2005-2006

SENATE EDUCATION/HIGHER EDUCATION

COMMITTEE MINUTES

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, March 9, 2005 at 10:00 AM
Room 414, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:00 AM on March 9, 2005, in Room 414 of the Legislative Office Building. Twenty Eight (28) members of the committee were present. Senator Jeanne H. Lucas presided.

Senator Lucas opened the meeting by introducing the pages and sergeant of arms. Senator Dalton was then called on to explain his bill which was Senate Bill 171 entitled – Impact of Student Mobility on Academic Perf. There being no questions the bill received a favorable report.

Senator Lucas then turned the meeting over to Senator Swindell so that she could present her bill, Senate Resolution 220. Senator Swindell moved to accept a committee substitute bill, which the committee accepted. Senator Stevens presented an amendment, after some discussion the amendment failed. Drupti Chauhan from staff then presented the bill. Upon a motion by Senator Lucas the bill was unfavorable at to adoption of senate resolution, but favorable as to adoption of committee substitute senate resolution.

There being no further business the meeting adjourned at 10:20 a.m.

Jeanne H. Lucas
Senator Jeanne H. Lucas, Presiding

B D-Yerumo
Bernadette David-Yerumo, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, March 09, 2005

Senator LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **171** Impact of Student Mobility on Academic Perf.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 171

Short Title:	Impact of Student Mobility on Academic Perf.	(Public)
Sponsors:	Senator Dalton.	
Referred to:	Education/Higher Education.	

February 21, 2005

A BILL TO BE ENTITLED

AN ACT DIRECTING THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO STUDY THE IMPACT OF STUDENT MOBILITY ON ACADEMIC PERFORMANCE.

The General Assembly of North Carolina enacts:

SECTION 1. The Joint Legislative Education Oversight Committee shall study the impact of student mobility on academic performance. In the course of the study, the Committee shall consider:

(1) The mobility rates of different student populations, especially those at risk of academic failure, and the relationship between high mobility rates and student performance for different student populations;

(2) Impediments to receiving a sound basic education that are a product of high mobility rates; and

(3) Strategies for meeting the needs of students who move frequently, especially students at risk of academic failure.

The Committee shall report the results of its study to the 2006 Regular Session of the 2005 General Assembly.

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, March 09, 2005

Senator LUCAS,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO ADOPTION OF SENATE RESOLUTION, BUT FAVORABLE AS TO ADOPTION OF COMMITTEE SUBSTITUTE SENATE RESOLUTION

S.R. **220** UNC Board of Governors/Election Procedure.

Draft Number:	PCS35105
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE RESOLUTION 220

Sponsors:	Senators Lucas; and Swindell.
Referred to:	Education/Higher Education.

February 28, 2005

A SENATE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA.

Be it resolved by the Senate:

SECTION 1. This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE RESOLUTION 220
PROPOSED COMMITTEE SUBSTITUTE S220-CSRQ-1 [v.3]

3/4/2005 11:22:59 AM

Sponsors:

Referred to:

February 28, 2005

A SENATE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA.

Be it resolved by the Senate:

SECTION 1. The following procedures for nominating and electing members of the Board of Governors of The University of North Carolina are adopted:

I. COMMITTEE RESPONSIBILITIES.

1. It is the duty of the Senate Committee on Education/Higher Education (hereinafter referred to as the "Senate Committee") to choose nominees for each opening on the Board of Governors of The University of North Carolina to which the Senate is to elect members.

2. The Senate Committee shall receive suggestions of proposed candidates for nomination for election to the Board of Governors of The University of North Carolina from Monday, March 14, 2005, through Friday, March 18, 2005. In 2005, the total number of positions is eight. In order for a person to have standing to be considered as a candidate for nomination by the Senate Committee, that person must be formally proposed as a candidate for nomination by a member of the Senate. Only a written nomination on a form provided by the cochairs of the Senate Committee for that purpose and received in the Office of the Senate Principal Clerk on or after Monday, March 14, 2005, and no later than 5:00 P.M. on Friday, March 18, 2005, shall constitute formal proposal of a candidate. Delivery of a nomination form by facsimile transmission shall not constitute a formal proposal of a candidate.

3. A Senator may propose candidates for nomination only for the openings available for election by the Senate. In the 2005 Session of the General Assembly, the Senate will elect eight persons for four-year terms.

4. On or after March 19, 2005, the Senate Committee shall list all proposed candidates for nomination. The Senate Committee shall screen the proposed candidates for nomination as to their qualifications and background and may interview each one to make sure that suitable persons are nominated. The Senate Committee shall ascertain that each candidate for nomination is willing and able to serve and has no statutory

disability. On completion of the screening process, the Senate Committee shall conduct a vote to ensure that the slate of legally qualified candidates lists no more than twice the number of candidates for the total seats open.

5. The cochairs of the Senate Committee shall ascertain whether the nominees for election by the Senate would serve if elected. Any nominee may withdraw without the approval of the sponsor.

6. Senate Committee nominees shall be placed before and recommended to the Senate for election.

II. ELECTIONS IN THE SENATE.

1. A ballot shall be prepared under the supervision of the cochairs of the Senate Committee for the use of the Senate.

2. The ballot shall list only the names of those nominees proposed by the Senate Committee who have consented to run and for whom the Senate is entitled to vote. Their names shall be arranged alphabetically by surname.

3. The Senate shall hold its election no later than the beginning of the daily session on April 6, 2005. Before the voting begins, one of the cochairs of the Senate Committee shall explain the voting rules, which are:

(a) No nomination shall be received from the floor.

(b) In order to be chosen, a nominee must receive the votes of a majority of all members present and voting.

(c) Each member present and voting shall vote for as many nominees as there are positions to be filled, and any ballot not so marked shall be deemed void.

(d) If fewer than eight nominees receive the votes of a majority of all members present and voting, a runoff to fill the open position or positions shall be conducted among the nominees who were not elected but who received the highest number of votes cast; and the number of nominees eligible to be voted on in the runoff shall be twice the number of positions to be filled.

(e) If there is a tie for the last position between two nominees who are eligible for the next runoff, both nominees shall be included in the next runoff balloting, even though there would be more than two nominees per available position, unless the deciding vote is cast in accordance with the North Carolina Constitution, Article II, Section 13.

(f) If more than eight nominees receive the votes of a majority of all members present and voting, then the eight nominees receiving the highest number of votes shall be deemed to have been chosen.

4. The Senators shall proceed to mark their ballots for eight persons, for four-year terms.

Every ballot shall be signed by the Senator casting it, and no unsigned ballots shall be counted.

5. The cochairs of the Senate Committee shall be responsible for canvassing the vote and declaring the results. All ballots shall be retained by the Principal Clerk as

part of the permanent records of the Senate and shall be open for immediate public inspection.

6. When the cochairs of the Senate Committee have determined that the Senate has chosen eight persons to serve as members of the Board of Governors for terms of four years, the President of the Senate shall declare those eight persons to have been elected.

7. The results of the election in the Senate shall then be sent by Special Messenger to the House of Representatives.

III. NOTIFICATION OF ELECTION RESULTS.

When the election process is complete, the cochairs of the Senate Committee shall notify the Secretary of the Board of Governors of The University of North Carolina of the names of the persons elected by the Senate and of the term for which each person was elected.

SECTION 2. As used in this resolution, the term "cochairs" means the cochairs of the Senate Committee.

SECTION 3. This resolution is effective upon adoption.

SENATE RESOLUTION 220: Board of Governors Election

BILL ANALYSIS

Committee: Senate Education/Higher Education
Date: March 9, 2005
Version: PCS for 1st Edition S220-CSRQ-1[v.3]

Introduced by: Lucas and Swindell
Summary by: Drupti Chauhan
Committee Counsel

SUMMARY:

The Board of Governors of The University of North Carolina has thirty-two elected members serving staggered four-year terms. During each odd numbered year, the General Assembly elects sixteen individuals to the Board - eight by the House and eight by the Senate. Each chamber separately prepares a resolution governing its nomination and election procedure. In 2001, G.S. Section 116-6 was amended and the various categories were eliminated. All the seats are now at-large seats.

If adopted, SR 220 provides the following procedure:

1. The Senate Committee on Education/Higher Education is responsible for receiving proposed suggestions for Board of Governors nominees.
2. The nomination process begins on Monday, March 14, 2005 and closes on Friday, March 18, 2005. Only nominations submitted on a form provided by the Committee Cochairs and received by 5 p.m. in the Office of the Senate Principal Clerk are eligible for consideration.
3. No member of the General Assembly, State officer or employee, employee of a constituent university, nor any spouse of these persons is eligible to serve.
4. On or after Saturday, March 19, 2005, the Committee shall consider the nominees to determine whether each candidate is willing and able to serve and has no statutory disability. The Committee will then conduct a vote to make sure that the slate of legally qualified candidates does not list more than twice the number of candidates for the total seats open. After the Committee finishes voting, the Cochairs will prepare a ballot listing the names of the candidates selected by the Committee.
5. The Senate must hold its election no later than the beginning of the daily session on Wednesday, April 6, 2005. The Committee Cochairs will explain the voting procedure set out in the Resolution. No floor nominations will be accepted.
6. In order to be elected, a candidate must receive the votes of a majority of the Senators present and voting. In order to be counted, each Senator must sign the ballot he or she casts.
7. The Cochairs of the Committee are responsible for canvassing the ballots and declaring the results.
8. After the Senate finishes the election, the Cochairs will forward the results to the Secretary of the Board of Governors.

Robin Johnson and Sara Kamprath, contributed to this summary

Senate Education/Higher Education Committee
Wednesday, March 9, 2005, 10:00 AM
414 LOB

AGENDA

Welcome and Opening Remarks — **Senator Lucas**

Introduction of Pages and Sergeant of Arms

Bills

SB 171	Impact of Student Mobility on Academic Perf.	Senator Dalton
SR 220	UNC Board of Governors/Election Procedure.	Senator Lucas

Presentations

Other Business

Adjournment

VISITOR REGISTRATION SHEET

Senate Education/Higher Education — March 9, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim McDowell	NCICU
Leann Winn	NCSBA
Ellen Greaves	PENC
Ben Hacftle	Sen. Hagan's Office
Adrienne Allism	visitor, UNC Law
Stephanie Ceccato	"
Tripp Melton	Sen. Stevens intern
Henry Hentoff	N.C.S.D.A.
Hal Miller	NCACCT
John Bowdish	ADA
Brian Lewis	Covenant w/ NC's Children

VISITOR REGISTRATION SHEET

Senate Education/Higher Education — March 9, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nikki McDougald	Intern
Marus Downs	NCAE
Gardner Payne	Edmisten & Webb
B Bryk	Gov's office
Mark Fleming	Wyrick, Robbins, Yates & Ponton
Tricia Hyyn	SBE/DPI

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE

Wednesday, March 23, 2005
10:00 AM
Room 414, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:00 AM on March 23, 2005, in Room 414 of the Legislative Office Building. Nineteen members of the committee were present. Senator Garwood presided.

The Chair recognized Senator Swindell to explain Senate Bill 569, Teacher Scholarships/Fund. Senator Swindell moved the adoption of the Proposed Committee Substitute for discussion. The motion carried by voice vote. Senator Hoyle moved an unfavorable report to the original Bill and a favorable report as to Proposed Committee Substitute, and the Proposed Committee Substitute be re-referred to the Appropriations Committee. The motion carried by unanimous voice vote.

Senator Garwood then recognized Senator Swindell to explain Senate Bill 571, School Counselors and Dropout prevention/Study. Dr. Linda Suggs, State Board of Education, was recognized to speak on the bill and answer questions. After Committee discussion, Senator Dannelly moved that the bill receive a favorable report. The motion carried by unanimous voice vote.

Senator Bingham was recognized to explain Senate Bill 408, Study Ways to Reduce Dropout Rate. Senator Hartsell moved a favorable report for Senate Bill 408. The motion carried by unanimous voice vote.

Senator Tillman was recognized to explain Senate Bill 181, Reciprocity for Teachers from other States. Chairman Howard Lee, State Board of Education was recognized to answer questions. A subcommittee was appointed to study Senate Bill 181. The Subcommittee members are: Senator Dannelly, Chair, Senator Tillman, Senator Hoyle, Senator Stevens, Senator Dorsett, Senator Dalton, Senator Malone.

The Committee agreed to designate one meeting to the discussion of "No Child Left Behind." Senator Lucas stated that Dr. Leak would be invited to that meeting.

The meeting adjourned at 9:50 a.m.

Senator John Garwood, Presiding Chair

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Thursday, March 24, 2005

Senator GARWOOD,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **569** Teacher Scholarships/Funds.

Draft Number:	PCS15211
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 569
PROPOSED COMMITTEE SUBSTITUTE S569-CSRQ-3 [v.3]

3/22/2005 3:37:55 PM

Short Title: Teacher Scholarships/Funds. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE FUTURE TEACHERS OF NORTH CAROLINA SCHOLARSHIP FUND FOR CERTAIN STUDENTS WHO AGREE TO BECOME CERTIFIED IN CERTAIN SUBJECT AREAS AND TEACH IN THE STATE PUBLIC SCHOOL SYSTEM AND TO APPROPRIATE FUNDS FOR THE SCHOLARSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 116 of the General Statutes is amended by adding the following new section:

"**§ 116-209.38. Future Teachers of North Carolina Scholarship Fund.**

(a) There is established the Future Teachers of North Carolina Scholarship Fund. The purpose of the Fund is to provide a two-year scholarship loan of six thousand five hundred dollars ($6,500) per year for any North Carolina student pursuing a college degree to teach in the public schools of the State. The scholarship loan shall be paid only for the student's junior and senior year. The scholarship loan is available if the student is enrolled in a State institution of higher education or a private institution of higher education located in this State that has an accredited teacher preparation program for students planning to become certified teachers in North Carolina. The State Education Assistance Authority shall administer the Fund and shall award 100 scholarship loans annually.

(b) The Board of Governors of The University of North Carolina in consultation with the State Board of Education and the State Board of Community Colleges shall develop the criteria for awarding the scholarship loans under this section and shall adopt very stringent standards for awarding these scholarship loans to ensure that only the best students receive them. Additional criteria for awarding a scholarship loan under this section shall include all of the following:

(1) The student is one who either: (i) maintained a "B" average in college and is enrolled as a junior or senior in a teacher preparation program at

any of the institutions described by subsection (a) of this section; or (ii) completed a college transfer curriculum at a community college in the State's community college system, maintained a "B" average in the community college courses, and is accepted and enrolled in a teacher preparation program at one of the institutions described by subsection (a) of this section.

(2) The student agrees to become certified in math, science, special education, or English as a Second Language and teach full-time in that subject area in a North Carolina public school for three years within four years after graduation.

(3) Any additional criteria that the Board of Governors of The University of North Carolina in consultation with the State Board of Education and the State Board of Community Colleges considers necessary to administer the Fund effectively.

(c) If a student who is awarded a scholarship loan under this section fails to comply with the provisions of this section or the terms of the agreement awarding the scholarship loan, then the student shall repay the full amount of the scholarship loan provided to the student and the appropriate amount of interest as determined by the State Education Assistance Authority.

(d) The Board of Governors of The University of North Carolina, the State Board of Education, and the State Board of Community Colleges shall: (i) prepare a clear written explanation of the Future Teachers of North Carolina Scholarship Fund and the information regarding the availability and criteria for awarding the scholarship loans, and (ii) shall provide that information to the appropriate counselors in each local school system and the appropriate institutions of higher education and shall charge those counselors to inform students about the scholarship loans and to encourage them to apply for the scholarship loans.

(e) The Board of Governors of The University of North Carolina shall adopt rules to implement this section.

(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by March 1 each year regarding the Fund and scholarship loans awarded from the Fund."

SECTION 2. There is appropriated from the General Fund to the State Education Assistance Authority the sum of six hundred fifty thousand dollars ($650,000) for the 2005-2006 fiscal year and the sum of one million three hundred thousand dollars ($1,300,000) for the 2006-2007 fiscal year to implement this act.

SECTION 3. This act becomes effective July 1, 2005.

SENATE BILL 569:
Teacher Scholarships/Funds.

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Introduced by:**	Senator Swindell
		Summary by:	Drupti Chauhan Committee Counsel
Date:	March 23, 2005		
Version:	**PCS S569-CSRQ-3[v.3]**		

SUMMARY: ***Senate Bill 569 would create the Future Teachers of North Carolina Scholarship Fund for North Carolina students who are pursuing teaching degrees and plan to teach in the public schools of the State. The Bill includes an appropriation to the State Education Assistance Authority to the Scholarship Fund.***

The PCS would require a scholarship recipient to teach in a North Carolina public school for three years within fours after graduation. It also changes the references to the "scholarship" to "scholarship loans" to reflect that a student would have to pay the money back if the terms of the scholarship are not fulfilled. Finally, the PCS removes minimum scholastic aptitude scores as criteria for the scholarship loan.

BILL ANALYSIS: Senate Bill 569 would create the Future Teachers of North Carolina Scholarship Fund (Fund) to provide 100 scholarship loans in the amount of $6,500 per year to any North Carolina student who is pursuing a teaching degree and plans to teach in the public schools of the State. The scholarship loan is only available for the student's junior and senior years. In order to be eligible, a student must be enrolled in a public or private North Carolina institution of higher education that has an accredited teacher preparation program. The State Education Assistance Authority (SEAA) is to administer the Fund.

The bill directs the Board of Governors of The University of North Carolina (BOG), in consultation with the State Board of Education (SBE) and the State Board of Community Colleges (SBCC), to develop the criteria for awarding the scholarship loans including the following:

1. The student must be enrolled as a junior or senior in a teacher preparation program at a North Carolina public or private institution of higher education or completed a college transfer curriculum at a North Carolina community college and have been accepted and enrolled in a teacher preparation program at a North Carolina public or private institution of higher education;
2. The student must have maintained a "B" average in college or in the community college courses;
3. The student must agree to become certified in math, science, special education, or English as a Second Language and be employed full-time as a teacher in a North Carolina public school for three years within four years of graduation; and
4. Any other criteria that the BOG, in consultation with the SBE and SBCC, considers necessary.

If a student who is awarded a scholarship loan from this Fund fails to comply with the terms of the scholarship loan, then the student would be required to repay the full amount of the scholarship loan provided to the student with interest as determined by the SEAA.

The bill further provides that the BOG, SBE and the SBCC must prepare a clear written explanation of the Fund and information regarding the availability and criteria for awarding the scholarship loans as well as

provide that information to counselors in the local school systems and the appropriate institutions of higher education.

The BOG would be required to adopt rules for implementation and report to the Joint Legislative Education Oversight Committee by March 1 of each year about the Fund and the scholarship loans awarded.

The bill includes an appropriation in the amount of $650,000 for 2005-2006 and $1,300,000 for 2006-2007.

BACKGROUND: There are several other teacher scholarship funds including the Teacher Assistant Scholarship Fund, the North Carolina Teaching Fellows, and the Scholarship Loan Fund for Prospective Teachers. The Teacher Assistant Scholarship Fund provides scholarships to teacher assistants who are working full-time in North Carolina and are pursuing college degrees to become teachers. The North Carolina Teaching Fellows Program gives four-year scholarship loans to North Carolina high school seniors who agree to teach for four years in a North Carolina public school. The Scholarship Loan Fund for Prospective Teachers provides scholarships to North Carolina residents who are in programs leading to teacher licensure and is administered by the NC Department of Public Instruction. The North Carolina Department of Instruction also administers the Teacher Assistant Scholarship Loan program which provides funds to full time teacher assistants who are attending a North Carolina community college to pursue a program of study leading to teacher licensure.

EFFECTIVE DATE: The bill would become effective July 1, 2005.

SB569-SMRQ-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 569

Short Title:	Teacher Scholarships/Funds.	(Public)
Sponsors:	Senators Swindell; Allran, Jenkins, and Thomas.	
Referred to:	Education/Higher Education.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE FUTURE TEACHERS OF NORTH CAROLINA SCHOLARSHIP FUND FOR CERTAIN STUDENTS WHO AGREE TO BECOME CERTIFIED IN CERTAIN SUBJECT AREAS AND TEACH IN THE STATE PUBLIC SCHOOL SYSTEM AND TO APPROPRIATE FUNDS FOR THE SCHOLARSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 116 of the General Statutes is amended by adding the following new section:

"**§ 116-209.38. Future Teachers of North Carolina Scholarship Fund.**

(a) There is established the Future Teachers of North Carolina Scholarship Fund. The purpose of the Fund is to provide a two-year scholarship of six thousand five hundred dollars ($6,500) per year for any North Carolina student pursuing a college degree to teach in the public schools of the State. The scholarship shall be paid only for the student's junior and senior year. The scholarship is available if the student is enrolled in a State institution of higher education or a private institution of higher education located in this State that has an accredited teacher preparation program for students planning to become certified teachers in North Carolina. The State Education Assistance Authority shall administer the Fund and shall award 100 scholarships annually.

(b) The Board of Governors of The University of North Carolina in consultation with the State Board of Education and the State Board of Community Colleges shall develop the criteria for awarding the scholarships under this section and shall adopt very stringent standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarships to ensure that only the best students receive them. Additional criteria for awarding a scholarship under this section shall include all of the following:

(1) The student is one who either: (i) maintained a "B" average in college and is enrolled as a junior or senior in a teacher preparation program at

any of the institutions described by subsection (a) of this section; or (ii) completed a college transfer curriculum at a community college in the State's community college system, maintained a "B" average in the community college courses, and is accepted and enrolled in a teacher preparation program at one of the institutions described by subsection (a) of this section.

(2) The student agrees to be employed full-time as a teacher in North Carolina for the period of time that satisfies the criteria set out by this section.

(3) The student agrees to become certified in math, science, special education, or English as a Second Language and teach in that subject area in this State in the public school system for the same number of years for which the scholarship is provided.

(4) Any additional criteria that the Board of Governors of The University of North Carolina in consultation with the State Board of Education and the State Board of Community Colleges considers necessary to administer the Fund effectively.

(c) If a student who is awarded a scholarship under this section fails to comply with the provisions of this section or the terms of the agreement awarding the scholarship, then the student shall repay the full amount of the scholarship provided to the student and the appropriate amount of interest as determined by the State Education Assistance Authority.

(d) The Board of Governors of The University of North Carolina, the State Board of Education, and the State Board of Community Colleges shall: (i) prepare a clear written explanation of the Future Teachers of North Carolina Scholarship Fund and the information regarding the availability and criteria for awarding the scholarships, and (ii) shall provide that information to the appropriate counselors in each local school system and the appropriate institutions of higher education and shall charge those counselors to inform students about the scholarships and to encourage them to apply for the scholarships.

(e) The Board of Governors of The University of North Carolina shall adopt rules to implement this section.

(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by March 1 each year regarding the Fund and scholarships awarded from the Fund."

SECTION 2. There is appropriated from the General Fund to the State Education Assistance Authority the sum of six hundred fifty thousand dollars ($650,000) for the 2005-2006 fiscal year and the sum of one million three hundred thousand dollars ($1,300,000) for the 2006-2007 fiscal year to implement this act.

SECTION 3. This act becomes effective July 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, March 23, 2005

Senator GARWOOD,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**408**	Study Ways to Reduce Dropout Rate.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**571**	School Counselors & Drop-out Prevention/Study.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 408

Short Title:	Study Ways to Reduce Dropout Rate.	(Public)
Sponsors:	Senators Bingham; Albertson, Apodaca, Berger of Rockingham, Blake, Brown, Cowell, East, Forrester, Garwood, Hagan, Jacumin, Jenkins, Kinnaird, Pittenger, Presnell, Smith, and Stevens.	
Referred to:	Education/Higher Education.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO IDENTIFY RESEARCH-BASED METHODS TO REDUCE THE DROPOUT RATE.

The General Assembly of North Carolina enacts:

SECTION 1. The State Board of Education shall identify research-based methods to reduce the dropout rate, especially in high-poverty schools with diverse student populations. As part of its study, the State Board shall review the research for best practices, effective policies, and model programs in areas such as (i) academic rigor in the curriculum, (ii) early identification of at-risk students, (iii) effective supplemental services for at-risk students, (iv) school size, (v) school climate, and (vi) adolescent literacy programs, as they relate to a reduction in the dropout rate.

The State Board shall report its findings to the Joint Legislative Education Oversight Committee by January 2006.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 571

Short Title:	School Counselors & Dropout Prevention/Study.	(Public)
Sponsors:	Senators Swindell; Albertson, Allran, Atwater, Bingham, Clodfelter, Dannelly, Dorsett, Garwood, Jenkins, Kinnaird, Lucas, Malone, Rand, Soles, Stevens, Thomas, and Tillman.	
Referred to:	Education/Higher Education.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO REPORT ON THE ROLE SCHOOL COUNSELORS PLAY IN PROVIDING DROPOUT PREVENTION AND INTERVENTION SERVICES TO STUDENTS IN MIDDLE AND HIGH SCHOOL.

The General Assembly of North Carolina enacts:

SECTION 1. Research shows that school counselors can provide effective services to students that encourage them to stay in school, succeed in school, and graduate from high school. Research also shows that middle school is a critical time for students who are at risk of dropping out of school. The General Assembly currently provides funding that local school administrative units may use to hire school counselors; it is unclear, however, what role school counselors play in providing effective and efficient dropout prevention and intervention services to students in middle and high school. The General Assembly needs additional information to determine whether adjustments should be made in funding for school counselors or assignment of duties to school counselors; therefore, the State Board of Education shall report the following information to the Joint Legislative Education Oversight Committee prior to March 15, 2006:

(1) The number of school counselors per school with a sixth grade or higher grade;

(2) The source of funds used for each of these counselors;

(3) A review and analysis of the counselors' primary duties by school;

(4) A summary and description of school-based dropout prevention and intervention services provided directly to students in the sixth grade and higher grades, including the role of school counselors in providing the services; and

(5) The number of school counselors and other individuals per local school administrative unit whose primary responsibility is to provide school-based dropout prevention and intervention services and the percentage of their time spent providing these services.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 181

Short Title:	Reciprocity for Teachers From Other States.	(Public)
Sponsors:	Senators Tillman; Allran, Apodaca, Atwater, Berger of Franklin, Bingham, Blake, Brock, Brown, Clodfelter, Dorsett, East, Forrester, Garwood, Goodall, Hartsell, Hunt, Jacumin, Pittenger, Presnell, Purcell, Smith, Soles, Stevens, and Thomas.	
Referred to:	Education/Higher Education.	

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CERTIFICATION IN NORTH CAROLINA OF OUT-OF-STATE TEACHERS WHO ARE FULLY CERTIFIED AND HIGHLY QUALIFIED IN ANOTHER STATE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that there is a shortage of certified teachers for the North Carolina public schools; therefore, G.S. 115C-296.3 is reenacted and reads as rewritten:

"**§ 115C-296.3. Certification of highly qualified teachers from other states.**

Notwithstanding any other provision of law, a teacher from another state shall be granted North Carolina certification under the following conditions:

(1) New hires to the profession from other states. – A teacher from another state who (i) has less than three years of experience as a full-time classroom teacher, (ii) is fully certified and highly qualified, as provided in the No Child Left Behind Act of 2001, 20 U.S.C. § 6301, et seq., in that other state; and (iii) is employed as a teacher by a local school administrative unit in North Carolina, is deemed to have satisfied the academic and professional preparation required to receive initial certification in North ~~Carolina.~~ Carolina, except as otherwise provided in the No Child Left Behind Act of 2001. The initial certification shall be granted for one year or for the period of time necessary for the teacher to acquire three years of full-time teaching experience in North Carolina and the other state combined, whichever is longer.

Once the teacher has three years of experience as a full-time teacher with at least one full year in a local school administrative unit

in North Carolina, the teacher shall receive continuing certification unless the employing local school administrative unit recommends that the teacher not be granted continuing certification. The teacher shall be subject to the same requirements for continuing certification and certificate renewal as other teachers in North Carolina.

The teacher shall not be required to take and pass a standard examination to demonstrate adequate academic and professional preparation for certification, except as otherwise provided by the No Child Left Behind Act of 2001.

(2) New hires with at least three years of experience from other states. – A teacher from another state who (i) has three or more years of experience as a full-time teacher, (ii) is fully certified and highly qualified as provided in the No Child Left Behind Act of 2001 in that other state, and (iii) is employed as a teacher by a local school administrative unit in North Carolina is deemed to have satisfied the academic and professional preparation required to receive continuing certification for one year in North ~~Carolina.~~ Carolina, except as otherwise provided in the No Child Left Behind Act of 2001.

If at the end of one year of employment, the employing local board of education recommends to the State Board of Education that the teacher's certification be renewed, the teacher shall be eligible to receive continuing certification. The teacher shall be subject to the same requirements for continuing certification and certificate renewal as other teachers in North Carolina.

The teacher shall not be required to take and pass a standard examination to demonstrate that preparation, except as otherwise provided by the No Child Left Behind Act of 2001."

SECTION 2. The Joint Legislative Education Oversight Committee shall study the shortage of certified teachers for the North Carolina public schools. The Committee shall report to the 2007 General Assembly on the continuing need to expedite the certification of out-of-State teachers in accordance with G.S. 115C-296.3, as reenacted and rewritten in Section 1 of this act due to the teacher shortage.

SECTION 3. This act is effective when it becomes law and applies to all persons initially employed as teachers by a local school administrative unit in North Carolina for the 2005-2006 school year or the 2006-2007 school year. This act expires June 30, 2007.

SENATE BILL 181:
Reciprocity for Teachers from Other States

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Introduced by:**	Senator Tillman
		Summary by:	Shirley Iorio, Ph D Committee Analyst
Date:	March 23, 2005		
Version:	First Edition		

SUMMARY: ***G.S. 115C-296.3 expired June 30, 2004. This bill would reenact that statute and would grant reciprocity to teachers from other states that were deemed fully certified and highly qualified in their states under the No Child Left Behind Act of 2001 (NCLB). These teachers would not have to take and pass a standard examination except as required under NCLB.***

The bill would require the Joint Legislative Education Oversight Committee to study the shortage of certified teachers for the North Carolina public schools. The Committee would report to the 2007 General Assembly on the continuing need to expedite the certification of out-of-state teachers.

The bill would become effective when it becomes law and apply to all persons initially employed as teachers by a North Carolina LEA for the 2005-2006 school year or the 2006-2007 school year

This act would expire June 30, 2007.

CURRENT LAW: State Board of Education policy (QP-A-018 and QP-A-002) allows an individual who has not completed an approved teacher education program in North Carolina to be eligible for a North Carolina license through reciprocity if the program completed in another state is equivalent to North Carolina's standards and guidelines for approved education programs and is in an area for which the Department of Public Instruction (DPI) can issue a license. DPI recognizes the following bases for reciprocity:

- Completion of an education program accredited by the National Council for Accreditation of Teacher Education (NCATE);
- Completion of an education program that meets the standards developed by the National Association of State Directors of Teacher Education and Certification (NASDTEC);
- Completion of an education program in a state with which North Carolina has an interstate agreement (G.S. 115C-349 through 115C-358).

Graduates of accredited teacher education programs of out-of-state senior colleges who do not meet the requirements listed above may be issued a provisional license valid for one year, provided the applicant holds or is qualified to hold at least a non-provisional, entry level current license in the state in which the applicant completed the bachelor's level teacher education program. The provisional license is issued only for classroom teachers, at the bachelor's degree level, and covers only the areas and levels in which the applicant holds or is qualified to hold an out-of-state license. If the applicant has satisfied testing requirements, the provisions can be removed after one year of satisfactory teaching in a North Carolina public school. Effective June 30, 2006, provisional licenses will no longer be issued for the elementary grade levels or at the middle and high school levels in license areas required for teaching the core academic subjects. No Child Left Behind prohibits issuing most provisional licenses.

Reciprocity does **not** generally "cover" a testing requirement.

G.S. 115C-296.1, which will expire September 1, 2006, allows local boards of education, if they have determined that there is or will be a shortage of qualified teachers with North Carolina certificates available to teach certain subjects or grade levels, to employ for up to one year under a provisional certificate teachers who are certified in other states, have at least one year of relevant classroom teaching experience, and are eligible for re-employment by their prior employer. The local board must also meet other specified requirements. If the local board reemploys these teachers after the first year, the teachers do not have to take and pass the certification exam (currently PRAXIS II). They are subject to the same requirements for continuing certification and certificate renewal as other North Carolina teachers.

Effective June 30, 2006, local boards will no longer be able to use this provision. No Child Left Behind requires that all teachers must be highly qualified by June 30, 2006, and prohibits issuing most provisional licenses.

BILL ANALYSIS: This bill would authorize the initial certification for a teacher from another state who meets all of the following criteria:

- Has less than three years of full-time classroom teaching experience.
- Is fully certified and highly qualified, as provided in No Child Left Behind, in that other state.
- Is employed as a teacher by a local school administrative unit in North Carolina.

Under this provision, initial certification would be for one year or until the teacher acquires three full years of full-time teaching experience in North Carolina and the other state combined, whichever is longer. Unless the local school unit recommends otherwise, a teacher would receive continuing certification upon the completion of three years of full-time teaching, including one full year in that unit. The teacher would then be subject to the same continuing certification and certificate renewal requirements as other North Carolina teachers. The teacher would not be required to take and pass a standard examination, unless No Child Left Behind requires otherwise.

This bill would also authorize continuing certification for one year for a teacher from another state who meets all of the following criteria:

- Has three or more years of experience as a full-time teacher.
- Is fully certified and highly qualified, as provided in No Child Left Behind, in that other state.
- Is employed as a teacher by a local school administrative unit in North Carolina.

Under this provision the teacher would retain continuing certification if, at the end of one year of employment, the employing local board of education recommends to the State Board that the teacher's continuing certification be renewed. The teacher would not be required to take and pass a standard examination, unless No Child Left Behind requires otherwise. The teacher would be subject to the same continuing certification and certificate renewal requirements as other North Carolina teachers.

Senate Education/Higher Education Committee

Wednesday, March 23, 2005

10:00 AM

ROOM 414 LOB

AGENDA

Sen. John Garwood, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 569	Teacher Scholarships/Funds.	Senator Swindell IV
SB 571	School Counselors & Drop-out Prevention/Study.	Senator Swindell IV
SB 408	Study Ways to Reduce Dropout Rate.	Senator Bingham
SB 181	Reciprocity for Teachers from other States.	Senator Tillman

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education
Name of Committee **Date March 23, 2005**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Grossenbacher	OSBM
[signature]	NCPAPA
Michael Wagner	Fayetteville Observer
Joel Maynard	OMS
Kevin Mills	Senator Purcell's Office
E Vajda	UNCTV
Michael Houser	NCACE
Ann McArthur	Governor's Office

VISITOR REGISTRATION SHEET

Education/Higher Education
Name of Committee **Date March 23, 2005**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gina Norris	Public School Forum
Tom Mulvaney	NCICU
Linda Hayes	SBE/DPI
Cynthia T Boyd	DPI
Gladys Fogan	DPI
[illegible]	Gov's office
Mary McDuffie	NCCAT
Kathy Sullivan	DPI
John McKnight	Gov Office
Lisa Bateman	DJJDP
Molly Ryan	NCSBA
Gene Causby	NCGCA

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, March 30, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:15 AM on March 30, 2005, in Room 643 of the Legislative Office Building. Seventeen members of the committee were present. Senator Swindell presided.

Senator Swindell opened the meeting by introducing the pages. Senator Lucas was recognized to present the 2005 nominees for the UNC Board of Governors (see attached). Senator Malone made a motion to accept the slate of twelve to recommend to the full Senate. Senator Stevens asked why two other nominees were not on the list. Senator Swindell stated that the nominees sent in fax copies that were not acceptable. The motion carried by unanimous voice vote.

Senator Swindell relinquished the Chair to Senator Lucas so he could present two bills.

Senator Lucas recognized Senator Swindell to explain Senate Bill 630, Residential Schools Like Other Public Schools. Senator Dannelly moved the adoption of the Proposed Committee Substitute for discussion. The motion carried by voice vote. Senator Dannelly moved an unfavorable report to the original Bill and a favorable report as to the Proposed Committee Substitute. The motion carried by unanimous voice vote. Senator Swindell moved to adopt the Proposed Committee Substitute for Senate Bill 630. The motion carried by unanimous voice vote.

Senator Swindell explained Senate Bill 709, Salary of Teachers at Residential Schools and recommended passage of the bill. Senator Tillman asked if this bill authorized salary supplements but authorizes no money. Senator Swindell agreed and stated that there are no monies in this legislature. After committee discussion, Senator Dannelly moved an unfavorable report to the original Bill and a favorable report as to the Proposed Committee Substitute. The motion carried by unanimous voice vote.

The meeting adjourned at 10: 37 a.m.

Senator A. B. Swindell, Presiding

Tonia Butler Perez, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator A. B. Swindell, Co-Chair
Senator Jeanne Hopkins Lucas, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, March 30, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **630** Residential Schools Like Other Public Schools.

Draft Number:	PCS75278
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **709** Salary of Teachers at Residential Schools.

Draft Number:	PCS85228
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
2005-2006

Senator Jeanne Lucas, Co-Chair
Room 311, LOB
Raleigh, NC
(919) 733-4599

Senator A. B. Swindell, IV, Co-Chair
Room 629, LOB
Raleigh, NC 27601-2808
(919) 715-3030

Senator John Garwood, Co-Chair
Room 1118, LB
Raleigh, NC 27601-2808
(919) 733-5742

March 30, 2005

MEMORANDUM

TO: Members of the Senate

FROM: Senator Jeanne Lucas, Co-Chair
Senator A. B. Swindell, IV, Co-Chair
Senator John Garwood, Co-Chair
Education/Higher Education Committee

RE: The University Board of Governors Nominees

Pursuant to Senate Resolution 174, the Education/Higher Education Committee has met and voted on the following slate of candidates to be submitted to the Senate. The Senate will elect 8 individuals from this slate to serve on The University of North Carolina Board of Governors.

NOMINEE	SENATE SPONSOR (S)
Peaches Gunter Blank	Senator Hoyle
Michael Brader-Araje	Senator Kinnaird
Phillip R. Dickson	Senator Kerr, Senator Jenkins, Senator Thomas
Ray S. Farris	Senator Clodfelter, Senator Dannelly, Senator Graham
Hannah Dawson Gage	Senator Boseman
Dr. Willie Gilchrist	Senator Holloman
Luther H. Hodges, Jr.	Senator Atwater, Senator Hunt
Robert P. Kennel	Senator Garwood Senator Weinstein
Jim Phillips	Senator Hagan
John Spotswood Russell	Senator Dalton
William G. Smith	Senator Lucas
J. Bradley Wilson	Senator Rand

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 630
PROPOSED COMMITTEE SUBSTITUTE S630-CSRH-5 [v.3]

3/29/2005 7:39:33 PM

Short Title: Residential Schools Like Other Public Schools. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE STATUTES GOVERNING RESIDENTIAL SCHOOLS TO MAKE THEIR ACCOUNTABILITY SYSTEM AND THEIR SCHOOL IMPROVEMENT PLANS LIKE THOSE OF OTHER PUBLIC SCHOOLS, AND TO MAKE OTHER TECHNICAL OR CONFORMING CHANGES TO THOSE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-146.1(b) reads as rewritten:

"(b) The following definitions apply in this Part:

(1) ABC's Program or Program. – The School-Based Management and Accountability Program developed by the State Board.

(2) Department. – The Department of Health and Human Services.

(3) Instructional personnel. ~~Principals, assistant~~ Assistant principals, teachers, instructional personnel, instructional support personnel, and teacher assistants employed in a residential school.

(4) Participating school. – A residential school that is required to participate in the ABC's Program.

(5) Residential school personnel. – The individuals included in G.S. 143B-146.16(a)(2).

(6) Schools. – The residential schools under the control of the Secretary.

(7) Secretary. – The Secretary of Health and Human Services.

(8) State Board. – The State Board of Education.

(9) Superintendent. – ~~The individual designated by the Secretary to administer a residential school.~~The Superintendent of the Office of Education Services of the Department of Health and Human Services."

SECTION 2. G.S. 143B-146.2(a) reads as rewritten:

"(a) The Governor Morehead School and the schools for the deaf shall participate in the ABC's Program. The Secretary, in consultation with the General Assembly and

the State Board, may designate other residential schools that must participate in the ABC's Program. The primary goal of the ABC's Program is to improve student performance. The Program is based upon an accountability, recognition, assistance, and intervention process in order to hold each participating school, its ~~superintendent,~~ principal, and the instructional personnel accountable for improved student performance in that school."

SECTION 3. G.S. 143B-146.4 reads as rewritten:

"**§ 143B-146.4. Performance recognition.**

(a) ~~The superintendent and instructional personnel assigned to participating schools that achieve or exceed a level of expected growth to be determined by the State Board are eligible for financial awards in amounts set by the State Board. Participating schools and personnel shall not be required to apply for these awards.~~ The personnel in participating schools that achieve a level of expected growth greater than one hundred percent (100%) at a level to be determined by the State Board of Education are eligible for financial awards in amounts set by the State Board. Schools and personnel shall not be required to apply for these awards. For the purpose of this section, "personnel" includes the principal and the instructional personnel (i) serving students in one or more of the grades kindergarten through 12 or (ii) assigned to a prekindergarten program that is located within the participating school and is designed to prepare students for kindergarten at that school.

(b) The State Board shall establish a procedure to allocate the funds for these awards. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure ~~for:~~ for awards to personnel.

~~(1) Awards to the personnel; or~~

~~(2) The purposes authorized in a plan that has been:~~

~~a. Developed and voted on by the superintendent and instructional personnel in the same manner that a school improvement plan is approved under G.S. 143B-146.12;~~

~~b. Approved by a majority of the personnel who vote on the plan; and~~

~~c. Submitted to and approved by the Secretary.~~

~~The Secretary shall approve this plan unless the plan involves expenditures of funds that are not for a public purpose or that are otherwise unlawful.~~

The Secretary is encouraged to make these awards to each eligible person no later than the first regular teacher payroll following receipt of the funds, and shall make these awards to each eligible person no later than the second regular teacher payroll following the receipt of the funds."

SECTION 4. G.S. 143B-146.6(b) reads as rewritten:

"(b) When assigned to an identified low-performing school, an assistance team shall:

...

(2) Evaluate at least semiannually the ~~superintendent~~ principal and instructional personnel assigned to the school and make findings and recommendations concerning their performance.

..."

SECTION 5. G.S. 143B-146.7(a) reads as rewritten:

"(a) Within 30 days of the initial identification of a school as low-performing, whether by the Secretary under G.S. 143B-146.5(b) or by the State Board under G.S. 143B-146.5(a), the Secretary shall take one of the following actions concerning the school's ~~superintendent:~~ principal: (i) decide whether the ~~superintendent~~ principal should be retained in the same position, (ii) decide whether the ~~superintendent~~ principal should be retained in the same position and a plan of remediation should be developed, (iii) decide whether the ~~superintendent~~ principal should be transferred, or (iv) proceed under the State Personnel Act to dismiss or demote the ~~superintendent.~~ principal. The ~~superintendent~~ principal may be retained in the same position without a plan for remediation only if the ~~superintendent~~ principal was in that position for no more than two years before the school is identified as low-performing. The ~~superintendent~~ principal shall not be transferred to another position unless (i) it is in a ~~superintendent~~ principal position in which the ~~superintendent~~ principal previously demonstrated at least two years of success, (ii) there is a plan to evaluate and provide remediation to the ~~superintendent~~ principal for at least one year following the transfer to assure the ~~superintendent~~ principal does not impede student performance at the school to which the ~~superintendent~~ principal is being transferred; and (iii) the parents of the students at the school to which the ~~superintendent~~ principal is being transferred are notified. The ~~superintendent~~ principal shall not be transferred to another low-performing school. The Secretary may, at any time, proceed under the State Personnel Act for the dismissal of any ~~superintendent~~ principal who is assigned to a low-performing school to which an assistance team has been assigned. The Secretary shall proceed under the State Personnel Act for the dismissal of any ~~superintendent~~ principal when the Secretary receives from the assistance team assigned to that school two consecutive evaluations that include written findings and recommendations regarding the ~~superintendent's~~ principal's inadequate performance. The Secretary shall order the dismissal of the ~~superintendent~~ principal if the Secretary determines from available information, including the findings of the assistance team, that the low performance of the school is due to the ~~superintendent's~~ principal's inadequate performance. The Secretary may order the dismissal of the ~~superintendent~~ principal if (i) the Secretary determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the ~~superintendent.~~ principal. The Secretary may order the dismissal of a ~~superintendent~~ principal before the assistance team assigned to the ~~superintendent's~~ principal's school has evaluated that ~~superintendent~~ principal if the Secretary determines from other available information that the low performance of the school is due to the ~~superintendent's~~ principal's inadequate performance. The burden of proof is on the ~~superintendent~~ principal to establish that the factors leading to the school's low performance were not due to the ~~superintendent's~~ principal's inadequate performance.

The burden of proof is on the Secretary to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school. Two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the ~~superintendent.~~ principal. Within 15 days of the Secretary's decision concerning the ~~superintendent,~~ principal, but no later than September 30, the Secretary shall submit to the State Board a written notice of the action taken and the basis for that action."

SECTION 6. G.S. 143B-146.8 reads as rewritten:

" § **143B-146.8. Evaluation of certificated personnel and ~~superintendents;~~ principals; action plans; State Board notification.**

(a) Annual Evaluations; Low-Performing Schools. – The ~~superintendent~~ principal shall evaluate at least once each year all certificated personnel assigned to a participating school that has been identified as low-performing but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under G.S. 115C-325(a)(6), either the principal or an assessment team assigned under G.S. 143B-146.9 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), the ~~superintendent~~ Superintendent shall conduct the evaluation.

Notwithstanding this subsection or any other law, the principal shall observe at least three times annually, a teacher shall observe at least once annually, and the principal shall evaluate at least once annually, all teachers who have not attained career status. All other employees defined as teachers under G.S. 115C-325(a)(6) who are assigned to participating schools that are not designated as low-performing shall be evaluated annually unless the Secretary adopts rules that allow specified categories of teachers with career status to be evaluated more or less frequently. The Secretary also may adopt rules requiring the annual evaluation of noncertificated personnel. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school.

The Secretary shall use the State Board's performance standards and criteria unless the Secretary develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if an evaluation is used other than one adopted by the State Board.

(b) Action Plans. – If a certificated employee in a participating school that has been identified as low-performing receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the ~~superintendent~~ principal that: (i) the employee receive an action plan designed to improve the employee's performance; or (ii) the ~~superintendent~~ principal recommend to the Secretary that the employee be dismissed or demoted. The ~~superintendent~~ principal shall determine whether to develop an action plan or to recommend a dismissal

proceeding. The person who evaluated the employee or the employee's supervisor shall develop the action plan unless an assistance team or assessment team conducted the evaluation. If an assistance team or assessment team conducted the evaluation, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board, in consultation with the Secretary, shall develop guidelines that include strategies to assist in evaluating certificated personnel and developing effective action plans within the time allotted under this section. The Secretary may adopt policies for the development and implementation of action plans or professional development plans for personnel who do not require action plans under this section.

(c) Reevaluation. – Upon completion of an action plan under subsection (b) of this section, the ~~superintendent~~ principal or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the ~~superintendent~~ principal shall recommend that the employee be dismissed or demoted under G.S. 115C-325. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

...

(f) Evaluation of ~~Superintendents.~~ Principals.– Each year the Secretary or the ~~Secretary's designee~~ Superintendent shall evaluate the ~~superintendents~~ principals."

SECTION 7. G.S. 143B-146.9 reads as rewritten:

"**§ 143B-146.9. Assessment teams.**

The State Board shall develop guidelines for the Secretary to use to create assessment teams. The Secretary shall assign an assessment team to every low-performing school that has not received an assistance team. The Secretary shall ensure that assessment team members are trained in the proper administration of the employee evaluation used in the participating schools. If service on an assessment team is an additional duty for an employee of a local school administrative unit or an employee of a residential school, the Secretary may pay the employee for that additional work.

Assessment teams shall:

(1) Conduct evaluations of certificated personnel in low-performing schools;

(2) Provide technical assistance and training to principals ~~and superintendents~~ who conduct evaluations of certificated personnel;

(3) Develop action plans for certificated personnel; and

(4) Assist principals ~~and superintendents~~ in the development and implementation of action plans."

SECTION 8. G.S. 143B-146.10 reads as rewritten:

"**§ 143B-146.10. Development of performance standards and criteria for certificated personnel.**

The State Board, in consultation with the Secretary, shall revise and develop uniform performance standards and criteria to be used in evaluating certificated personnel, including school administrators. These standards and criteria shall include improving student achievement, employee skills, and employee knowledge. The standards and criteria for school administrators also shall include building-level gains in student learning and effectiveness in providing for school safety and enforcing student discipline. The Secretary shall develop guidelines for evaluating ~~superintendents.~~ principals. The guidelines shall include criteria for evaluating a ~~superintendent's~~principal's effectiveness in providing safe schools and enforcing student discipline."

SECTION 9. G.S. 143B-146.12 reads as rewritten:

"**§ 143B-146.12. Development and approval of school improvement plans.**

(a) In order to improve student performance, each ~~participating~~ school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 143B-146.3. The ~~superintendent,~~principal of each school, instructional personnel, and residential life personnel assigned to that school, and a minimum of five parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance.

(a1) Representatives of the instructional and residential life personnel shall be elected by their respective groups by secret ballot.

(b) Parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. To the extent possible, parents serving on school improvement teams shall reflect the composition of the students enrolled in that school. No more than two parents may be employees of the school. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with ~~teachers,~~instructional and residential life personnel, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. Parents who are elected to serve on school improvement teams and who are not employees of the school shall receive travel and subsistence expenses in accordance with G.S. 138-5 and, if appropriate, may receive a stipend.

(c) The strategies for improving student performance shall include the following:

(1) A plan for the use of staff development funds that may be made available to the school ~~by the Secretary to meet the goals for that school under the ABC's Program and~~ to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while teachers are meeting with mentors;

(1a) A plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when a child is not reading at

grade level and is at risk of not reading at grade level by the time the child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read, strategies for teachers and parents to implement that will help students improve and expand their reading ability, and provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade level.

(2) A comprehensive plan to encourage parent involvement.

(3) A safe school plan designed to provide that the school is safe, secure, and orderly, that there is a climate of respect in the school, and that appropriate personal conduct is a priority for all students and all residential school personnel. This plan shall include components similar to those listed in G.S. 115C-105.47(b).

(4) A plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school.

(d) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The ~~superintendent~~ principal of the school shall present the proposed school improvement plan to all of the instructional personnel assigned to the school for their review and vote. The vote shall be by secret ballot. The ~~superintendent~~ principal shall submit the school improvement plan to the Superintendent for presentation to the Secretary only if the proposed school improvement plan has the approval of a majority of the instructional personnel who voted on the plan.

(e) The Secretary shall accept or reject the school improvement plan. The Secretary shall not make any substantive changes in any school improvement plan that the Secretary accepts. If the Secretary rejects a school improvement plan, the Secretary shall state with specificity the reasons for rejecting the ~~plan;~~plan to the Superintendent to share with the principal; the school improvement team may then prepare another plan, present it to the instructional personnel assigned to the school for a vote, and submit it to the Superintendent for presentation to the Secretary to accept or reject. Within 60 days after the initial submission of the school improvement plan to the Secretary, the Secretary shall accept the plan or shall ~~designate a person to~~direct that the Superintendent work with the school improvement team to resolve the disagreements. If there is no resolution within 30 days, then the Secretary may develop a school improvement plan for the school; however, the General Assembly urges the Secretary to utilize the school's proposed school improvement plan to the maximum extent possible when developing this plan.

(f) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the Secretary finds that a school improvement plan is impeding student performance at a school, the Secretary may vacate the relevant portion of the

plan and may direct the school to revise that portion. The procedures set out in this section shall apply to amendments and revisions to school improvement plans.

(g) Any funds the Secretary makes available to a school to meet the goals for that school under the ABC's Program and to implement the school improvement plan at that school shall be used in accordance with those goals and the school improvement plan.

(h) The ~~Secretary,~~ Superintendent, in consultation with the State Board, shall develop a list of recommended strategies that it determines to be effective which building level committees may use to establish parent involvement programs designed to meet the specific needs of their schools.

(i) Once developed, the ~~Secretary~~ principal shall ensure the plan is available and accessible to parents and the school community."

SECTION 10. G.S. 143B-146.15 reads as rewritten:

"**§ 143B-146.15. Duty to report certain acts to law enforcement.**

When the ~~superintendent~~ principal has personal knowledge or actual notice from residential school personnel or other reliable source that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the ~~superintendent~~ principal shall immediately report the act to the appropriate local law enforcement agency. Failure to report under this section is a Class 3 misdemeanor. For purposes of this section, "school property" shall include any building, bus, campus, grounds, recreational area, or athletic field, in the charge of the ~~superintendent~~ principal or while the student is under the supervision of school personnel. It is the intent of the General Assembly that the ~~superintendent~~ principal notify the Secretary or the ~~Secretary's designee~~ Superintendent of any report made to law enforcement under this section."

SECTION 11. This act becomes effective July 1, 2005.

SENATE BILL 630:
Residential Schools Like Other Public Schools.

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Introduced by:**	Senator Swindell
		Summary by:	Robin Johnson Robin
Date:	March 30, 2005		Committee Counsel
Version:	S630-CSRH-5[v.3]		

SUMMARY: ***Senate Bill 630 would amend the laws governing the ABC's Program as it is implemented in the Schools for the Deaf and the Governor Morehead School. The changes would update these laws to reflect comparable changes that have been made over time to the laws governing the ABC's Program for the public schools.***

The bill would not change the school personnel who are eligible for ABC's awards.

The PCS makes technical and conforming changes to the original bill.

BACKGROUND/CURRENT LAW: In 1998, the General Assembly enacted legislation addressing the needs of the residential schools in the State. A major part of this legislation required the Governor Morehead School and the Schools for the Deaf to participate in the ABC's Program. (Other residential programs were authorized to participate as determined by the Secretary and the State Board of Education.) A new Part 3A of Article 3 of Chapter 143B of the General Statutes ("Part 3A" -- *Education Programs in Residential Schools)* was created that closely tracked miscellaneous public school statutes, including those governing the ABC's Plan for public schools. Some of the provisions include:

- The State Board of Education (State Board) must set annual performance standards for each participating school.
- The superintendents, principals, assistant principals, teachers, instructional personnel, instructional support personnel, and teacher assistants are eligible for ABC's bonus when their school meets or exceeds goal set by State Board. At that time, public schools were allowed to vote to spend the money in accordance with a plan. This provision was repealed for the public schools later in 1998.
- The State Board must design and implement a plan to identify low-performing schools on an annual basis in the same manner as public schools are so identified. (Low-performing schools are those in which there is a failure to meet the minimum growth standards, as set by the Board, and a majority of students are performing below grade level.)
- Low-performing schools must notify parents when so identified, and similar steps must be taken to address the needs of that school as must be taken with a public school that is identified as low-performing.
- The State Board may assign assistance teams to low-performing schools. Teams have the same duties as when assigned to a public school, except they report to the Secretary as well as to the State Board.
- The consequences for the superintendent (now the principal) and for certificated personnel at a school that is identified as low-performing are the same as for personnel at a public school identified as low-performing. These include evaluation, action plans, and possible dismissal.
- Requires all residential schools, including those that are not participating in the ABC's Program, to adopt a school calendar with a minimum of 180 instructional days and 1000 instructional hours

covering at least nine calendar months. A school must consult with parents, personnel, and the local school administrative unit in which it is located when it develops its calendar.

- Each school must develop and implement a school improvement plan. The requirements are similar to those for public schools, but were modified to take into account the unique nature of these residential schools. At least 5 parents (two of whom may be school employees) and residential life personnel assigned to the school must be included on the team that develops the improvement plan. Parents elect parents, and those who are not employees must receive travel and subsistence expenses and may, if appropriate, receive a stipend. Development and approval of school improvement plans are the same as for public school plans.

BILL SUMMARY: The bill would amend Part 3A to conform to the laws governing the ABC's Plan for the public schools. Most of the changes are technical in nature.

The major changes, found in Section 3 of the Bill, would raise the eligibility criteria for the ABC's awards and would delete the option that allows the personnel who are eligible for ABC's awards to develop and vote on a plan to spend these funds. Comparable changes have been made to the public school laws governing the ABC's Plan.

The bill also would delete references to the superintendents of the residential schools because these schools no longer have both superintendents and principals as they did when the law was originally enacted.

Finally, the Superintendent of the Office of Education Services of the Department of Health and Human Services, a position that did not exist in 1998, is authorized to act as the Secretary's designee in evaluating the schools' principals and in receiving school improvement plans developed by each school.

The bill would become effective when it becomes law.

S630-SMRH-1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 630

Short Title:	Residential Schools Like Other Public Schools.	(Public)
Sponsors:	Senator Swindell.	
Referred to:	Education/Higher Education.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE STATUTES GOVERNING RESIDENTIAL SCHOOLS TO MAKE THEIR ACCOUNTABILITY SYSTEM AND THEIR SCHOOL IMPROVEMENT PLANS LIKE THOSE OF OTHER PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-146.4 reads as rewritten:

"**§ 143B-146.4. Performance recognition.**

(a) ~~The superintendent and instructional personnel assigned to participating schools that achieve or exceed a level of expected growth to be determined by the State Board are eligible for financial awards in amounts set by the State Board. Participating schools and personnel shall not be required to apply for these awards.~~ The personnel in schools that achieve a level of expected growth greater than one hundred percent (100%) at a level to be determined by the State Board of Education are eligible for financial awards in amounts set by the State Board. Schools and personnel shall not be required to apply for these awards. For the purpose of this section, "personnel" includes the principal, assistant principal, instructional personnel, instructional support personnel, and teacher assistants (i) serving students in one or more of the grades kindergarten through 12 or (ii) assigned to a public school prekindergarten program that is located within a public elementary school and is designed to prepare students for kindergarten at that school.

(b) The State Board shall establish a procedure to allocate the funds for these awards. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure ~~for:~~ for awards to personnel.

~~(1) Awards to the personnel; or~~

~~(2) The purposes authorized in a plan that has been:~~

~~a. Developed and voted on by the superintendent and instructional personnel in the same manner that a school improvement plan is approved under G.S. 143B-146.12;~~

~~b. Approved by a majority of the personnel who vote on the plan; and~~

~~c. Submitted to and approved by the Secretary.~~

~~The Secretary shall approve this plan unless the plan involves expenditures of funds that are not for a public purpose or that are otherwise unlawful.~~

The Secretary is encouraged to make these awards to each eligible person no later than the first regular teacher payroll following receipt of the funds, and shall make these awards to each eligible person no later than the second regular teacher payroll following the receipt of the funds."

SECTION 2. G.S. 143B-146.12 reads as rewritten:

"**§ 143B-146.12. Development and approval of school improvement plans.**

(a) In order to improve student performance, each ~~participating~~ school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 143B-146.3. The ~~superintendent,~~principal of each school, instructional personnel, and residential life personnel assigned to that school, and a minimum of five parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance.

(a1) Representatives of the instructional and residential life personnel shall be elected by their respective groups by secret ballot.

(b) Parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. To the extent possible, parents serving on school improvement teams shall reflect the composition of the students enrolled in that school. No more than two parents may be employees of the school. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with ~~teachers,~~instructional and residential life personnel, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. Parents who are elected to serve on school improvement teams and who are not employees of the school shall receive travel and subsistence expenses in accordance with G.S. 138-5 and, if appropriate, may receive a stipend.

(c) The strategies for improving student performance shall include the following:

(1) A plan for the use of staff development funds that may be made available to the school ~~by the Secretary to meet the goals for that school under the ABC's Program and~~ to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while teachers are meeting with mentors;

(1a) A plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when a child is not reading at grade level and is at risk of not reading at grade level by the time the

child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read, strategies for teachers and parents to implement that will help students improve and expand their reading ability, and provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade level.

(2) A comprehensive plan to encourage parent involvement.

(3) A safe school plan designed to provide that the school is safe, secure, and orderly, that there is a climate of respect in the school, and that appropriate personal conduct is a priority for all students and all residential school personnel. This plan shall include components similar to those listed in G.S. 115C-105.47(b).

(4) A plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school.

(d) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The ~~superintendent~~ principal of the school shall present the proposed school improvement plan to all of the instructional personnel assigned to the school for their review and vote. The vote shall be by secret ballot. The ~~superintendent~~ principal shall submit the school improvement plan to the Superintendent of the Office of Education Services for presentation to the Secretary only if the proposed school improvement plan has the approval of a majority of the instructional personnel who voted on the plan.

(e) The Secretary shall accept or reject the school improvement plan. The Secretary shall not make any substantive changes in any school improvement plan that the Secretary accepts. If the Secretary rejects a school improvement plan, the Secretary shall state with specificity the reasons for rejecting the ~~plan;~~plan to the Superintendent of the Office of Education Services to share with the principal; the school improvement team may then prepare another plan, present it to the instructional personnel assigned to the school for a vote, and submit it to the Superintendent of the Office of Education Services for presentation to the Secretary to accept or reject. Within 60 days after the initial submission of the school improvement plan to the Secretary, the Secretary shall accept the plan or shall ~~designate a person to~~direct that the Superintendent of the Office of Education Services work with the school improvement team to resolve the disagreements. If there is no resolution within 30 days, then the Secretary may develop a school improvement plan for the school; however, the General Assembly urges the Secretary to utilize the school's proposed school improvement plan to the maximum extent possible when developing this plan.

(f) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the Secretary finds that a school improvement plan is impeding student performance at a school, the Secretary may vacate the relevant portion of the

plan and may direct the school to revise that portion. The procedures set out in this section shall apply to amendments and revisions to school improvement plans.

(g) Any funds the Secretary makes available to a school to meet the goals for that school under the ABC's Program and to implement the school improvement plan at that school shall be used in accordance with those goals and the school improvement plan.

~~(h) The Secretary, in consultation with the State Board, shall develop a list of recommended strategies that it determines to be effective which building-level committees may use to establish parent involvement programs designed to meet the specific needs of their schools.~~

(i) Once developed, the ~~Secretary~~ principal shall ensure the plan is available and accessible to parents and the school community."

SECTION 3. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 709
PROPOSED COMMITTEE SUBSTITUTE S709-CSSF-2 [v.1]

3/29/2005 6:06:03 PM

Short Title: Salary Supplement/Certain Ed. Programs. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE SECRETARY OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND THE SECRETARY OF THE STATE DEPARTMENT OF CORRECTION TO SET THE SALARY SUPPLEMENT FOR CERTAIN PERSONNEL WORKING AT PROGRAMS OPERATED BY THEIR DEPARTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-146.21 is amended by adding a new subsection to read:

"(e) The Secretary of Health and Human Services, in consultation with the Office of State Personnel, shall set the salary supplement paid to personnel who are employed in the programs operated by the Department of Health and Human Services and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%)."

SECTION 2. G.S. 143B-516(b) reads as rewritten:

"(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that youth development centers be phased out as populations diminish.

(2) Close a State youth development center when its operation is no longer justified and transfer State funds appropriated for the operation of that youth development center to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing youth development centers, provided the Advisory Budget Commission reviews this action.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding, on a matching basis, juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Develop and administer a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and

allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles. The plan shall include attendance at appropriate professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(17a) Set, in consultation with the Office of State Personnel, the salary supplement paid to personnel who are employed at juvenile facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%).

(18) Designate persons, as necessary, as State juvenile justice officers, to provide for the care and supervision of juveniles placed in the physical custody of the Department."

SECTION 3. G.S. 148-22.1 reads as rewritten:

"**§ 148-22.1. Educational facilities and programs for selected inmates.**

(a) The State Department of Correction is authorized to take advantage of aid available from any source in establishing facilities and developing programs to provide inmates of the State prison system with such academic and vocational and technical education as seems most likely to facilitate the rehabilitation of these inmates and their return to free society with attitudes, knowledge, and skills that will improve their prospects of becoming law-abiding and self-supporting citizens. The State Department of Public Instruction is authorized to cooperate with the State Department of Correction in planning academic and vocational and technical education of prison system inmates, but the State Department of Public Instruction is not authorized to expend any funds in this connection.

(b) In expending funds that may be made available for facilities and programs to provide inmates of the State prison system with academic and vocational and technical education, the State Department of Correction shall give priority to meeting the needs of inmates who are less than 21 years of age when received in the prison system with a sentence or sentences under which they will be held for not less than six months nor more than five years before becoming eligible to be considered for a parole or unconditional release. These inmates shall be given appropriate tests to determine their

educational needs and aptitudes. When the necessary arrangements can be made, they shall receive such instruction as may be deemed practical and advisable for them.

(c) The Secretary of Correction, in consultation with the Office of State Personnel, shall set the salary supplement paid to personnel who are Division of Prison employees that serve in youth facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%)."

SECTION 4. This act becomes effective July 1, 2005.

SENATE BILL 709:
Salary Supplement/Certain Ed. Programs

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Introduced by:**	Senator Swindell
		Summary by:	Shirley Iorio, Ph D Committee Analyst
Date:	March 30, 2005		
Version:	PCS to First Edition S709-CSSF-2 [v.1]		

SUMMARY: ***This Proposed Committee Substitute (PCS) would allow the Secretaries of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the State Department of Correction, in consultation with the Office of State Personnel, to set the salary supplement paid to personnel who are licensed by the State Board of Education and are employed at certain programs or facilities that are operated by these Departments.***

The salary supplement would be at least 5%.

The act would become effective July 1, 2005.

The PCS changes both the short title and the long title to make them more accurate. The phrase "in consultation with the Office of State Personnel" is added to each underlined section. One other technical change was made.

CURRENT LAW: Teachers in these programs are paid on the State Teacher Salary Schedules. In the 1998 budget, funds were provided for the 1998-99 fiscal year to give statewide teacher supplements for State agency teachers who were paid on the teacher salary schedule based on 5% of their salaries (S.L. 1998-212, Section 28.16). This 5% salary supplement has not increased since 1998.

Local boards of education may authorize the superintendent to supplement the salaries of all teachers from local funds (G.S. 115C-302.1(h)). There is no such authority for the Secretaries of these agencies. Any salary supplement for personnel in these agency programs comes from a General Assembly appropriation.

BILL ANALYSIS: This bill would give the Secretary of Health and Human Services, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, and the Secretary of the State Department of Correction the authority to set salary supplements for personnel in their schools who are licensed by the State Board of Education. The supplements, at a minimum of 5% of a teacher's salary, would be primarily for certified teachers; many of them certified Special Education teachers. There is no appropriation for supplements in this bill. The agencies are asking for the Secretaries to have the authority to set salary supplements. The Secretary would determine the amount of the salary supplement, with no individual receiving less than 5%.

The programs and facilities that have personnel who would receive a salary supplement are listed on the back of this summary.

S709-SMSF-001

Department of Health and Human Services Educational Programs
Governor Morehead School
Governor Morehead Preschool
North Carolina Early Intervention Program for Children who are Deaf and Hard of Hearing
North Carolina School for the Deaf
Eastern North Carolina School for the Deaf
Caswell Center
J Iverson Riddle Development Center
Murdoch Center
O'Berry Center
Wright School
Whitaker School
Enola Learning Center - Broughton Hospital
Pine Valley and Bowling Green Schools- John Umstead Hospital
Riverbend School- Cherry Hospital
Spring Hill School - Dorthea Dix Hospital
Division of Services for the Blind Rehabilitation Program

Department of Juvenile Justice and Delinquency Prevention Juvenile Facilities
5 Youth Development Centers
C.A.Dillon YDC in Butner
Stonewall Jackson YDC in Concord
Samarkand YDC in Eagle Springs
Dobbs YDC in Kinston
Swannanoa YDC in Asheville

9 Detention Centers
Alexander Detention Center in Taylorsville
Buncombe Detention Center in Asheville
Cumberland Detention Center in Fayetteville
Gaton Detention Center in Dallas
New Hanover Detention Center in Castle Haynes
Perquimans Detention Center in Hertford
Richmond Detention Center in Rockingham
Pitt Detention Center in Greenville
Wake Detention Center in Raleigh

Department of Correction Youth Facilities
Polk Youth Institution
North Carolina Correctional Institution for Women
Morrison Correctional Institution
Foothills Correctional Institution
Western Youth Institution

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 709

Short Title:	Salary of Teachers at Residential Schools.	(Public)
Sponsors:	Senators Swindell; Atwater and Thomas.	
Referred to:	Education/Higher Education.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE SECRETARY OF A DEPARTMENT TO SET THE SALARY SUPPLEMENT FOR TEACHERS WORKING AT SCHOOLS OPERATED BY THE DEPARTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-146.21 is amended by adding a new subsection to read:

"(e) The Secretary of Health and Human Services shall set the salary supplement paid to instructional personnel who are licensed by the State Board of Education at the programs operated by the Department of Health and Human Services. The salary supplement shall be at least five percent (5%)."

SECTION 2. G.S. 143B-516(b) reads as rewritten:

"(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that youth development centers be phased out as populations diminish.

(2) Close a State youth development center when its operation is no longer justified and transfer State funds appropriated for the operation of that youth development center to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing youth development centers, provided the Advisory Budget Commission reviews this action.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding, on a matching basis, juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Develop and administer a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles. The plan shall include attendance at appropriate professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(17a) Set the salary supplement paid to personnel who are employed at juvenile facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%).

(18) Designate persons, as necessary, as State juvenile justice officers, to provide for the care and supervision of juveniles placed in the physical custody of the Department."

SECTION 3. G.S. 148-22.1 reads as rewritten:

"**§ 148-22.1. Educational facilities and programs for selected inmates.**

(a) The State Department of Correction is authorized to take advantage of aid available from any source in establishing facilities and developing programs to provide inmates of the State prison system with such academic and vocational and technical education as seems most likely to facilitate the rehabilitation of these inmates and their return to free society with attitudes, knowledge, and skills that will improve their prospects of becoming law-abiding and self-supporting citizens. The State Department of Public Instruction is authorized to cooperate with the State Department of Correction in planning academic and vocational and technical education of prison system inmates, but the State Department of Public Instruction is not authorized to expend any funds in this connection.

(b) In expending funds that may be made available for facilities and programs to provide inmates of the State prison system with academic and vocational and technical education, the State Department of Correction shall give priority to meeting the needs of inmates who are less than 21 years of age when received in the prison system with a sentence or sentences under which they will be held for not less than six months nor more than five years before becoming eligible to be considered for a parole or unconditional release. These inmates shall be given appropriate tests to determine their educational needs and aptitudes. When the necessary arrangements can be made, they shall receive such instruction as may be deemed practical and advisable for them.

(c) The Secretary of Correction shall set the salary supplement paid to personnel who are Division of Prison employees that serve in youth facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%)."

SECTION 4. This act becomes effective July 1, 2005.

Senate Education/Higher Education Committee
Wednesday, March 30, 2005, 10:00 AM
643 LOB

AGENDA

Senator A. B. Swindell IV, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

Bills

UNC Board of Governors Nominations

SB 630	Residential Schools Like Other Public Schools	Senator Swindell IV
SB 709	Salary of Teachers at Residential Schools	Senator Swindell

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education — March 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Morris	BSF
Amy Mills	AT
Katherine Joyce	NCASA
Leslie Bowerman Conn	Capstrat
Molly Ryan	NCSBA
Mark Fleming	University
Gene Causby	NCSBA

VISITOR REGISTRATION SHEET

Education/Higher Education — March 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stella McKenney	NC DHHS
John Snow	Staff
Carl Goodwin	OSP
Susan Davis	DJJDP
Lisa Bateman	DJJDP
Mildred Spearman	NCDOC
JB Buxton	Gov office
Michael Houser	NCAE
Cecil Banks	NCAE
Cynthia Grant	OES/DHHS
Daphne Lyon	OSBM

VISITOR REGISTRATION SHEET

Education/Higher Education — March 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
Peggy Nagy	ans
[signature]	WCPSS
R. Paul Wilms	NCMBA
Tim McDowell	University

VISITOR REGISTRATION SHEET

Education/Higher Education — March 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Cyrus	NCSG
Hal Miller	NCACCT
Leanne Winner	NCSBE
Tripp Melton	intern
Nikki Houpes	Intern
Mary Morgan Reeves	Cowper Consulting / Schooldude.com
Jim Ayre	SBE / DPI
Ran Cobb	NCCPPR
Sam Watts	NCCPPR
Bob Kennedy	Council of UNC Alumni
Ann McArthur	Governor's Office

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, April 6, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:07 AM on April 6, 2005, in Room 643 of the Legislative Office Building. Twenty-three members of the committee were present. Senator John Garwood presided.

The Chair introduced the pages and recognized Mr. Michael Williamson, Director, State Retirement System and Brett Joyal, Director of Policy, State Retirement System to make presentations (see attached).

The Chair recognized Senator Swindell, who presented Senate Bill 570, Extend Sunset on Retired Teachers Provision and recommended passage of the bill, which was accepted as a motion by the Chair. Questions from the committee were raised and answered.

Senator Hagan requested information regarding salary caps and comparison with other states. Mr. Williamson of the State Retirement System will get the information to the committee. The Chair asked Linda Suggs, Legislative Director for the State Board if she had any comments. Ms. Suggs answered questions regarding the number of retired teachers who have taken advantage of this provision. After committee discussion, the Chair called for the vote. The motion carried by unanimous voice vote.

The meeting adjourned at 10:55 AM.

Senator John Garwood, Presiding

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, April 06, 2005

Senator GARWOOD,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **570** Extend Sunset on Retired Teachers Provision.
Sequential Referral: Pensions & Retirement and Aging
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE BILL 570:
Extend Sunset on Retired Teachers Provision

BILL ANALYSIS

Committee: Senate Education/Higher Education
Date: April 6, 2005
Version: 1st Edition

Introduced by: Sens. Swindell and Rand
Summary by: Drupti Chauhan
Committee Counsel

SUMMARY: ***Senate Bill 570 would extend the sunset until June 30, 2007 on the provisions that allow retired teachers to return to the classroom with no earnings restrictions. The bill would become effective June 30, 2005.***

CURRENT LAW: Teachers can retire and return to teaching with no earnings restrictions if they meet the following:

- Been retired at least six months;
- Not been employed in any capacity, except as a substitute teacher or as a part-time tutor, with a public school for at least six months immediately preceding the effective date of the retirement; and
- Have had satisfactory performance during the last year of employment, as determined by the local board of education

If a teacher meets this criteria, then the teacher can be hired to teach and receive a full-time salary and his or her retirement benefits without penalty. In 2004, a requirement was added that added that the salary paid a retired reemployed teacher, plus a newly established Reemployed Teacher Retirement Contribution Rate equal to 11.7% of the salary paid to a retired reemployed teacher, may not exceed 100% of the State-supported salary provided for that teacher's position. If the salary of a retired reemployed teacher plus the contribution rate of 11.7% exceeds 100% of the gross State-supported salary funding for the position, then the additional requirements must be paid with local funds. This local contribution is scheduled to expire June 30, 2005.

BILL ANALYSIS: Senate Bill 570 would extent the sunset until June 30, 2007 on the provisions that allow retired teachers to return to the classroom with no earnings restrictions. A teacher would have no earnings restrictions if he or she has been retired for at least six months; not been employed in any capacity except as a substitute teacher or as a part-time tutor, with a public school for at least six months immediately preceding the effective date of the retirement; and have had satisfactory performance during the last year of employment, as determined by the local board of education. The bill does not include the 11.7% local contribution.

BACKGROUND:

1998 – Original Legislation

Permit Retired Teachers to Work as Substitute Teachers in Public Schools or as Teachers in Low-Performing Schools Without Losing Retirement Benefits (S.L. 1998-212, Sec. 28.24; SB 1366, Sec. 28.24, as amended by S.L. 1998-217, Sec. 67 and 67.1;SB 1279, Sec. 67 and 67.1)

- Excluded the following earnings from the computation of retirement benefits of a public school teacher who has been retired for at least 12 months and who has not been employed, other than as a substitute teacher, with a public school for at least 12 months:

(i) earnings while employed on a substitute or interim basis in a public school;

(ii) earnings while employed in the teacher's area of certification in a public elementary or middle school designated as low-performing where at least 48% of the students were below grade level during at least one of the two years before the designation or in a high school designated as low-performing, and while continuing to be employed in that school for the two school years after the removal of this designation; or

(iii) earnings while employed in the teacher's area of certification in a geographical area where the State Board of Education has determined there is a shortage of teachers in that area of certification.

- Clarified that a person employed under this section is considered a probationary teacher.

- Directed the Department of Public Instruction to certify to the Retirement System that a beneficiary is employed under this section.
- Amended G.S. 115C-316 to prohibit local boards of education from paying a retired teacher more than the employee would have received on the teacher salary schedule, excluding longevity, if the employee had not retired.
- Amended G.S. 115C-325(a) to define a retired teacher as (i) a Retirement System beneficiary who has been retired at least 12 months, (ii) one who has not been employed in any capacity, other than as a substitute teacher, with a local board of education for at least 12 months, (iii) one who had satisfactory performance, as determined by a local board of education, during the last year of employment by that board, and (iv) one who is employed to teach as a probationary teacher under G.S. 135-3(8)c.
- These changes took effect January 1, 1999, and were to expire June 30, 2003. (RJ)

2000 – Expanded Application

Encourage Retired Teachers to Return to the Classroom (S.L. 2000-67, Secs. 8.24(a)-(b); HB 1840)

- Removed requirements that teachers must be employed in a low-performing school or in a geographical area where there is a shortage of teachers.
- Took effect July 1, 2000, and was to expire July 1, 2003.

2001 - Break in service is reduced to 6 months:

Shorten the Amount of Time Retired Teachers Must be Retired Before They Return to Work (S.L. 2001-424, Sec. 32.25; SB 1005)

- Shortened the period of time from 12 months to six months that a beneficiary of the Teachers' and State Employees' Retirement System must be retired prior to reemployment in a public school.
- Expanded permissible employment during the break in service to include employment as a part-time tutor.
- Became effective July 1, 2001 and was to expire June 30, 2003.

2002 – Extend the sunset to June 30, 2004; IRS ruling requested:

Retired Teachers Returning to the Classroom Without Loss of Retirement Benefits/Option Extended (S.L. 2002-126, Sec. 28.10; SB 1115)

- Extended sunset to June 30, 2004.
- Directed the State Treasurer to seek a ruling from the IRS to determine whether the break in service could be reduced from six months to two months without adverse affect on the tax qualification of the Teachers' and State Employees' Retirement System.
- Became effective July 1, 2002.

2004 – Extend the sunset to June 30, 2005; Add Reemployed Retired Teacher Contribution; Study authorized:

Retired Teachers Returning to the Classroom Without Loss of Retirement Benefits/Option Extended (S.L. 2004-124, Sec. 31.18A)

- Extended sunset to June 30, 2005.
- Directed the Retirement Systems Division to conduct an analysis of the postretirement reemployment issue, including a survey of peer State systems, cost analyses, review of relevant impacting federal regulations, and the administrative impact of various postretirement reemployment policies. To be reported to General Assembly by February 1, 2005.
- Authorized Retirement Systems Division to modify its IRS inquiry in order to obtain a substantive ruling.
- Established a Reemployed Teacher Retirement Contribution Rate equal to 11.7% of the salary paid to a retired reemployed teacher, may not exceed 100% of the State-supported salary provided for that teacher's position. If the salary of a retired reemployed teacher plus the contribution rate of 11.7% exceeds 100% of the gross State-supported salary funding for the position, then the additional requirements must be paid with local funds.

Extend Provision to Charter Schools (S.L. 2004-199, Sec. 57)

- Extended provision so retiree may teach in a charter school as well as in a traditional public school.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 570

Short Title:	Extend Sunset on Retired Teachers Provision.	(Public)
Sponsors:	Senators Swindell, Rand; Albertson, Allran, Apodaca, Atwater, Bingham, Clodfelter, Dannelly, Dorsett, Garwood, Jenkins, Kinnaird, Lucas, Malone, Soles, Stevens, Thomas, and Tillman.	
Referred to:	Education/Higher Education.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE PROVISION THAT PERMITS RETIRED TEACHERS TO RETURN TO THE CLASSROOM WITHOUT A LOSS OF RETIREMENT BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (d) of Section 28.24 of S.L. 1998-212, as rewritten by Section 28.10 of S.L. 2002-126 and subsection (a) of Section 31.18A of S.L. 2004-124, reads as rewritten:

"(d) This section becomes effective January 1, 1999, and expires June 30, ~~2005.~~2007."

SECTION 2. The introductory language of Section 67 of S.L. 1998-217, as rewritten by Section 28.10 of S.L. 2002-126 and subsection (b) of Section 31.18A of S.L. 2004-124, reads as rewritten:

"**SECTION 67.** Effective January 1, 1999, through June 30, ~~2005,~~2007, G.S. 135-3(8)c., as rewritten by Section 28.24(a) of S.L. 1998-212 reads as rewritten:".

SECTION 3. Subsection (b) of Section 67.1 of S.L. 1998-217, as rewritten by Section 28.10 of S.L. 2002-126 and subsection (c) of Section 31.18A of S.L. 2004-124, reads as rewritten:

"(b) This section becomes effective January 1, 1999, and expires June 30, ~~2005.~~2007."

SECTION 4. Subsection (c) of Section 32.25 of S.L. 2001-424, as rewritten by Section 28.10 of S.L. 2002-126 and subsection (d) of Section 31.18A of S.L. 2004-124, reads as rewritten:

"**SECTION 32.25.(c)** This section becomes effective July 1, 2001, and expires June 30, ~~2005.~~2007."

SECTION 5. This act becomes effective June 30, 2005.

Richard Moore
Treasurer

BUILDING BRIGHTER FUTURES
FOR NC PUBLIC EMPLOYEES
North Carolina Retirement Systems

Michael Williamson
Director

Overview of the Retirement Systems Division's Report to the General Assembly on North Carolina's Return-to-Work Policy

April 5, 2005

The North Carolina General Assembly directed the Retirement Systems Division in 2004 to evaluate the State's return-to-work policy. The exact wording of the bill reads, "conduct an analysis of the postretirement reemployment issue, including a survey of peer State systems, cost analyses, review of relevant impacting federal regulations, and the administrative impact of various postretirement reemployment policies."

This report fulfills the legislature's directive with an in-depth examination of and recommended adjustments to the State's current return-to-work regulations. This report also provides recommendations for future work force retention policy in North Carolina's public sector.

The policies adopted by the General Assembly will determine North Carolina's ability to recruit and retain a talented and dependable workforce, today and in the future. This issue has never been more important than it is today. However, any response that is adopted by the General Assembly must also consider the long-term financial health of the state's retirement systems as well as compliance with federal regulations. We must take great care to fully understand the impact upon our retirement systems of the various policies we implement, so that we do not put the system's long-term sustainability in jeopardy.

With that in consideration, the Retirement Systems Division adopted an objective, comprehensive approach to examining this issue, including interviews with many employee and employer associations and State agencies. Our intention has been to balance the State's need to meet its personnel objectives with its need to protect benefit programs for public employees.

Foremost in our minds is that the Department of State Treasurer and the Retirement Systems Division have a constitutional mandate to protect the financial integrity of the State's retirement systems.

To those who commit their careers to public service, the promise of a dependable and sustainable post-employment benefit must be kept. For retirees in the systems,

funds for continued cost-of-living adjustments are imperative if their benefits are to remain a viable source of income. Recruitment and retention of a quality government work force now and in the future rests largely on a strong, fiscally sound public pension plan. The systems' financial integrity and federal tax-exempt status must be preserved if these responsibilities are to be met.

Our research considered two key principles:

- Maintaining the Retirement Systems financial status
- Keeping the systems in compliance with federal codes

Additionally, we attempted to provide policy makers with employee retention strategies.

The report culminated in six recommendations that are intended to:

- Recognize and reimburse the pension systems the cost of any changes made to the State's return-to-work policy;
- Bring all return-to-work policies into compliance with IRS regulations so as not to jeopardize the system's tax-exempt status; and
- Encourage lawmakers to explore work force retention policies beyond return-to-work.

The findings in this report were generated through primary and secondary research; surveys with Retirement Systems in other states; interviews with key stakeholders and administrators; consultations with the Internal Revenue Service; and analysis of various data. The report contains multiple appendices and an attachment. The primary data sources are the North Carolina Department of Public Instruction and the Retirement Systems Division.

<u>Recommendations</u>

The report's first three recommendations pertain to the system's financial status.

The Retirement System's actuary projected that Return to Work policies that create an incentive to retire earlier than projected create a cost to the pension funds. If left un-funded, these costs are absorbed by actuarial gains, which are then unavailable as benefit enhancements such as Cost of Living Adjustments.

Further, the actuary indicated that the longer such a policy is in kept in place, the greater the number of employees who will utilize it, which continually increases the costs.

The main assumption underlying the cost projections is that a salary cap exemption will change retirement rates. It is a change in retirement rates resulting from a policy shift that generates new costs.

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In order to fully understand how lifting the salary cap impacts the Retirement Systems, we felt it crucial to test the actuary's assumption on this point.

Additionally, in our interviews with the associations and State agencies, a top concern expressed by all groups was whether or not lifting the cap was having an impact on retirement rates, and thus the system.

Consequently, we conducted an evaluation of retirement patterns before and after the salary exemption was put in place for teachers. We found that the number of teachers retiring annually was increasing. Generally, this is true of most classes of employees because larger numbers are becoming eligible to retire. However, while the percent of teachers out of the entire teacher population eligible to retire had remained fairly constant overtime (between 12-14%), the percent of the retirement eligible that actually retired rose significantly after the salary exemption policy was enacted in 1999. Further, the percent of teachers eligible to retire actually declined slightly in 2003, further magnifying the effect of lifting the cap.

This finding supports the actuary's cost projections, which are based on the premise that lifting the salary cap accelerates retirement rates. Recognizing that un-funded costs will gradually erode the system's ability to meet its liabilities, we arrived at the following recommendations:

Recommendation 1: The Retirement System recommends that if the existing return-to-work exemption for those who return to teach is to be retained temporarily, or made permanent, that the costs must be recognized and appropriately funded.

Recommendation 2: Any new salary cap exemptions adopted by the General Assembly should include cost evaluations and appropriate funding measures.

Recommendation 3: Conduct a study to determine if salary cap exemptions are an effective personnel strategy for enhancing retention.

Recommendations 4 and 5 pertain to maintaining North Carolina's tax-exempt status. Maintaining the State's tax exempt status is a critical step toward preserving the retirement systems. Ensuring that North Carolina's return-to-work policies comply with IRS regulations will require two adjustments to state law.

Recommendation 4: Establish in statute a required separation from service between the times of retirement and returning to work for all retirees that resume work within the same retirement system, even those subject to earnings limitations.

- Discussions with IRS regulators lead the Retirement System to believe that current policy allowing retirees to return to work immediately, including

those abiding by earnings restrictions, places the Retirement System's tax-exempt status in jeopardy. Establishing a mandatory separation of service will ensure compliance.

Recommendation 5: Specify in statute that pre-existing employment agreements between employers and employees prior to retirement are prohibited.

- A common practice for employees who return to teach under the current exemption, as well as other employees working under the wage cap, is to establish a post-retirement employment agreement to be fulfilled when they return after the required break in service. This practice is explicitly prohibited by the IRS and threatens the Retirement System's tax-exempt status.

The final recommendation pertains to the consideration of other employee retention programs. The report proposed three:

Recommendation 6A: Conduct a comprehensive analysis of the State's total employee turnover. Derive the associated turnover costs. Begin to recognize these costs as operating expenses funded from departmental budgets. Develop a new retention program that gives department and agency management the ability to offer valuable veteran employees a bonus incentive to postpone retirement.

Recommendation 6B: Evaluate and prepare for implementation of a State phased retirement program.

Recommendation 6C: Consider the adoption of incentives, such as an increase in the retirement accrual rate for employees who have reached retirement eligibility, to encourage continued service.

The Retirement Systems Division submitted this report to members of the General Assembly on February 17, 2005.

Actuarial Cost Projections for Various Salary Cap Exemption Proposals Projections calculated in April 2004, payroll figures updated March 2005

Exemption Period 1: Six Months (current law)^				
		Extend Sunset to:		
Group	Permanent Exemption*	6/30/2005**	6/30/2006*	6/30/2007*
Teachers	$31.1 Million (0.28%)	$4.2 Million (0.04%)	$7.8 Million (0.07%)	$11.1 Million (0.10%)
Assistant Principals	$2.2 Million (0.02%)	Less than $1 Million	Less than $1 Million	$1.1 Million (0.01%)
Central Office	$1.1 Million (0.01%)	Less than $1 Million	Less than $1 Million	Less than $1 Million
Principals	$2.2 Million (0.02%)	Less than $1 Million	Less than $1 Million	$1.1 Million (0.01%)
Support Staff	$2.2 Million (0.02%)	Less than $1 Million	Less than $1 Million	$1.1 Million (0.01%)
All other State personnel	$43.3 Million (0.39%)	$6.4 Million (0.06%)	$12.2 Million (0.11%)	$16.7 Million (0.15%)
Total!	**$83.3 Million (0.75%)**	**$11.6 Million (0.11%)**	**$21.1 Million (0.19%)**	**$31.1 Million (0.28%)**

^ Figures based on 2003 Valuation and 2004 Legislation – Values will vary year to year.

* 2005 – 2006 Payroll $11.1 Billion

** 2004-2005 Payroll $10.6 Billion

! Totals may not be exact due to rounding

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Figure 2: Percent of Total Teacher Population Eligible to Retire

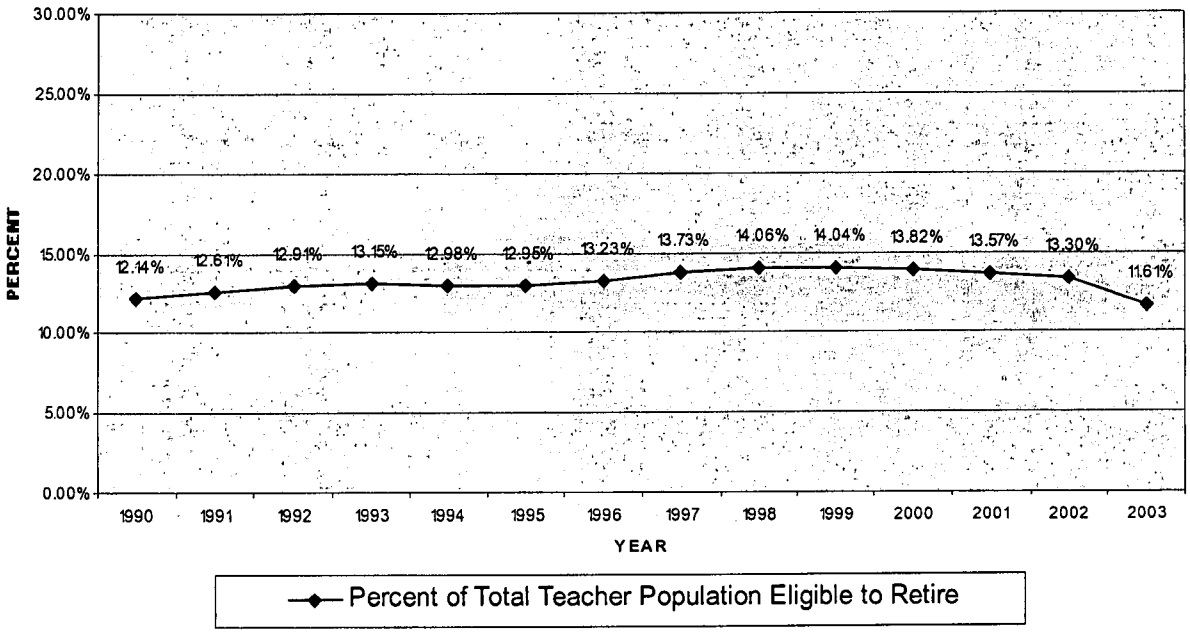
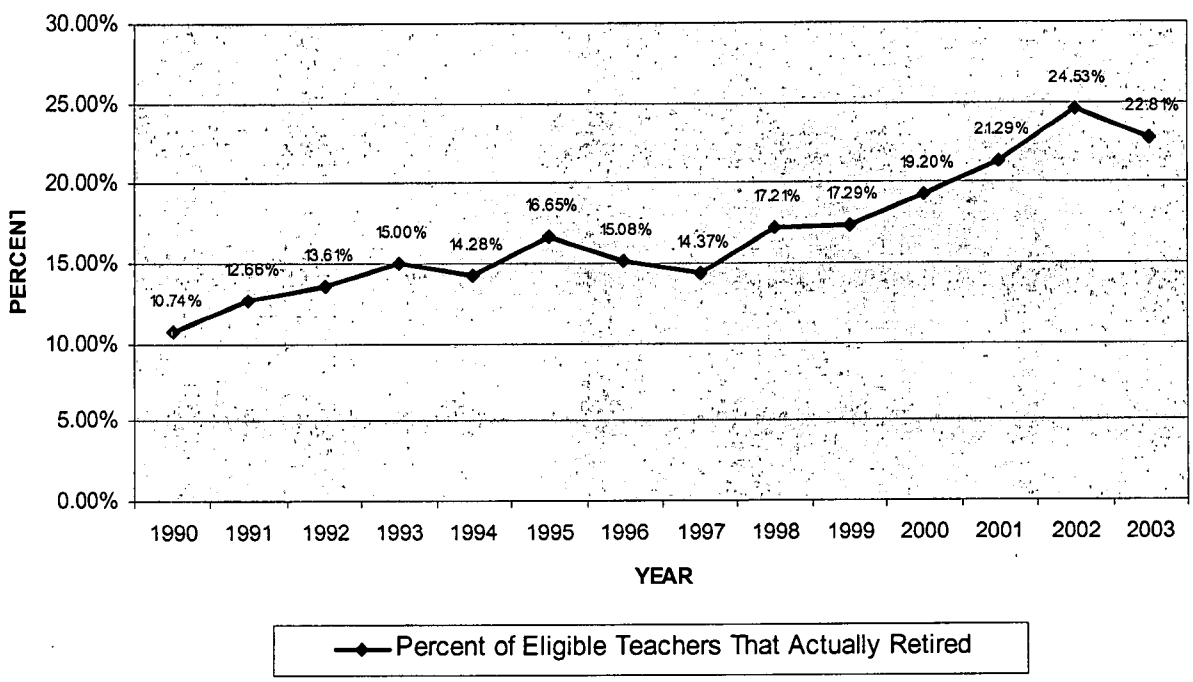


Figure 3: Percent of Retirement Eligible Teachers That Retired



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Senate Education/Higher Education Committee

Wednesday, April 6, 2005

10:00 AM

ROOM 643 LOB

AGENDA

Senator Jeanne H. Lucas, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

Bills

Post-Retirement Reemployment

Michael Williamson, Director, State Retirement System

Brett Joyal, Director, of Policy, State Retirement System

SB 570	Extend Sunset on Retired Teachers Provision.	Senator Swindell IV

Presentations

Other Business

Adjournment

VISITOR REGISTRATION SHEET

Education/Higher Education — April 6, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tripp Melton	Sen. Stevens Intern
Molly Ryan	NCSBA
Michael Houser	NCAE
Marcus Downs	NCAE
John Bardo	WCU
Clifton Metcalf	WCU

VISITOR REGISTRATION SHEET

Education/Higher Education — April 6, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emma C. Greaves	PCNC
Leanne Winner	NCSBA
Hilary Arthur	NCASA
JOHN C. MIDGETTE	NCPBA
John McKay	Gov office
Mary Doty	LTF
Abby Emanuelson	NBMS
Carol Bayle	NCAE
Amy Shaber	Poyner Spruill
Debra Bryan	Treasurer
Pam Deardorff	"

VISITOR REGISTRATION SHEET

Education/Higher Education — April 6, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hal Miller	NCPACT

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, April 13, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:08 AM on April 13, 2005, in Room 643 of the Legislative Office Building. Twenty- four members of the committee were present. Senator A. B. Swindell presided.

The Chair introduced the pages and recognized Senator Garrou, who presented Senate Bill 1052, Business Education Technology Alliance Legislation. Senator Garrou recognized John Boling of SAS Institute; Larry Price, Superintendent of Wilson Public School System and Edgar Murphy, State Board to speak. Senator Horton moved for acronyms to be defined in Senate Bill 1052. Questions from the committee were raised and answered. Senator Dannelly moved to adopt the Proposed Committee Substitute for Senate Bill 1052. The motion carried by unanimous voice vote.

Senator Swindell recognized Senator Lucas, who presented Senate Bill 566, Facilitate Community College Earn and Learn Program. Senator Malone moved for favorable report. Questions from the committee were raised and answered. Senator Swindell moved to adopt Bill 566. The motion carried by unanimous vote.

The Chair recognized Senator Hoyle, to explain Senate Bill 988, Transfer Textile Center to Gaston College. Senator Dannelly moved for favorable report. Questions from the committee were raised and answered. Senator Swindell acknowledged the move for favorable report was on the floor. The motion carried by unanimous vote.

Senator Swindell asked Senator Nesbitt if he could explain Senate Bill 700, Customized Industry Training Program, in thirty seconds, his answer was in the negative. The Committee was asked if they wished to hear the last bill or adjourn the meeting. By common consent the meeting was adjourned. Senator Nesbitt will present the bill at the next committee meeting.

The meeting adjourned at 11:00.

Senator A. B. Swindell, Presiding

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, April 13, 2005

Senator SWINDELL,

submits the following with recommendations as to passage:

FAVORABLE

S.B. **566** Facilitate Comm. Coll. Learn & Earn Prog.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **988** Transfer Textile Center to Gaston College.
Draft Number: PCS75284
Sequential Referral:
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

PUBLIC BILL

S.B. 566

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW TO FACILITATE THE IMPLEMENTATION OF THE LEARN AND EARN PROGRAM.

Introduced by Senator(s) Lucas Lucas Malone Daniel Hallonquist Hugh Berry

Principal Clerk's Use Only

FILED MAR 15 2005

PASSED 1st READING

MAR 16 2005

AND REFERRED TO COMMITTEE

on Ed / Higher Ed

Favorable

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 566

Short Title:	Facilitate Comm. Coll. Learn & Earn Prog.	(Public)
Sponsors:	Senators Lucas; Berger of Franklin, Dannelly, Dorsett, Holloman, and Malone.	
Referred to:	Education/Higher Education.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW TO FACILITATE THE IMPLEMENTATION OF THE LEARN AND EARN PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development

Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community ~~colleges~~ colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section."

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

SENATE BILL 566:
Facilitate Comm. Coll. Learn & Earn Program

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Introduced by:**	Sen. Lucas
		Summary by:	Drupti Chauhan Committee Counsel
Date:	April 13, 2005		
Version:	1st Edition		

SUMMARY: ***Senate Bill 566 would specifically provide that all courses taken by high school students at community colleges including students in early and middle college programs would be free of tuition.***

CURRENT LAW: G.S. 115D-5(b) provides for tuition waivers for all courses at the community colleges taken by high school students. Dual enrollment allows for an individual high school student to also take classes at the community college if the student is at least 16 years of age. A high school and community college may also offer a class to an entire group of high school students either on the high school campus or the community college campus.

BILL ANALYSIS: Senate Bill 566 would specifically provide that all courses taken by high school students at community colleges, including students in early and middle college programs, would be free of tuition.

BACKGROUND: Early college programs are often referred to as early college high schools and are located on a community college or university campus. They are small autonomous high schools with their own school codes, administrators and staff and students graduate with a high school diploma and an Associate's degree or two years of transferable college credit toward a bachelor's degree.

Middle college programs are also referred to as middle college high schools and are located on a community college or university campus. They are small autonomous high schools with their own school codes, administrators, and staff where students graduate with a high school diploma and some college credit.

For the Learn and Earn High School Initiative, Governor Easley's budget proposal provides for an appropriation of $3,247,426 and non-recurring appropriation of $917,500 for 2005-2006. The 2006-2007 appropriation would be $9,259,440 and a non-recurring appropriation of $1,000,000.

The current sites include: Buncombe Middle College High School; Catawba Valley Early College High School; Entertainment and Technology Early/Middle College at Guilford Technical Community College; Josephine Dobbs Clement Early College High School (Durham); and Nash-Rocky Mount Middle College.

EFFECTIVE DATE: The bill would become effective July 1, 2005.

PUBLIC BILL

S.B. 988

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE NORTH CAROLINA CENTER FOR APPLIED TEXTILE TECHNOLOGY TO GASTON COLLEGE.

Introduced by Senator(s) Hoyle

Principal Clerk's Use Only

FILED MAR 2 3 2005

PASSED 1st READING

MAR 24 2005

AND REFERRED TO COMMITTEE

on Ed / Higher Ed

SEQUENTIAL REFERRAL:

Finance

SEQUENTIAL REFERRAL:

Appro / Base Bud, Favorable Report to Comm & Subs

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 988
PROPOSED COMMITTEE SUBSTITUTE S988-CSSF-8 [v.2]

4/13/2005 9:14:38 AM

Short Title: Transfer Textile Center to Gaston College. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE NORTH CAROLINA CENTER FOR APPLIED TEXTILE TECHNOLOGY TO GASTON COLLEGE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Center for Applied Textile Technology is transferred from the Community Colleges System Office to Gaston College. The transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6(a).

SECTION 2. Article 6 of Chapter 115D of the General Statutes is repealed.

SECTION 3. Chapter 115D of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"North Carolina Center for Applied Textile Technology at Gaston College.

"**§ 115D-67.1. Purpose of the Center.**

The purpose of the North Carolina Center for Applied Textile Technology is to develop a world-class workforce for the textile industry in North Carolina; support the textile industry by identifying problems confronting the industry and assisting the industry in solving them; garner support from the textile industry for the work of the Center; and serve as a statewide center of excellence that serves all components of the textile industry.

"**§ 115D-67.2. Advisory Board.**

(a) The Advisory Board to the North Carolina Center for Applied Textile Technology is hereby established. The purpose of the Advisory Board is to assist in the advancement and administration of the Applied Textile Technology Center.

(b) The Advisory Board shall consist of 14 members:

(1) The President of Gaston College, who shall serve ex officio;

(2) Four members appointed by the North Carolina Manufacturers Association, Inc.;

(3) Two members appointed by the board of the North Carolina Center for Applied Textile Technology Foundation;
(4) Two members appointed by the board of trustees of Gaston College;
(5) Three members appointed by the State Board of Community Colleges;
(6) One member appointed by the dean of the College of Textiles at North Carolina State University; and
(7) The Director of the Hosiery Technology Center at Catawba Valley Community College who shall serve ex officio as a nonvoting member.

The appointing entities shall attempt to appoint members who are distributed geographically throughout the State; members representing large and small companies; and members from each segment of the diverse textile industry including spun yarn manufacturing, filament yarn manufacturing, knitting, weaving, dyeing and finishing, apparel, nonwoven, technical/medical textiles, and fiber producers.

(c) In order for the terms of members to be staggered, one initial member appointed by the North Carolina Manufacturers Association, Inc., one member appointed by the North Carolina Center for Applied Textile Technology Foundation, one member appointed by the board of trustees of Gaston College, and two members appointed by the State Board of Community Colleges shall serve for two-year terms. The remainder of the initial appointees shall serve for four-year terms. Subsequent terms shall be for four years. Initial terms shall begin July 1, 2005.

Members may serve for no more than two consecutive four-year terms. Members appointed to an initial term of two years and members appointed to fill a vacancy may serve two consecutive four-year terms after the expiration of their term of less than four years.

All vacancies occurring on the board shall be filled for the remainder of the unexpired term by the appointing authority making the original appointment.

Members shall receive per diem, travel, and subsistence allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(d) The Advisory Board is a public body as defined in G.S. 143-318.10(b) and is subject to all provisions of G.S. 143-318.9 through G.S. 143-318.18.

"**§ 115D-67.3. Director and other Center personnel.**

The President of Gaston College shall appoint an individual to serve as the director of the Center from a list of two or more candidates recommended by the Advisory Board. If the President rejects the recommended candidates, the Advisory Board shall submit two or more additional candidates. The director, after consultation with the Advisory Board and subject to the approval of the President of Gaston College, shall select other staff members of the Center. The director and other staff members of the Center are employees of Gaston College and are subject to the personnel policies of Gaston College.

"**§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

Notwithstanding any other provision of law, all fees collected by the Applied Textile Technology Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, shall be retained by the Center and used for the

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

SECTION 4. G.S. 115D-2(3) reads as rewritten:

"**§ 115D-2. Definitions.**

As used in this Chapter:

...

(3) The term "institution" refers to any institution established pursuant to this ~~Chapter except for the North Carolina Center for Applied Textile Technology.~~Chapter."

SECTION 5. G.S. 115D-58.14(a) reads as rewritten:

"(a) Community colleges ~~and the Center for Applied Textile Technology~~ may purchase the same supplies, equipment, and materials from noncertified sources as are available under State term contracts, subject to the following conditions:

(1) The purchase price, including the cost of delivery, is less than the cost under the State term contract; and

(2) The cost of the purchase shall not exceed the bid value benchmark established under G.S. 143-53.1."

SECTION 6. The Director of the North Carolina Center for Applied Textile Technology shall serve ex officio as a nonvoting member of the Advisory Board to the Hosiery Technology Center at Catawba Valley Community College.

SECTION 7. This act becomes effective July 1, 2005.

SENATE BILL 988:
Transfer Textile Center to Gaston College

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Introduced by:**	Senator Hoyle
		Summary by:	Shirley Iorio, Ph. D. Committee Analyst
Date:	April 13, 2005		
Version:	PCS to the First Edition S988-CSSF-8 [v.2]		

SUMMARY: ***This bill would transfer the North Carolina Center for Applied Textile Technology from the Community Colleges System Office to Gaston College. Article 6 of Chapter 115D of the General Statutes would be repealed and a new Article created.***

There would be technical changes made to related parts of Chapter 115D of the General Statutes.

The Director of the North Carolina Center for Applied Textile Technology would serve on the Advisory Board to the Hosiery Technology Center at Catawba Valley Community College.

The bill would become effective July 1, 2005.

The PCS makes technical changes and reduces the number of potential candidates for director that the Advisory Board recommends from "three or more" to "two or more".

CURRENT LAW: Article 6 of Chapter 115D of the General Statutes (attached) pertains to the North Carolina Center for Applied Textile Technology. This article creates a nine-member board of trustees, appointed by the Governor. The board of trustees manages, subject to policies and regulations of the State Board of Community Colleges, the Center for Applied Textile Technology. The powers and duties of the board of trustees are delineated in this Article.

BILL ANALYSIS:

Section 1 would transfer the North Carolina Center for Applied Textile Technology (Center) from the Community Colleges System Office to Gaston College. The transfer would have all the elements of a Type I transfer (G.S. 143A-6(a) attached).

Section 2 would repeal the current law, Article 6 of G.S. 115D.

Section 3 would create Article 5A of G.S. 115D, the North Carolina Center for Applied Textile Technology at Gaston College:

- § 115D-67.1 would set out the following purposes of the Center: to develop a world-class workforce for the NC textile industry; to support the textile industry; to garner support from the textile industry for the work of the Center; and to serve as a statewide center of excellence that serves all components of the textile industry.
- § 115D-67.2 would establish the Advisory Board. The purpose of the 14 member Advisory Board would be to assist in the advancement and administration of the Center. The Board would consist of:
    - The President of Gaston College, ex officio;
    - Four members appointed by the NC Manufacturers Association, Inc;

- Two members appointed by the board of the NC Center for Applied Textile Technology Foundation;
- Two members appointed by the board of trustees of Gaston College;
- Three members appointed by the State Board of Community Colleges;
- One member appointed by the dean of the College of Textiles at NC State University; and
- The Director of the Hosiery Technology Center at Catawba Valley Community College who shall serve ex officio as a nonvoting member.

The appointing entities would attempt to appoint members who are distributed geographically throughout the State, who represent large and small companies, and who are from each segment of the diverse textile industry. Advisory Board members would be able to serve no more than two consecutive four-year terms.

- § 115D-67.3 would set out the procedure for the President of Gaston College to appoint an individual to serve as the director of the Center, and then for the director to select other staff members of the Center.
- § 115D-67.4 would provide that all fees collected by the Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, would be retained by the Center and used for the operations of the Center. Purchases made by the Center using these funds would not be subject to the provisions of Article 3 of Chapter 143 of the General Statutes (Purchases and Contracts).

Section 4 would amend a definitions section of G.S. 115D by removing the North Carolina Center for Applied Textile Technology as an exception to the term "institution".

Section 5 would amend a purchasing flexibility section of G.S. 115D by removing the reference to the Center for Applied Textile Technology.

Section 6 would provide that the Director of the North Carolina Center for Applied Textile Technology would serve as an ex officio, nonvoting member of the Advisory Board to the Hosiery Technology Center at Catawba Valley Community College.

Section 7 would make this act effective July 1, 2005.

The General Assembly passed legislation in 2004 that required the State Board of Community Colleges to study the Center for Applied Textile Technology. This bill would implement an option recommended by Regional Technology Strategies, Inc. (RTS), the firm employed by the State Board of Community Colleges to conduct the study of the Center for Applied Textile Technology. The Textile Center would become a part of Gaston College just as the Hosiery Technology Center is a part of Catawba Valley Community College.

BACKGROUND: A provision in the 2004 budget bill directed the State Board of Community Colleges (State Board) to study the Center for Applied Textile Technology (Center). The State Board was to consider:

- The mission and purpose of the Center;
- The Center's programs and course of study;
- Any duplication of courses offered by community colleges;

- The Center's expenditures, receipts, and potential funding mechanisms;
- The population served by the Center, including students and industry; and
- The Center's status within the Community College System.

The State Board was directed to seek input, during the course of the study, from various interested parties. In addition, the State Board was to determine whether the Center should:

- Remain an independent institution under the Community College System;
- Be administered by a community college;
- Be dissolved and the property transferred from State to county ownership; or
- Be otherwise administered.

If the State Board determined that the Center should remain an independent institution under the Community College System or be administered by a community college, the State Board must then identify necessary changes to the Center's organization and funding structure, mission and purpose, programs or services currently offered, and governance.

The State Board was further required to consult with the Education Subcommittee of the Joint Legislative Commission on Governmental Operations and report on the results of the study, by October 30, 2004, to several legislative committees. The State Board of Community Colleges, in consultation with the Office of State Budget and Management, must implement the results of the study by January 1, 2005.

The State Board of Community Colleges employed Regional Technology Strategies, Inc. (RTS) to conduct the study of the Center for Applied Textile Technology. RTS made the following key findings:

- Despite recent job losses, the textile industry is still very important to North Carolina.
- The textile industry needs a dedicated center for applied technology services and technical assistance.
- The isolation and lack of accountability at the Center for Applied Textile Technology have allowed it to drift away from its core mission.
- The Hosiery Technology Center provides an excellent model of compromise between autonomy and accountability.

In concluding the study, RTS recommended the creation of a semi-autonomous, industry-driven Textile Technology Center at Gaston College.

§ 143A-6. Types of transfers.

(a) Under this Chapter, a Type I transfer means the transferring of all or part of an existing agency to a principal department established by this Chapter. When all or part of any agency is transferred to a principal department under a Type I transfer, its statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, are transferred to the principal department.

When any agency, or part thereof, is transferred by a Type I transfer to a principal department under the provisions of this Chapter, all its prescribed powers, duties, and functions, including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred to the head of the principal department into which the agency, or part thereof, has been transferred.

Article 6.

Textile Training School.

§ 115D-68. Creation of board of trustees; members and terms of office; no compensation.

The North Carolina Center for Applied Textile Technology shall be managed, subject to policies and regulations of the State Board of Community Colleges, by a board of trustees. The board of trustees shall consist of nine members appointed by the Governor. The terms of office of the trustees shall be as follows: Three of the trustees shall be appointed for a term of two years; three for three years; and three for four years. At the expiration of those terms, the appointments shall be made for periods of four years. In the event of any vacancy on the board, the vacancy shall be filled by appointment of the Governor for the unexpired term of the member causing the vacancy. The members of the board of trustees shall serve without compensation.

§ 115D-69. Powers of board.

The board of trustees shall hold all the property of the North Carolina Center for Applied Textile Technology and shall have the authority to direct and manage the affairs of the Center in accordance with the policies and regulations of the State Board of Community Colleges and, within available appropriations therefor, appoint a managing head and any other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of the Center, may accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the affairs of the Center. Provided, however, that the board of trustees shall not accept any funds upon any condition that the Center shall be operated contrary to any provision of the Constitution or statutes of this State.

§ 115D-70. Board vested with powers and authority of former boards.

The board of trustees acting under authority of this Article is vested with all the powers and authority of the board created under authority of Chapter 360 of the Public Laws of 1941, and the board created under authority of Chapter 806 of the Session Laws of 1971.

§ 115D-71. Persons eligible to attend the Center; subjects taught.

Persons eligible to attend the Center shall be at least 16 years of age and legal residents of the State of North Carolina, as set forth in G.S. 116-143.1: Provided, that out-of-state students, not to exceed ten percent (10%) of the total enrollment, may be enrolled when vacancies exist, upon payment of tuition. The amount of tuition shall be determined by the board of trustees. The money thus collected shall be deposited in the State treasury. The Center shall (i) assist individual citizens of North Carolina in becoming contributing members of a well-qualified work force and (ii) assist in identification of problems confronting the textile industry and in solving these problems through education, training, and technology transfer in partnership with the North Carolina Community College System.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 988

Short Title:	Transfer Textile Center to Gaston College.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Education/Higher Education.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE NORTH CAROLINA CENTER FOR APPLIED TEXTILE TECHNOLOGY TO GASTON COLLEGE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Center for Applied Textile Technology is transferred from the Community Colleges System Office to Gaston College. The transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6(a).

SECTION 2. Article 6 of Chapter 115D of the General Statutes is repealed.

SECTION 3. Chapter 115D of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"North Carolina Center for Applied Textile Technology at Gaston College.

"**§ 115D-67.1. Purpose of the Center.**

The purpose of the North Carolina Center for Applied Textile Technology is to develop a world-class workforce for the textile industry in North Carolina; support the textile industry by identifying problems confronting the industry and assisting the industry in solving them; garner support from the textile industry for the work of the Center; and serve as a statewide center of excellence that serves all components of the textile industry.

"**§ 115D-67.2. Advisory Board.**

(a) The Advisory Board to the North Carolina Center for Applied Textile Technology is hereby established. The purpose of the Advisory Board is to assist in the advancement and administration of the Applied Textile Technology Center.

(b) The Advisory Board shall consist of 14 members:

(1) The President of Gaston College, who shall serve ex officio;

(2) Four members appointed by the North Carolina Manufacturers Association, Inc.;

(3) Two members appointed by the board of the North Carolina Center for Applied Textile Technology Foundation;

(4) Two members appointed by the board of trustees of Gaston College;
(5) Three members appointed by the State Board of Community Colleges;
(6) One member appointed by the dean of the College of Textiles at North Carolina State University; and
(7) The Director of the Hosiery Technology Center at Catawba Valley Community College who shall serve ex officio as a nonvoting member.

The appointing entities shall attempt to appoint members who are distributed geographically throughout the State; members representing large and small companies; and members from each segment of the diverse textile industry including spun yarn manufacturing, filament yarn manufacturing, knitting, weaving, dyeing and finishing, apparel, nonwoven, technical/medical textiles, and fiber producers.

(c) In order for the terms of members to be staggered, one initial member appointed by the North Carolina Manufacturers Association, Inc., one member appointed by the North Carolina Center for Applied Textile Technology Foundation, one member appointed by the board of trustees of Gaston College, and two members appointed by the State Board of Community Colleges shall serve for two-year terms. The remainder of the initial appointees shall serve for four-year terms. Subsequent terms shall be for four years. Initial terms shall begin July 1, 2004.

Members may serve for no more than two consecutive four-year terms. Members appointed to an initial term of two years and members appointed to fill a vacancy may serve two consecutive four-year terms after the expiration of their term of less than four years.

All vacancies occurring on the board shall be filled for the remainder of the unexpired term by the appointing authority making the original appointment.

Members shall receive per diem, travel, and subsistence allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(d) The Advisory Board is a public body as defined in G.S. 143-318.10(b) and is subject to all provisions of G.S. 143-318.9 through G.S. 143-318.18.

"**§ 115D-67.3. Director and other Center personnel.**

The President of Gaston College shall appoint an individual to serve as the director of the Center from a list of three or more candidates recommended by the Advisory Board. If the President rejects the recommended candidates, the Advisory Board shall submit three or more additional candidates. The director, after consultation with the Advisory Board and subject to the approval of the President of Gaston College, shall select other staff members of the Center. The director and other staff members of the Center are employees of Gaston College and are subject to the personnel policies of Gaston College.

"**§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

Notwithstanding any other provision of law, all fees collected by the Applied Textile Technology Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, shall be retained by the Center and used for the operations of the Center. Purchases made by the Center using these funds are not subject to the provisions of Article 3 of Chapter 143 of the General Statutes."

SECTION 2. G.S. 115D-2(3) reads as rewritten:

"**§ 115D-2. Definitions.**

As used in this Chapter:

...

(3) The term "institution" refers to any institution established pursuant to this ~~Chapter except for the North Carolina Center for Applied Textile Technology.~~Chapter."

SECTION 3. G.S. 115D-58.14(a) reads as rewritten:

"(a) Community colleges ~~and the Center for Applied Textile Technology~~ may purchase the same supplies, equipment, and materials from noncertified sources as are available under State term contracts, subject to the following conditions:

(1) The purchase price, including the cost of delivery, is less than the cost under the State term contract; and

(2) The cost of the purchase shall not exceed the bid value benchmark established under G.S. 143-53.1."

SECTION 4. The Director of the North Carolina Center for Applied Textile Technology shall serve ex officio as a nonvoting member of the Advisory Board to the Hosiery Technology Center at Catawba Valley Community College.

SECTION 5. This act becomes effective July 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Tuesday, April 19, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1052** Business Educ. Tech. Alliance Legislation.

Draft Number:	PCS35211
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1052
PROPOSED COMMITTEE SUBSTITUTE S1052-PCS35211-RH-9

Short Title: Business Educ. Tech. Alliance Legislation. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE BUSINESS EDUCATION TECHNOLOGY ALLIANCE.

The General Assembly of North Carolina enacts:

PART I. DEFINITIONS

SECTION 1. The following definitions apply in this act:

(1) E-learning. – Electronic learning that includes a wide set of applications and processes, such as Web-based learning, computer-based learning, virtual classrooms, and digital collaboration. It includes the delivery of content via Internet, intranet/extranet (LAN/WAN), audiotape, videotape, satellite broadcast, interactive television, and CD-ROM.

(2) e-NC Authority. – The e-NC Authority established in Part 2F of Article 10 of Chapter 143B of the General Statutes.

(3) E-Rate. – The mechanism to provide discount rates to support universal telecommunications services for use by schools and libraries as provided in section 254 of the federal Telecommunications Act of 1996.

PART II. PLAN AND FUNDING FOR A VIRTUAL HIGH SCHOOL

SECTION 2.(a) The State Board of Education, the Board of Governors of The University of North Carolina, the Independent Colleges and Universities, and the State Board of Community Colleges shall develop E-learning standards and plans for infrastructures that provide virtual learning opportunities accessible to students and other citizens through all North Carolina schools, universities, and community colleges.

In developing the plan for the public schools, the State Board of Education shall focus initially on high schools while also researching and developing, where appropriate, E-learning for middle schools, junior high schools, and elementary schools. E-learning programs shall support both teachers and students.

SECTION 2.(b) It is the intent of the General Assembly to give public schools the highest priority in funding for and development of E-learning. Funding for E-learning should be a new appropriation and not come exclusively from existing funds.

SECTION 2.(c) There is appropriated from the General Fund to the Department of Public Instruction the sum of one hundred fifty thousand dollars ($150,000) for the 2005-2006 fiscal year. The State Board of Education shall use these funds to establish and implement during the 2005-2006 school year a pilot virtual high school.

SECTION 2.(d) If the pilot program is successful, it is the intent of the General Assembly to provide funding to implement a virtual high school on a statewide basis for the 2006-2007 fiscal year.

PART III. FEASIBILITY STUDY FOR DEVELOPING REGIONAL EDUCATION NETWORKS

SECTION 3.(a) The North Carolina Rural Economic Development Center and the e-NC Authority, in collaboration with representatives from local school administrative units, The University of North Carolina, the State Board of Education, the State Chief Information Officer, and the Community College System shall perform a feasibility study on developing regional education networks that are centrally managed to provide and sustain broadband connectivity to individual students and teachers in schools, community colleges, and universities.

The study shall include an evaluation of existing technology infrastructures, such as the statewide infrastructure, the North Carolina Research and Education Network, or the regional infrastructure, Winston-Net. These state-of-the-art infrastructures may be capable of supporting growth in traffic and thus serve as a backbone infrastructure for delivering high-speed access to underserved regions.

The North Carolina Rural Economic Development Center and the e-NC Authority shall report the results of the study to the Regular 2006 Session of the 2005 General Assembly.

SECTION 3.(b) There is appropriated from the General Fund to the North Carolina Rural Economic Development Center the sum of one hundred thousand dollars ($100,000) for the 2005-2006 fiscal year to perform the feasibility study pursuant to subsection (a) of this section.

PART IV. PLAN FOR PROJECTING SCHOOL TECHNOLOGY FUNDING NEEDS

SECTION 4.(a) G.S. 115C-102.6A(c) reads as rewritten:

"(c) Components of the State school technology plan shall include at least the following:

...

(17) A baseline template for:

a. Technology infrastructure including broadband connectivity, personnel recommendations, and other resources needed to operate effectively from the classroom desktop to local, regional, and State networks, and

b. An evaluation component that provides for local school administrative unit accountability for maintaining quality upgradeable systems."

SECTION 4.(b) Before November 2005, the Department of Public Instruction shall hold regional workshops for local school administrative units to provide guidance in developing local school system technology plans that meet the criteria established in the State school technology plan, including the components added under subsection (a) of this section. The State Chief Information Officer will assist with the regional meetings as needed to provide technical assistance.

SECTION 4.(c) G.S. 115C-102.7 is amended by adding the following new subsection to read:

"(c) The Department of Public Instruction shall randomly check local school system technology plans to ensure that local school administrative units are implementing their plans as approved. The Department shall report to the State Board of Education and the State Chief Information Officer on which local school administrative units are not complying with their plans. The report shall include the reasons these local school administrative units are out of compliance and a recommended plan of action to support each of these local school administrative units in carrying out their plans."

SECTION 4.(d) The State Board of Education shall determine the total amount of funds needed for the recurring total cost of ownership to implement, maintain, and upgrade technology infrastructures and instructional technology as specified in the revised local school system technology plans. This shall include personnel costs for both technical and instructional needs so that a three- to five-year budget plan can be developed for the General Assembly.

SECTION 4.(e) The State Board of Education also shall study and identify the types of resources needed to operate schools designed to meet the needs of twenty-first century learners.

The State Board shall report the results of this study to the Regular 2006 Session of the 2005 General Assembly.

PART V. ANNUAL REPORT THAT HIGHLIGHTS THE IMPACT OF EDUCATION PREPARATION ON ECONOMIC GROWTH

SECTION 5. The North Carolina Board of Science and Technology shall provide an annual report by county on the status of trends that reflect the impact of education on economic growth for the twenty-first century. This report shall be

available for citizens and shall contain information about the status of each county with regard to education and economic growth.

PART VI. PROCESS FOR MORE ASSISTANCE FOR E-RATE

SECTION 6. In order to provide assistance to local school administrative units with E-rate applications, the Department of Public Instruction shall, within existing funds, ensure that a minimum of one full-time coordinator who has technical knowledge and skills is assigned this responsibility. The Department shall notify local school administrative units about the person or office assigned the responsibility of providing assistance with E-rate applications.

The Department shall provide the State Board of Education with an annual report on E-rate, including funding, commitments, and enrollment by local school administrative units.

PART VII. PLANNING FOR A STATE CENTRAL INFRASTRUCTURE OFFICE

SECTION 7.(a) The Office of State Budget and Management shall conduct a study to determine the feasibility of establishing a State Central Infrastructure Office that would collect and manage information for technology, water, sewer, and other utility infrastructures needed to assist communities in becoming and remaining economically viable.

SECTION 7.(b) The Office of State Budget and Management shall report the results of this study to the Regular 2006 Session of the 2005 General Assembly. The report shall include legislative proposals, including a proposal to define the term "infrastructure" in the General Statutes to include technology.

PART VIII. EFFECTIVE DATE

SECTION 8. This act becomes effective July 1, 2005.

Senate Bill 1052:
Business Educ. Tech. Alliance Legislation

BILL ANALYSIS

Committee:	Senate Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget	**Date:**	April 13, 2005
Introduced by:	Sen. Garrou	**Summary by:**	Robin Johnson
Version:	First Edition :S1052-CSRH-9[v.3]		Committee Counsel

SUMMARY: Senate Bill 1052 would implement the following recommendations of the Business Education Technology Alliance (BETA) in its January 1, 2005, report (report) to the State Board of Education and the Joint Legislative Education Oversight Committee:

The PCS makes technical changes.

BILL ANALYSIS:

PART I: Plan and funding for Virtual High School.

BETA's report notes that there are groups and organizations currently providing E-learning programs. E-learning includes on-line learning and virtual schools.

Part I of Senate Bill 1052 would direct the State Board of Education (SBE), the Board of Governors of The University of North Carolina (UNC), the Independent Colleges and Universities, and the State Board of Community Colleges to develop E-learning standards and plans to provide virtual learning opportunities to students and citizens. The initial focus would be on high schools, with subsequent opportunities for middle, junior, and elementary schools.

Section 1.(c) would appropriate $150,000 for the 2005-2006 fiscal year for the SBE to establish and implement during the 2005-06 school year a pilot virtual high school. If successful, the bill provides the intent of the General Assembly would be to provide funding to implement virtual high school on a statewide basis the following year.

PART II: Feasibility Study for Developing Regional Education Networks.

According to BETA's report, each school system, college, and university arranges for Internet service, information databases, software licenses, etc. The report concludes that acting as a network would "provide greater opportunity to influence the market so that equitable access is available" to all the entities and it could "provide consistency in safety and security via network policies and management."

In 2003, the General Assembly enacted legislation (HB 1194), creating the e-NC Authority, which will continue the work of the Rural Internet Access Authority for three more years, beginning January 2004. The purpose of the e-NC Authority is to encourage all North Carolina citizens, especially those in rural areas, to use technology, especially the Internet, to improve their quality of life and their economic prospects.

Part II of the bill would direct the Rural Economic Development Center and the e-NC Authority, in collaboration with representatives from local school systems, UNC, the State Board, the State Chief Information Officer, and the Community College System, to determine the feasibility of developing regional education networks that are centrally managed to provide and sustain broadband connectivity to individual students and teachers in schools, community colleges, and universities. This study would include an evaluation of existing statewide technological infrastructures (such as the Research and Education Network) and regional technology infrastructures (such as Winston-Net). The Rural

Economic Development Center and the e-NC Authority would be directed to report the results of the study to the 2006 Session.

This Part also would appropriate $100,000 for the 2005-2006 fiscal year to conduct this study.

PART III: Plan for Projecting School Technology Funding Needs.

The Commission on School Technology (Commission), located administratively in DPI, has developed a State school technology plan, which is a long-term State implementation plan for using funds from the State School Technology Fund and other sources to improve student performance through the use of technologies. The State plan, which includes specific components, must be modified at least every two years. Each local board of education develops a local school system technology plan that meets the requirements of the State plan. The Office of Information Technology Services evaluates the technical aspects of each local plan and DPI evaluates the instructional aspects. After considering these evaluations, the State Board of Education approves each local plan that complies with the State plan.

Once a local plan is approved, all State funds spent for any aspect of school technology must be used to implement the local plan. The local board also may use funds in the State School Technology Fund that are allocated to the school system to implement the local plan. The Commission is charged with monitoring and evaluating the development and implementation of the State plan and the local plans.

Section 3.(a) would amend G.S. 115C-102.6A(c) to require the State school technology plan to include a baseline template for (i) technology infrastructure including broadband connectivity, personnel recommendations and other resources needed to operate effectively from the classroom desktop to local, regional and State networks, and (ii) an evaluation component that provides for local school administrative unit accountability for maintaining quality upgradeable systems.

Section 3.(b) would direct the Department of Public Instruction (DPI) to hold, before November 2005, regional workshops for school systems to help them develop their school technology plans. The State Chief Information Officer will assist with the regional meetings as needed to provide technical assistance.

Section 3.(c) would amend G.S. 115C-102.7 to add a new subsection (c) requiring DPI to check local school technology plans to ensure that local school systems are implementing their plans as approved. DPI would be directed to report to the State Board and the State Chief Information Officer on those that are not in compliance, the reasons for this noncompliance, and a recommended plan of action to help these school systems carry out their plans.

In order to develop a three to five year budget plan for the General Assembly, Section 3.(d) would direct the State Board to determine the funds needed for the recurring total cost of ownership to implement, maintain, and upgrade technology infrastructures and technology as specified in the revised local school system technology plans.

Section 3.(e) would direct the State Board to study and identify the types of resources needed to operate schools designed to meet the needs of 21st Century learners and to report to the 2006 Session.

PART IV. Annual Report That Highlights the Impact of Education Preparation on Economic Growth.

Part IV would direct the Board of Science and Technology to report annually by county on the status of trends reflecting education's impact on economic growth for this century.

PART V. Process for More Assistance for E-rate.

E-Rate is a federally administered program, established to provide reimbursements to schools and libraries for line charges and connectivity, primarily in rural areas. According to BETA's report, the application process is often difficult to negotiate and the regulations have become increasingly burdensome, which means schools need assistance to improve their ability to access these reimbursements.

Part V would direct DPI to assist with E-rate applications and to ensure, within existing funds, that a minimum of one full-time coordinator is assigned this responsibility. DPI would be directed to notify school systems about the person or office assigned this responsibility. This Part also would direct DPI to provide the State Board with an annual report on E-rate, including funding, commitments, and enrollment by local education agencies.

PART VI. Planning for a State Central Infrastructure Office.

Part VI would direct the Office of State Budget and Management (OSMB) to determine the feasibility of establishing a State Central Infrastructure Office to collect and manage information for technology, water, sewer, and other utility infrastructures needed to assist communities in becoming and remaining economically viable. OSMB would be directed to report the results of this study, which must include legislative proposals and a proposed definition of the term "infrastructure," to the 2006 Session.

EFFECTIVE DATE: The bill would become effective July 1, 2005.

BACKGROUND: In 2002, the General Assembly created the State Board of Education's Business and Education Technology Alliance. BETA, currently chaired by the Lieutenant Governor, is charged with advising the State Board of Education on the following issues (*see attached G.S. 115C-102.15*):

- The development of a vision for a technologically literate citizen in 2025 that includes the educational standards and technology needed to accomplish that vision and a plan for educating the community, educators, and business people about the vision and educational uses of technology.
- The development of a technology infrastructure, delivery, and support system that provides equity and access to all.
- The development of professional development programs for teachers to successfully implement and use technology in public schools for all students.
- The development of a Funding and Accountability system to ensure statewide access and equity.

BETA is required to report annually to both the State Board of Education and to the Joint Legislative Education Oversight Committee. Senate Bill 1052 includes some of BETA's 2005 recommendations.

S1052e1-SMRH-1

§ 115C-102.15. Business and Education Technology Alliance.

(a) There is created the State Board of Education's Business and Education Technology Alliance.

(b) The Business and Education Technology Alliance shall be composed of 27 members who have knowledge and interest in ensuring that the effective use of technology is built into the North Carolina School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century. These members shall be appointed as follows:

(1) The Superintendent of Public Instruction or his or her designee;

(2) One member of the State Board of Education appointed by the chair of the State Board of Education;

(3) One parent of a public school child appointed by the State Board of Education after receiving recommendations from the North Carolina State Parent Teacher Association;

(4) Two members of the Senate appointed by the President Pro Tempore of the Senate;

(5) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(6) One member of a local board of education who represents a local education agency (LEA) that has successfully incorporated technology into its schools, who is appointed by the Governor, after receiving recommendations from the North Carolina School Boards Association;

(7) One member of a local board of education who represents a local education agency (LEA) that has limited access to technology, who is appointed by the Governor, after receiving recommendations from the North Carolina School Boards Association;

(8) Two at-large members appointed by the Governor;

(9) One representative of business and industry appointed by the State Board of Education after receiving recommendations from the North Carolina Citizens for Business and Industry;

(10) Four members appointed by the President Pro Tempore of the Senate. In making these appointments the President Pro Tempore is encouraged to consider appointing a local school superintendent or a local school administrator who represents a local education agency that has limited access to technology, a school principal who works in a school that successfully incorporates technology into its instructional program, a school teacher who works in a school with limited access to technology, and a technology director who represents a local education agency (LEA) that has successfully incorporated technology into its schools. Professional associations representing school administrators and professional associations representing teachers may recommend appointees to the President Pro Tempore;

(11) Four members appointed by the Speaker of the House of Representatives. In making these appointments the Speaker of the House of Representatives is encouraged to consider appointing a local school superintendent or a local school administrator from a local education agency that has successfully incorporated the use of technology into its instructional programs, a school principal working in a school with limited access to technology, a school teacher who has successfully incorporated the use of technology into classroom instruction, and a technology director who represents a local education agency (LEA) that has limited access to technology. Professional associations representing school administrators and professional associations representing teachers may recommend appointees to the Speaker of the House of Representatives;

(12) One chancellor or his or her designee of institutions of higher education who has demonstrated effective and innovative use of technology for education, appointed by the Board of Governors of The University of North Carolina;

(13) One president or his or her designee of the Community College System who has demonstrated effective and innovative use of technology for education, appointed by the State Board of Community Colleges;

(14) Two county commissioners, one of whom represents a county that has successfully incorporated technology into its schools and community, who are appointed by the State Board of Education, after receiving recommendations from the North Carolina Association of County Commissioners;

(15) Two representatives of technology businesses who have either successfully developed innovative technology programs for education or have partnered with a local education agency (LEA) to develop a technology-based education environment in that LEA, who are appointed by the State Board of Education, after receiving recommendations from North Carolina Electronics and Information Technologies Association and the North Carolina Citizens for Business and Industry; and

(16) One representative of the Office of Information Technology Services appointed by the State Chief Information Officer.

(c) Each of the following organizations or agencies shall select a representative from its organization or agency to serve as a nonvoting member to the Alliance. These members shall provide information to the Alliance about technology in North Carolina: Rural Internet Access Authority; Information and Technology Services, North Carolina Department of Public Instruction; Office of State Information Technology Services, Office of the Governor.

(d) Members of the Business and Education Technology Alliance shall serve for two-year terms. All members of the Alliance shall be voting members unless they are designated as ex officio members. The officer who made the initial appointment shall fill vacancies in the appointed membership. The member of the State Board of Education appointed to the Alliance by the chair of the State Board of Education shall serve as chair of the Alliance.

(e) Members of the Business and Education Technology Alliance shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6.

(f) The Business and Education Technology Alliance shall:

(1) Advise the State Board of Education on the development of a vision for a technologically literate citizen in 2025. This vision should contain the educational standards needed to accomplish that vision, the educational uses of technology to accomplish that vision, and a plan for educating the community, educators, and business people about the vision and educational uses of technology. The vision and the plan for educating the public about the vision may include:

a. Various models and frameworks of the high quality and effective use of technology for education purposes including those students who have not learned with traditional approaches. The models may include the Cumberland County Schools Web Academy, the Virtual High School, and Nova Net.

b. Opportunities for teachers to experience the uses of technology in work and business settings, which is the world for which they are preparing students to work.

c. Production of multimedia presentations such as videos, commercials, and publications that help citizens, students, and educators see and understand the current and future power of technology for educating our children and impacting our lives.

(2) Advise the State Board of Education on the development of a technology infrastructure, delivery, and support system that provides equity and access to all segments of the population in North Carolina. The infrastructure, delivery, and support system may include:

a. Opportunities for access to high-speed connectivity to the Internet which impacts on the quality of instruction that can be provided for students at school and in the community.

b. Technology networks that enable communities to encompass the student and his/her family while maintaining the rights to privacy for all citizens, i.e., a social service, health, education, and mental health network. This network will increase collaboration among agencies and provide a coordinated, systemic service approach.

c. Continue to evaluate the status of current technology systems and structures from the State to local level as it relates to employing technology for improving instruction.

d. Continue to provide access to technology equipment and infrastructure at home, school, and in the community such as extended hours of operation for schools and other community facilities and on-loan laptop computers for student and parent use.

e. Continue to develop surveys that provide information about the types and results of technological tools utilized by teachers, students, and others at school, in the community, and home.

f. Sufficient personnel to maintain the operation of information technology systems.

g. Coordination with regional economic development planners to position local education agencies as an integral part of economic development.

(3) Advise the State Board of Education on the development of professional development programs for teachers to successfully implement and use technology in public schools for all students. These programs should also develop their leadership skills so that they can use technology as a tool to support the rethinking of the core business of schools: student learning.

The professional development programs may include:

a. Models of staff development from the State that are considered state of the art, support the vision for technology, and that could be used by local districts to train their staffs.

b. Designated time for professional development for using technology as well as skills for using technology as a delivery for curriculum and instructional programs.Designated time for professional development for using technology as well as skills for using technology as a delivery for curriculum and instructional programs.

c. Collegial planning time so that colleagues can coach and support each other in learning new ways in which to think about instruction.

d. Teacher and administrator preparation and other programs that ensure the Department of Public Instruction's Technology Foundation Standards for Teachers and Administrators in higher education are incorporated into classroom instruction.

e. Training teachers with skill sets to teach technical courses that are in growing demand to function at home and work.

f. Increase opportunities for sharing best practices in all areas of instruction.

g. Increase opportunities for learning how to use technology to customize instruction for all students.

h. Increase opportunities for learning how to use technology to diagnose student learning.

(4) Advise the State Board of Education on the development of a Funding and Accountability system to ensure statewide access and equity. The Funding and Accountability system may include:

a. Public-private partnerships.

b. Identification of resources and the cost of those resources.

c. Funding to keep hardware/software current.

d. Evaluating progress toward realizing the technology vision.

e. Evaluating the impact of various technology initiatives on alleviating some of the State's education and economic development problems.

f. Incentives to encourage risk taking and innovative uses of technology.

g. Funding for only those initiatives that are well-planned, demonstrate high commitment, and have a solid evaluation component.

(5) Report annually to the State Board of Education on the progress of the Alliance's recommendations for education technology in the public schools on the first Friday in December. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve implementing education technology in the public schools.

(6) Report annually to the Joint Legislative Education Oversight Committee in the General Assembly on the recommendations for education technology in the public schools on the first Friday in January. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve implementing education technology in the public schools.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1052

Short Title:	Business Educ. Tech. Alliance Legislation.	(Public)
Sponsors:	Senator Garrou.	
Referred to:	Education/Higher Education.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE BUSINESS EDUCATION TECHNOLOGY ALLIANCE.

The General Assembly of North Carolina enacts:

PART I. PLAN AND FUNDING FOR A VIRTUAL HIGH SCHOOL

SECTION 1.(a) The State Board of Education, the Board of Governors of The University of North Carolina, the Independent Colleges and Universities, and the State Board of Community Colleges shall develop E-learning standards and plans for infrastructures that provide virtual learning opportunities accessible to students and other citizens through all North Carolina schools, universities, and community colleges. In developing the plan for the public schools, the State Board of Education shall focus initially on high schools while also researching and developing, where appropriate, E-learning for Middle/Junior High and Elementary schools. E-learning programs shall support both teachers and students.

SECTION 1.(b) It is the intent of the General Assembly to give public schools the highest priority in funding for and development of E-learning. Funding for E-learning should be a new appropriation and not come exclusively from existing funds.

SECTION 1.(c) There is appropriated from the General Fund to the Department of Public Instruction the sum of one hundred fifty thousand dollars ($150,000) for the 2005-2006 fiscal year. The State Board of Education shall use these funds to establish and implement during the 2005-2006 school year a pilot virtual high school.

SECTION 1.(d) If the pilot program is successful, it is the intent of the General Assembly to provide funding to implement virtual high school on a statewide basis for the 2006-2007 fiscal year.

PART II. FEASIBILITY STUDY FOR DEVELOPING REGIONAL EDUCATION NETWORKS

SECTION 2.(a) The North Carolina Rural Economic Development Center and the E-NC Initiative, in collaboration with representatives from Local Education Agencies, The University of North Carolina, the State Board of Education, the State Chief Information Officer, and the Community College System shall perform a feasibility study on developing regional education networks that are centrally managed to provide and sustain broadband connectivity to individual students and teachers in schools, community colleges, and universities.

The study shall include an evaluation of existing technology infrastructures, such as the statewide infrastructure, the North Carolina Research and Education Network, or the regional infrastructure, Winston-Net. These state-of-the-art infrastructures may be capable of supporting growth in traffic and thus serve as a backbone infrastructure for delivering high-speed access to underserved regions.

The North Carolina Rural Economic Development Center and the E-NC Initiative shall report the results of the study to the Regular 2006 Session of the 2005 General Assembly.

SECTION 2.(b) There is appropriated from the General Fund to the North Carolina Rural Economic Development Center the sum of one hundred thousand dollars ($100,000) for the 2005-2006 fiscal year to perform the feasibility study pursuant to subsection (a) of this section.

PART III. PLAN FOR PROJECTING SCHOOL TECHNOLOGY FUNDING NEEDS

SECTION 3.(a) The State Board of Education and the State Chief Information Officer shall ensure that the State Technology Education Plan, which establishes criteria for Local Education Agency (LEA) School Technology Plans, includes a baseline template for:

(1) Technology infrastructure including broadband connectivity, personnel recommendations and other resources needed to operate effectively from the classroom desktop to local, regional and State networks, and

(2) An evaluation component that provides for LEA accountability for maintaining quality upgradeable systems.

SECTION 3.(b) The Department of Public Instruction shall hold regional workshops for LEAs to provide guidance in developing School Technology Plans that meet the criteria established in the State Technology Plan. The State Chief Information Officer will assist with the regional meetings as needed to provide technical assistance. The Department shall randomly check local school technology plans to ensure that LEAs are implementing their plans as approved. The Department shall report to the State Board of Education and the State Chief Information Officer on which LEAs are not complying with their plans. The report shall include the reasons the LEAs are out of

compliance and a recommended plan of action to support each such LEA in carrying out its plan.

SECTION 3.(c) The State Board of Education shall determine the total amount of funds needed for the recurring total cost of ownership to implement, maintain, and upgrade technology infrastructures and instructional technology as specified in the revised LEA School Technology Plans. This shall include personnel costs for both technical and instructional needs so that a three- to five-year budget plan can be developed for the General Assembly.

SECTION 3.(d) The State Board of Education shall also study and identify the types of resources needed to operate schools designed to meet the needs of 21st-century learners.

The State Board shall report the results of this study to the Regular 2006 Session of the 2005 General Assembly.

PART IV. ANNUAL REPORT THAT HIGHLIGHTS THE IMPACT OF EDUCATION PREPARATION ON ECONOMIC GROWTH

SECTION 4. The North Carolina Board of Science and Technology shall provide an annual report by county on the status of trends that reflect the impact of education on economic growth for the 21st century. This report shall be available for citizens and shall contain information about the status of each county with regard to education and economic growth.

PART V. PROCESS FOR MORE ASSISTANCE FOR E-RATE

SECTION 5. The Department of Public Instruction shall provide assistance with E-rate applications and ensure that adequate staffing is available for this purpose. The staffing shall include a minimum of one full-time coordinator who has technical knowledge and skills. The Department shall notify school systems about the person or office assigned the responsibility.

The Department shall provide the State Board of Education with an annual report on e-rate, including funding, commitments, and enrollment by local education agencies.

PART VI. PLANNING FOR A STATE CENTRAL INFRASTRUCTURE OFFICE

SECTION 6.(a) The Office of State Budget and Management shall conduct a study to determine the feasibility of establishing a State Central Infrastructure Office that would collect and manage information for technology, water, sewer, and other utility infrastructures needed to assist communities in becoming and remaining economically viable.

SECTION 6.(b) The Office of State Budget and Management shall report the results of this study to the Regular 2006 Session of the 2005 General Assembly.

The report shall include legislative proposals, including a proposal to define the term "infrastructure" in the General Statutes to include technology.

PART VII. EFFECTIVE DATE

SECTION 7. This act becomes effective July 1, 2005.

Senate Education/Higher Education Committee

Wednesday, April 13, 2005

10:00 AM

643LOB

AGENDA

Senator A. B. Swindell: Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 566	Facilitate Comm. Coll. Learn & Earn Prog.	Senator Lucas
SB 700	Customized Industry Training Program.	Senator Nesbitt, Jr.
SB 988	Transfer Textile Center to Gaston College.	Senator Hoyle
SB 1052	Business Educ. Tech. Alliance Legislation.	Senator Garrou

Presentations

Other Business

Adjournment

VISITOR REGISTRATION SHEET

Education/Higher Education — April 13, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Maynard	CMS
Molly Ryan	NCSBA
Lee Hodge	KCLH
John McAfee	Governor's
Jim Barker	UNC-CH
Allan Jordan	Web Academy - Cumberland Co.
Tim Harris	WCPSS
Anne Marie Mann	PSF of NC
Alice Garland	NCDOC
Don Hobart	NC DOC
Suzanne Williams	NCCCS

VISITOR REGISTRATION SHEET

Education/Higher Education — April 13, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Wilson County Schools
Elizabeth Dattm	NCCBI
[signature]	SBE/DPI
[signature]	NCCCS
[signature]	"
Bill Rendall	"
George Bakatsa	ITS
Bob Bellamy	DPI
Ken Whitehead	NCCCS
Martel Perry	Shaw University
Katherine Joyce	NCASA

VISITOR REGISTRATION SHEET

Education/Higher Education — April 13, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCICU
Pam Wescott	Sprint
Edgar Murphy	State Board
John Bolnick	SAS Institute
Hal Miller	NCACCT
John Cyrus	NCSG
Michael Horan	NCAE
	NCAE
Caroline Kazmierski	NCTA
Herb Crumbacher	BellSouth
Bryan J. Conrad	OSBM

VISITOR REGISTRATION SHEET

Education/Higher Education — April 13, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Morrell	NC Rural Center
Sofi Franciewicz	New Schools Project
Marshall Matson	New Schools Project
Myra Best	NC Network / Beta
Elizabeth Grossman	CSEM
Mario Dorsey	NCAE
Ann McArthur	Governor's Office
Darlene Johnson	Alphanumeric Systems
Paul Jagodzinski	Textile Coalition / Hair Coalition
Mark Fleming	United / Synod
Gene Causby	NCSCA

VISITOR REGISTRATION SHEET

Education/Higher Education — April 13, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	[signature]
[signature]	[signature]
[signature]	[signature]
James L. Foose	OSA

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, April 20, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:13 AM on April 20, 2005, in Room 643 of the Legislative Office Building. Fifteen members of the committee were present. Senator Jeanne H. Lucas presided.

The Chair recognized Representative Phillip Frye, who explained House Bill 415, which he indicated was identical to Senate Bill 254, An Act to give Flexibility In The School Calendar To Accommodate Extraordinary Circumstances Caused By Hurricane Frances and Ivan. He stated that Bill 415 had passed in the House. Representative Frye introduced Ms. Grace Calhoun, Superintendent of Avery County. Ms. Calhoun spoke and asked for support of the bills. Senate Bill 254 was removed from the calendar. Senator Lucas asked Ms. Calhoun to remain for further questions after discussions of bills on calendar.

Senator Lucas recognized Senator Dalton. Senator Dalton presented Bill 565, An Act Authorizing Limited Use Of Community College Facilities By Private Companies That Have Loaned Or Donated Instructional Equipment To The College. Senator Dorsett moved to adopt the Proposed Committee Substitute. It was adopted. Senator Dalton moved for favorable report. Questions from the committee were raised and answered. The motion carried by unanimous voice vote

The Chair acknowledged Senator Nesbitt, who presented Bill 700, Customized Industry Training Program. Senator introduced Mr. Larry Keen of the North Carolina Community College System, who requested support for Bill 700. Questions from the committee were raised and answered. Senator Apodaca moved for favorable report as to the Committee Substitute, unfavorable to the original Bill, re-referred to the Appropriations Committee. Questions from the committee were raised and answered. The motion was adopted by unanimous voice vote.

The Chair recognized members of the committee for discussion with Ms. Calhoun. Questions from the committee were raised and answered.

The meeting adjourned at 11:35 AM.

Jeanne H. Lucas
Senator Jeanne H. Lucas, Presiding

Tonia Butler Perez
Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Thursday, April 21, 2005

Senator LUCAS,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **565** Amend Umstead Act/Comm. Coll. Facilities.

Draft Number:	PCS65305
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **700** Customized Industry Training Program.

Draft Number:	PCS75294
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 565*
PROPOSED COMMITTEE SUBSTITUTE S565-PCS65305-RQ-11

Short Title: Amend Umstead Act/Comm. Coll. Facilities. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING LIMITED USE OF COMMUNITY COLLEGE FACILITIES BY PRIVATE COMPANIES THAT HAVE LOANED OR DONATED INSTRUCTIONAL EQUIPMENT TO THE COLLEGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

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

...

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

SECTION 2. G.S. 115D-20(12) reads as rewritten:

"(12) Notwithstanding the provisions of this Chapter, a community college may permit the use of its personnel or facilities, in support of or by a private business enterprise located on a community college campus or in the service area of a community college for the specific purposes ~~services in support of economic development that are~~ set out in ~~G.S. 66-58(c)(3a).~~G.S. 66-58(c)(3a) and G.S. 66-58(c)(3c). The board of trustees of a community college must specifically approve any use of facilities or personnel under this subdivision. The State Board shall adopt rules to implement ~~the provisions of this subdivision and G.S. 66-58(c)(3a).~~this subdivision, G.S. 66-58(c)(3a), and G.S. 66-58(c)(3c)."

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

SENATE BILL 565:
Amend Umstead Act/Comm. Coll. Facilities

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Introduced by:**	Sen. Dalton
		Summary by:	Drupti Chauhan Committee Counsel
Date:	April 20, 2005		
Version:	PCS S565-CSRQ-11[v.3]		

SUMMARY: ***The PCS for Senate Bill 565 would authorize the use of community college facilities by private companies that have loaned or donated instructional equipment to the community college. The PCS makes conforming technical changes to the statute on the powers and duties of the boards of trustees.***

CURRENT LAW: As a general rule, G.S. 66-58 (the Umstead Act) prohibits State agencies from competing with private businesses in certain commercial activities. However, there are a number of exceptions that have been made including allowing a community college to permit the use of its personnel or facilities in support of or by a private business enterprise located on the campus of the community college campus or its service areas in support of economic development. Examples would be small business incubators, product testing services, and videoconferencing services provided to the public.

BILL ANALYSIS:

Section 1 of the PCS for Senate Bill 565 would authorize a community college to permit the use of its facilities by private business enterprises that have loaned or donated instructional equipment to the college. The private business enterprises would be able to use the facilities to demonstrate the loaned or donated instructional equipment to its customers. The board of trustees is required to adopt policies on the use of the facilities.

Section 2 of the PCS for Senate Bill 565 would make conforming changes to the statute on the powers and duties of the local boards of trustees.

BACKGROUND: Private companies loan or donate equipment to community colleges for training and educational uses. There are situations where the companies would like to use the facilities to demonstrate the equipment to their potential customers.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 565*

Short Title:	Amend Umstead Act/Comm. Coll. Facilities.	(Public)
Sponsors:	Senators Dalton; and Dorsett.	
Referred to:	Education/Higher Education.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING LIMITED USE OF COMMUNITY COLLEGE FACILITIES BY PRIVATE COMPANIES THAT HAVE LOANED OR DONATED INSTRUCTIONAL EQUIPMENT TO THE COLLEGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

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

...

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 700
PROPOSED COMMITTEE SUBSTITUTE S700-PCS75294-RJ-7

Short Title: Customized Industry Training Program. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CUSTOMIZED INDUSTRY TRAINING PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-7.1. Establishment of the Customized Industry Training Program.**

(a) There is created within the North Carolina Community College System the Customized Industry Training (CIT) Program. The CIT Program shall offer programs and training services as new options for assisting existing business and industry to remain productive, profitable, and within the State. Before a business or industry qualifies to receive assistance under the CIT Program, the President of the North Carolina Community College System shall determine that:

(1) The business is making an appreciable capital investment;

(2) The business is deploying new technology;

(3) The skills of the workers will be enhanced by the assistance.

(b) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

(1) The total amount of funds received by a company under the CIT Program;

(2) The amount of funds per trainee received by that company;

(3) The amount of funds received per trainee by the community college delivering the training;

(4) The number of trainees trained by the company and community college; and

(5) The number of years that company has been funded.

(c) The State Board shall adopt rules and policies to implement this section."

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

SENATE BILL 700:
Customized Industry Training Program

BILL ANALYSIS

Committee:	Senate Education/Higher Ed	**Introduced by:**	Sen. Nesbitt
Date:	April 12, 2005	**Summary by:**	Sara Kamprath
Version:	PCS for First Edition - S700-CSRJ-7 [v.1]		Committee Analyst

SUMMARY: ***The Proposed Committee Substitute would establish the Customized Industry Training Program (CIT) within the Community College System. The State Board of Community Colleges would adopt rules and policies to implement the Program and would report annually to the Joint Legislative Education Oversight Committee on specific aspects of the CIT Program.***

The act would become effective July 1, 2005.

Difference Between PCS and First Edition

The Proposed Committee Substitute deletes the requirement that the President of the Community College System shall determine that the average wage of the workers receiving training will measurably increase before a business or industry qualifies for assistance under the CIT Program.

BILL ANALYSIS: A new section would be added to the Community College statutes to establish the Customized Industry Training (CIT) Program, and the State Board would have to adopt rules and policies to implement the Program. One purpose of the Program would be to help keep existing business and industry in the State. CIT would offer programs and training services to assist existing business and industry to remain profitable and productive. The President of the North Carolina System of Community Colleges must determine that, based on specified criteria, a business or industry would qualify to receive assistance under the CIT Program. The business or industry must:

- make an appreciable capital investment;
- deploy new technology;
- enhance the skills of the workers through the CIT assistance; and

The State Board would make an annual report to the Joint Legislative Education Oversight Committee on:

- the amount of funds a company received under the CIT Program;
- the amount of funds per trainee received by both the company and the community college delivering the training;
- the number of trainees trained by the company and by the community college; and
- the number of years that the company has been funded.

This reporting requirement is very similar to the statutory reporting requirement for the New and Expanding Industry Training (NEIT) Program.

This new CIT Program is separate from and complementary to the New and Expanding Industry (NEIT) Program and the Focused Industrial Training (FIT) Program that already exist.

BACKGROUND: The New and Expanding Industry (NEIT) Program assists companies that create 12 or more full-time production jobs. Eligible industry categories include manufacturing, biotechnology, regional or national warehousing and distribution centers, customer services, and others. Eligible trainees are full-time production workers involved in direct production of goods and services. All training is customized to meet specific company needs.

The Focused Industrial Training (FIT) Program provides dedicated resources that are essential to meet the retraining needs resulting from technological or process advances within existing companies. It is designed to provide customized training assistance, focused upon skills required for both highly skilled and semi-skilled occupations.

S700-SMRJ-001 *Shirley Iorio contributed significantly to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 700

Short Title:	Customized Industry Training Program.	(Public)
Sponsors:	Senators Nesbitt; Apodaca, Atwater, Dalton, Forrester, Hartsell, Presnell, Snow, Swindell, and Thomas.	
Referred to:	Education/Higher Education.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CUSTOMIZED INDUSTRY TRAINING PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-7.1. Establishment of the Customized Industry Training Program.**

(a) There is created within the North Carolina Community College System the Customized Industry Training (CIT) Program. The CIT Program shall offer programs and training services as new options for assisting existing business and industry to remain productive, profitable, and within the State. Before a business or industry qualifies to receive assistance under the CIT Program, the President of the North Carolina System of Community Colleges shall determine that:

(1) The business is making an appreciable capital investment;

(2) The business is deploying new technology;

(3) The skills of the workers will be enhanced by the assistance; and

(4) The average wage of the workers receiving the training will increase measurably.

(b) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

(1) The total amount of funds received by a company under the CIT Program;

(2) The amount of funds per trainee received by that company;

(3) The amount of funds received per trainee by the community college delivering the training;

(4) The number of trainees trained by the company and community college; and

(5) The number of years that company has been funded.

(c) The State Board shall adopt rules and policies to implement this section."

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

Senate Education/Higher Education Committee

Wednesday, April 20, 2005, 10:00 AM

643 LOB

AGENDA

Senator Jeanne H. Lucas, Presiding

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 700	Customized Industry Training Program.	Senator Nesbitt, Jr.
SB 254	Sch. Calendar Flex. after Hurricane Flooding.	Senator Presnell
SB 565	Amend Umstead Act/Comm. Coll. Facilities.	Senator Dalton

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education — April 20, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Grace Calhoun	Supt. Avery Co. Schools P.O. Box 136 Newland, NC 28657
Martha Barnowski	Board Member. Avery County Schools
Edwina R. Sluder	Board Member - Avery County Schools
Ann McArthur	Governor's Office
[illegible]	Gov office
Suzanne Bachtiger	Gov office
Kym Bryd	NCCCS
Richard Sullins	NCCCS
Larry Keen	NCCCS
Rebecca Trantman	NCACC
Sari Schmidt	NC Justice Center

VISITOR REGISTRATION SHEET

Education/Higher Education — April 20, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRIAN LEWIS	Covenant with NC's Children
John Cyrus	NCSG
Hal Miller	NCAECT
[illegible]	Gov's office
Kevin Beaumont	NCSR
Sandra Tayor	Edmisten Webb
Michael Rose	NCAE

VISITOR REGISTRATION SHEET

Education/Higher Education — April 20, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Wellborn	NCCCS
Lisa Lassiter	BOT of NC
Tom McDowell	NCICU
Molly Ryan	NCSBA
Alice Garland	NCDOC
Katherine Joyce	NCASA
Gene Causby	NCSAA
Gary Mc	
Steve Shaber	Poyner & Spruill
Jim Blackburn	N.C. Association of County Commissioners
ZEB ALLEY	ALLEY ASSOC

VISITOR REGISTRATION SHEET

Education/Higher Education — April 20, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Don McCorquodale	SAS
Mark Fleming	Work for Zeb
MIKE MANN	SSI

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, April 27, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:17 AM on April 27, 2005, in Room 643 of the Legislative Office Building. Eighteen members of the committee were present. Senator John Garwood presided.

The Chair introduced the pages and recognized Senator Dorsett to present Bill 906, An Act To Clarify The Permissible Use Of Seclusion And Restraint In Public Schools And To Provide For Training In Management Of Student Behavior. Senator Lucas moved to adopt the Proposed Committee Substitute, which was adopted by unanimous voice vote. Senator Dorsett explained Bill 906 and introduced Ms. Renee Palmer of the Carolina Legal Assistance to explain further. Questions from the committee were raised. The Chair recommended and ruled that Bill 906 not be voted on this week and moved to the calendar for next week. This will give the members time to discuss the bill with their Superintendents of schools and other educators to discuss unanswered questions.

Senator Garwood acknowledged Senator Berger to explain Bill 862, An Act To Authorize The State Board Of Education To Issue Special Diplomas To Qualified Veterans Of Korea And Vietnam. Senator Berger introduced Mr. Charles Smith of North Carolina Division of Veteran Affairs, who was recognized to speak on behalf of Bill 862. The Chair recognized Mr. Larry Tetterton of the Legislative Commission of American Legion, who also supports Bill 862. Questions from the committee were raised and answered. Senator Horton moved for favorable report. The motion was carried by unanimous voice vote.

The Chair recognized Senator Presnell who presented Bill 254, An Act To Give Flexibility In The School Calendar To Accommodate Extraordinary Circumstances Caused By Hurricanes Frances And Ivan. Senator Presnell asked that Bill 254 be amended to change the number of days missed from 10 instructional days to 13 instructional days in the Bill, based on discussion with Senator Nesbitt. Senator Lucas moved to adopt the Proposed Committee Substitute for discussion. The motion was carried by unanimous voice vote. Senator Lucas requested displacement of Bill 254 to get Senator Nesbitt's amendment included. Senator Tillman recommended that Bill 254 be amended to reflect the changes. Staff amended Bill 254. Senator Tillman signed the amendment. Senator Horton moved to adopt the amendment as stated by the Chair. The motion was carried to adopt the amendment by unanimous voice vote. Senator Goodall moved to adopt Bill 254 as amended. The motion was carried by unanimous voice vote.

Senator Garwood recognized Senator Thomas to present Bill 724, An Act To Provide That Dependents Of Members Of The North Carolina National Guard Pay In-State Tuition. Senator Tillman moved for favorable report. Questions were raised by members and answered. Senator Tillman moved for adoption of Bill 724. The motion was carried by unanimous voice vote.

The Chair recognized Senator Jenkins to present Bill 821, An Act Permitting The Routing Of School Buses On Certain Streets Designated As Public. Senator Jenkins moved to amend Bill 821, page 1, and lines 8-12 (see Amendment) and accept Bill 821 as amended. The motion carried by unanimous voice vote. Questions were raised by members and answered. Senator Smith moved for a favorable report as amended and rolled into a Committee Substitute. The motion carried by unanimous voice vote.

The meeting adjourned at 10:57 AM.

Senator John Garwood, Presiding

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

CORRECTED REPORT

Wednesday, April 27, 2005

Senator GARWOOD,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **724** NCNG-Dependents Pay In-State Tuition.
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None

S.B. **862** Special Diplomas to Korea and Vietnam Vets.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **254** Sch. Calendar Flex. after Hurricane Flooding.
Draft Number: PCS65309
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

PUBLIC BILL

S.B. 724

ID = H 898

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT DEPENDENTS OF MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD PAY IN-STATE TUITION.

Introduced by Senator(s) Weinstein, Garwood, Thomas, Foxx, Dalton, Hagan, Purcell, Bingham, Forrester, Forbes

Principal Clerk's Use Only

FILED MAR 2 1 2005

PASSED 1st READING

MAR 22 2005

AND REFERRED TO COMMITTEE

Ed / Higher Ed

SEQUENTIAL REFERRAL:

Appro / Base Bud

Fiscal Note Attached APR 2 6 2005

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 724

Short Title:	NCNG – Dependents Pay In-State Tuition.	(Public)
Sponsors:	Senators Thomas; Apodaca, Bingham, Brown, Dalton, Forrester, Garwood, Hoyle, Jenkins, Rand, Swindell, and Weinstein.	
Referred to:	Education/Higher Education.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT DEPENDENTS OF MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD PAY IN-STATE TUITION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116-143.3 is amended by adding a new subsection to read:

"(c1) Any dependent relative of a member of the North Carolina National Guard as defined by the Board of Governors of The University of North Carolina and by the State Board of Community Colleges while sharing the abode of that member shall be eligible to be charged the in-State tuition rate, if the dependent relative qualifies for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3). The dependent relatives shall comply with the requirements of the Selective Service System, if applicable, in order to be accorded this benefit."

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

SENATE BILL 724:
NCNG – Dependents Pay In-State Tuition

BILL ANALYSIS

Committee:	Senate Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget	**Date:**	April 25, 2005
Introduced by:	Sen. Thomas	**Summary by:**	Robin Johnson
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 724 would allow the in-State tuition rate to be charged to a dependent relative of any member of the North Carolina National Guard (NCNG) who lives in another state or who may not be on active duty, or both. The dependent would be required to share the Guard member's abode.***

CURRENT LAW: Currently, dependent relatives of members of the armed services, including the NCNG, are eligible to be charged the in-State tuition rate if they qualify for admission to a community college or university. The members of the armed services must live in North Carolina incident to active duty. A dependent relative continues to be eligible for in-State tuition and applicable fees after the member of the armed services is transferred to another state so long as the dependent is continuously enrolled in the program in which the dependent was enrolled at the time the member is transferred.

BILL ANALYSIS: The bill would extend the in-State tuition rate to dependent relatives that share the abode of NCNG members who live in another state or who are no longer on active duty, or both. The dependents would be required to comply with the requirements of the Selective Service System, if applicable.

EFFECTIVE DATE: This act would become effective July 1, 2005.

PUBLIC BILL

S.B. 862

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF EDUCATION TO ISSUE SPECIAL DIPLOMAS TO QUALIFIED VETERANS OF KOREA AND VIETNAM.

Introduced by Senator(s) Berger of Franklin

Principal Clerk's Use Only

FILED MAR 22 2005

PASSED 1st READING

MAR 23 2005

AND REFERRED TO COMMITTEE

on Ed / Higher Ed

Moved for favorable report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 862

Short Title:	Special Diplomas to Korea and Vietnam Vets.	(Public)
Sponsors:	Senators Berger of Franklin; Atwater, Bingham, and Brown.	
Referred to:	Education/Higher Education.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF EDUCATION TO ISSUE SPECIAL DIPLOMAS TO QUALIFIED VETERANS OF KOREA AND VIETNAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12 reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(29) To issue special high school diplomas to veterans of ~~World War II.~~ World War II, Korea, and Vietnam. – The State Board of Education shall issue special high school diplomas to all honorably discharged veterans of ~~World War II~~ World War II, the Korean Conflict, and the Vietnam era who request special diplomas and have not previously received high school diplomas."

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

SENATE BILL 862:
Special Diplomas to Korea and Vietnam Vets

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	April 26, 2005
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Sara Kamprath
Version:	First Edition		Committee Analyst

SUMMARY: ***Senate Bill 862 authorizes the State Board of Education to issue special high school diplomas to Korean Conflict and Vietnam era veterans who were honorably discharged and have never previously received a high school diploma. The bill is effective when it becomes law.***

BACKGROUND: In 2001, the General Assembly passed legislation authorizing the State Board of Education to issue a special high school diploma to any honorably discharged World War II veteran who had not already received a diploma. Either the veteran or a family member of a deceased veteran must submit an application for the special diploma.

The State Board of Education adopted the attached policy that outlines the procedures for issuing the special diploma and the qualifications that the veteran must meet in order to receive the special diploma.

The 2001 legislation was a result of a national effort called "Operation Recognition" to recognize the sacrifice of the many veterans of World War II who left high school before graduation to serve in the U.S. armed forces and to issue those veterans a high school diploma.

S0862e1-SMRJ

NORTH CAROLINA STATE BOARD OF EDUCATION
Policy Manual

Policy Identification
Priority: High Student Performance
Category: Miscellaneous Graduation Policies
Policy ID Number: HSP-L-005

Policy Title: Policy on issuance of special high school diploms for World War II veterans

Current Policy Date: 07/12/2001

Other Historical Information:

Statutory Reference: GS 115C-12(29)

Administrative Procedures Act (APA) Reference Number and Category:

In honor of the sacrifices of World War II veterans, the State Board of Education authorizes the Department of Public Instruction to issue honorary diplomas to those who served in World War II and who present legal documentation of being honorably discharged. A veteran must send to the Department of Public Instruction a request for a diploma and attach documentation of his/her honorable discharge.

OPERATION RECOGNITION

On May 17, 2001, Governor Easley signed into law Session Law 2001-86, which directs the State Board of Education to issue special high school diplomas to all honorably discharged veterans of World War II who request the diploma and who have not previously received high school diplomas. This law is the result of a national effort known as Operation Recognition. Several North Carolina school systems have already participated in Operation Recognition by awarding diplomas to veterans.

Background
"Operation Recognition" is a program to award high school diplomas to World War II veterans who left high school to go to war.

During the 1940's, thousands of young men and women across the country left high school and the comforts of home and hearth to serve gallantly in the armed forces during World War II. Their sacrifice ensured our freedom, built our country into a superpower, and shaped the entire course of history throughout the world. After the war, many of these veterans were not able to finish high school for various reasons, but led productive lives and built our communities over a lifetime.

Procedures/Qualifications:
1. To be eligible, the veteran must have:
   a. attended a North Carolina high school between the years of 1937 and 1946 with graduation class years of 1940-1950 (12th grade was added in 1942);
   b. left high school prior to graduation to enlist in the armed forces of the United States;
   c. served in WWII between September 16, 1940, and December 31, 1946; and
   d. been honorably discharged.
2. Either the veteran or a family member of a deceased veteran must submit to the State Board of Education:
   a. an application for a "WWII Veterans" high school diploma; and
   b. a copy of honorable discharge papers (DD Form 214) attached to the application.

The State Board will submit the application to the Division of Veterans' Affairs for verification of the veteran's military service eligibility. Upon receipt of that verification, the State Board of Education will issue a diploma to the veteran.

Any veteran who has received a high school diploma from a local board of education in connection with Operation Recognition is not entitled to receive another diploma from the State Board of Education. However, receipt of a G.E.D. does not prohibit the veteran from receiving this diploma.

LOCAL BILL

S.B. 254

SESSION LAW _____

ID: H 415

A BILL TO BE ENTITLED

AN ACT TO GIVE FLEXIBILITY IN THE SCHOOL CALENDAR TO ACCOMMODATE EXTRAORDINARY CIRCUMSTANCES CAUSED BY HURRICANES FRANCES AND IVAN.

Introduced by Senator(s)

Presnell, Kerr, Barwood, Harris, Blake, Horton, Jenkins, Brock

Principal Clerk's Use Only

FILED FEB 28 2005

PASSED 1st READING

MAR 1 2005

AND REFERRED TO COMMITTEE

on Ed/Higher Ed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 254*
PROPOSED COMMITTEE SUBSTITUTE S254-PCS65309-SF-12

Short Title: Make Up Instructional Days/Hurricanes. (Public)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO GIVE FLEXIBILITY TO MAKE UP INSTRUCTIONAL DAYS MISSED DURING THE 2004-2005 SCHOOL YEAR IN LOCAL SCHOOL ADMINISTRATIVE UNITS LOCATED IN WHOLE OR IN PART IN THE COUNTIES THAT THE PRESIDENT OF THE UNITED STATES DECLARED TO BE DISASTER AREAS FOR HURRICANES FRANCES AND IVAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-84.2(a)(1) reads as rewritten:

"(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of either 180 days ~~and~~ or 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~180~~ instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

If, due to inclement weather, a local board of education complies with this subdivision by scheduling 1,000 hours of instruction on less than 180 days, the local school administrative unit is deemed to have a minimum of 180 days of instruction, teachers employed for a

10-month term are deemed to have been employed for 180 instructional days, and all other employees shall be compensated as if they had worked their regularly scheduled hours for 180 instructional days."

SECTION 2. This act applies only to local school administrative units located in whole or in part in the counties that (i) were declared by the President of the United States to be a disaster area for Hurricane Frances, Hurricane Ivan, or both and (ii) have missed more than 13 instructional days during the 2004-2005 school year due to all inclement weather including flooding from Hurricane Frances, Hurricane Ivan, or both.

SECTION 3. This act applies to the 2004-2005 school year only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 254*

Short Title:	Sch. Calendar Flex. After Hurricane Flooding.	(Public)
Sponsors:	Senators Presnell; Allran, Apodaca, Blake, Brock, Brown, East, Goodall, Horton, Hunt, Jacumin, Pittenger, Snow, and Stevens.	
Referred to:	Education/Higher Education.	

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO GIVE FLEXIBILITY IN THE SCHOOL CALENDAR TO ACCOMMODATE EXTRAORDINARY CIRCUMSTANCES CAUSED BY HURRICANES FRANCES AND IVAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-84.2(a)(1) reads as rewritten:

"(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of either 180 days ~~and~~ or 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~180~~ instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

If, due to inclement weather, a local board of education complies with this subdivision by scheduling 1,000 hours of instruction on less than 180 days, the local school administrative unit is deemed to have a minimum of 180 days of instruction, teachers employed for a 10-month term are deemed to have been employed for 180 instructional days, and all other employees shall be compensated as if

they had worked their regularly scheduled hours for 180 instructional days."

SECTION 2. This act applies only to local school administrative units located in whole or in part in the counties that (i) were declared by the President of the United States to be a disaster area for Hurricane Frances, Hurricane Ivan, or both and (ii) have missed more than 10 instructional days during the 2004-2005 school year due to all inclement weather including flooding from Hurricane Frances, Hurricane Ivan, or both.

SECTION 3. This act applies to the 2004-2005 school year only.

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

SENATE BILL 254:
Make Up Instructional Days/Hurricanes

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Introduced by:**	Senator Presnell
		Summary by:	Shirley Iorio, Ph.D. Committee Analyst
Date:	April 27, 2005		
Version:	PCS to the First Edition S254-CSSF-12 [v.1]		

SUMMARY: ***This bill would create an exception to the required time for instruction for all school systems in North Carolina. The bill would apply to local school administrative units located in whole or in part in certain counties and that have missed more than ten instructional days due to inclement weather including flooding from Hurricane Frances, Hurricane Ivan, or both.***

The bill would provide that local boards of education that comply with this exception by scheduling 1,000 hours on less than 180 days due to inclement weather are deemed to have a minimum of 180 days of instruction, and employees must be compensated accordingly.

The bill would apply only to the 2004-2005 school year, and would become effective when it becomes law.

The PCS changes both the short and the long titles to make them more accurate.

CURRENT LAW: The NC Constitution requires that the State provide "for a general and uniform system of free public schools, which shall be maintained at least nine months in every year." This is echoed in G.S. 115C-1, which requires the operation in every LEA of "a uniform school term of nine months."

School calendars must have a minimum of 215 days, all of which fall in the fiscal year. Of those days, local boards must adopt annual school calendars consisting of 180 days AND 1,000 hours of instruction during nine calendar months. The remaining 35 days must be scheduled as follows:

- 10 as annual vacation leave days;
- 10-11 as holidays;
- 5 days, as designated by the local board, for use as teacher workdays. These days are protected for teachers to complete instructional and classroom administrative duties. The local boards must designate on which of these days teachers with accumulated vacation leave may take that leave.
- 9-10 days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes, including vacation days for teachers with accumulated vacation leave. A local board may designate any of these days as additional make-up days for days missed due to school closing because of inclement weather. These make-up days are to be scheduled after the last day of student attendance.
- School cannot be held on Sundays or Veteran's Day. Actual workdays for teachers employed for 10-month terms cannot exceed 195 days, and, in most cases, there must be 42 consecutive days when teacher attendance is not required.

The State Board has authority to order general school closings during any emergency in any section of the State where emergency conditions make it necessary.

The school calendar must include a plan for making up days and instructional hours missed when schools are closed due to inclement weather.

Local boards are required to set the first instructional day of school no earlier than August 25 and the last day no later than June 10 for all schools except year-round schools. A local board of education may ask the State Board of Education for a waiver of this requirement if it can show good cause. The State Board also may waive this requirement for an educational purpose.

BILL ANALYSIS: This bill would amend G.S. 115C-84.2(a)(1) by changing the word "and" to the word "or" in reference to the required time for instruction. The bill also specifies that if a local board, due to inclement weather, schedules 1000 hours of instruction on less than 180 days, the local school administrative unit is deemed to have a minimum of 180 days of instruction, teachers employed for a 10 month term are deemed to have been employed for 180 instructional days, and all other employees must be compensated as if they had worked their regularly scheduled hours for 180 instructional days. These changes would apply only to the 2004-2005 school year.

This bill would only apply to local school administrative units who meet the following criteria:

- *Are located in whole or in part in the counties that were declared by the President of the United States to be a disaster area for Hurricane Frances, Hurricane Ivan, or both; and
- *Have missed more than 10 instructional days during the 2004-2005 school year due to all inclement weather including flooding from Hurricane Frances, Hurricane Ivan, or both.

***See attached chart**

BACKGROUND: The laws governing the school calendar have evolved over the past 90 years. The first major rewrite seems to have occurred in 1987. At that time, the law was rewritten to require local boards to have school calendars that provided for 180 days of instruction. (The State Board had a rule that defined the minimum number of hours of instruction in a school day.) The law also required the calendar to include makeup days for school closings due to hazardous weather, natural disaster, or other emergencies. The required number of makeup days varied from one school system to another. The law required the "greater of (i) five days or (ii) the average number of days missed in five of the last six school years in which the least number of days were missed." If a local board used all of its scheduled makeup days, it was permitted to excuse up to three additional days when it found it was "impracticable to make up the additional days." (This had to be reported to the State Board of Education.) In addition to those three days, the State Board was allowed to forgive an unlimited number of additional days when it found that "conditions justify such suspension of school." If the State Board forgave days, then teachers and students were not required to make them up, and the first 15 of those days did not affect teachers' pay.[1] In addition to the general law, local legislation was introduced (and usually adopted) creating additional exceptions, almost every Session.

By 1997, legislators and policymakers had become concerned because so many exceptions and reasons to excuse days of instruction had appeared over time. Their primary concern was that research strongly correlates instructional time with student learning. In addition, the concerns included: (i) it seemed too

[1] Interestingly, these 15 days originated in 1971 at which time school could be suspended up to 60 days "due to low average of daily attendance, or the needs of agriculture, or any other condition."

easy for local boards to cancel school and then not schedule makeup days; (ii) there did not appear to be a difference from one part of the state to another, even though winter weather tends to be worse in the western part; and (iii) the growing belief that the exceptions eroded the constitutional mandate of a nine-month school year.

In 1997 the law was significantly amended. The goals were to simplify the statute, put more responsibility at the local level for planning for makeup days, and provide much more flexibility to local boards when they "build" their school calendars. The flexibility was provided so that school systems could prepare for and anticipate events such as snow and ice storms and other generally unpredictable events that interfere with the act of getting to the schoolhouse.

In 1999, after Hurricane Floyd, there was legislation that provided a limited exception to G.S. 115C-84.2(a)(1) by changing the word "and" to the word "or" in reference to the required time for instruction. That legislation was limited to counties affected by the hurricane and applied only to that school year. However, there were several lawsuits filed, some of which were settled out of court. In two counties (Guilford and Union), the North Carolina Association of Educators (NCAE) brought lawsuits concerning extra pay for teachers and other staff members. In both cases the lawsuits have been settled. Teachers and certain other employees received one annual leave day to be used during a specified period of time.

In 2003, a bill similar to the 1999 Hurricane Floyd bill was enacted. However, this bill contained a provision which clarified that local boards that made up instructional time by adding instructional hours to previously scheduled instructional days were deemed to have a minimum of 180 days of instruction and employees were deemed to have been employed for the days being made up and must be compensated accordingly.

In 2004, legislation was passed that reduced the number of required days in the school calendar; required schools to open for students no earlier than August 25 and close by June 10 except in unusual circumstances or in year-round schools; reduced the number of teacher workdays; and provided that salaries were not reduced as a result of the reduction in teacher workdays.

CONSTITUTIONAL ISSUES

Article IX, Sec. 2, NC Const. There is a question as to how the courts would interpret the mandate that "[t]he General Assembly shall provide ... for a ... system of free public schools, which shall be maintained at least nine months in every year." On the one hand, it could merely mean that there are school calendars covering nine calendar months, not necessarily limited to instructional time. If it means instructional time, then there remains a question as to whether it means a minimum number of days or minimum number of hours. And it is unclear whether days or hours, or both, can be waived.

Leandro. The State is obligated to provide to all students the opportunity for a sound basic education. There is a question as to whether the State can forgive instructional time and still meet this responsibility.

Robin Johnson contributed to this summary

Senate Bill 254
School Calendar Flexibility After Hurricane Flooding

Inclement Weather
2004-05 School Year

Designated Disaster Counties	Total Days Missed Due to Weather	Days Missed for Hurricanes
Avery	22	7
Buncombe	10	4
Asheville City	9	4
Burke	5	3
Caldwell	3	1
Haywood	13	4
Henderson	6	2
Jackson	8	3
Macon	1	1
Madison	13	3
McDowell	5	3
Mitchell	11	2
Polk	3	2
Rutherford	2	1
Transylvania	6	3
Watauga	15	4
Yancey	14	5

Note: Hurricane Frances - 15 counties were declared as disaster areas by the President
Hurricane Ivan – The same 15 counties were declared as disaster areas with one addition – Macon County

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Thursday, April 28, 2005

Senator GARWOOD,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **821** Permissible School Bus Routes Modified.

Draft Number:	PCS85240
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 821
PROPOSED COMMITTEE SUBSTITUTE S821-PCS85240-RJ-11

Short Title: Permissible School Bus Routes Modified. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT PERMITTING THE ROUTING OF SCHOOL BUSES ON CERTAIN STREETS DESIGNATED AS PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-246(b) reads as rewritten:

"(b) Unless road or other conditions shall make it inadvisable to do so, public school buses shall be so routed on state-maintained highways or streets designated as a school bus route as ordained by the Division of Highways, that the school bus, to which such pupil is assigned, shall pass within one mile of the residence of each pupil, who lives one and one half miles or more from the school to which such pupil is assigned."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. First Edition

H. B. No. _____ DATE _____

S. B. No. 821 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, lines 8-12

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"a school bus route as ordinanced by the Division of Highways, that the school bus, to which such pupil is assigned, shall pass within".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 821

Short Title:	Permissible School Bus Routes Modified.	(Public)
Sponsors:	Senators Jenkins and Clodfelter.	
Referred to:	Education/Higher Education.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT PERMITTING THE ROUTING OF SCHOOL BUSES ON CERTAIN STREETS DESIGNATED AS PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-246(b) reads as rewritten:

"(b) Unless road or other conditions shall make it inadvisable to do so, public school buses shall be so routed on state-maintained highways or streets designated as public pursuant to G.S. 136-102.6(b) and certified by the owner as having been (i) constructed in accordance with the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system, and (ii) submitted to the Division of Highways for review and approval pursuant to G.S. 136-102.6(d), that the school bus, to which such pupil is assigned, shall pass within one mile of the residence of each pupil, who lives one and one half miles or more from the school to which such pupil is assigned."

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

SENATE BILL 821:
Permissible School Bus Routes Modified

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	April 26, 2005
Introduced by:	Sen. Jenkins	**Summary by:**	Sara Kamprath
Version:	First Edition		Committee Analyst

SUMMARY: Senate Bill 821 allows public school buses to operate on certain streets in subdivisions that have been designated as public.

CURRENT LAW: G.S. 115C-246(b) provides that public school buses shall be routed on state-maintained highways unless the road or other conditions make it inadvisable to do so.

BILL ANALYSIS: Senate Bill 821 would also allow public school buses to operate on subdivision streets that have been designated as public under G.S. 136-102.6. The owner would have to certify to the following 2 conditions:

- The street has been constructed according to the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system; and
- The street has been submitted to the Division of Highways for review and approval.

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

S0821e1-SMRJ

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

(a) The owner of a tract or parcel of land which is subdivided from and after October 1, 1975, into two or more lots, building sites, or other divisions for sale or building development for residential purposes, where such subdivision includes a new street or the changing of an existing street, shall record a map or plat of the subdivision with the register of deeds of the county in which the land is located. The map or plat shall be recorded prior to any conveyance of a portion of said land, by reference to said map or plat.

(b) The right-of-way of any new street or change in an existing street shall be delineated upon the map or plat with particularity and such streets shall be designated to be either public or private. Any street designated on the plat or map as public shall be conclusively presumed to be an offer of dedication to the public of such street.

(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of the streets on the subdivision plat or map. Final acceptance by the Division of Highways of the public streets and placing them on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation.

Senate Education/Higher Education Committee

Wednesday, April 27, 2005

10:00 AM

643 LOB

AGENDA

Senator John Garwood, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 254	Sch. Calendar Flex. after Hurricane Flooding.	Senator Presnell
SB 724	NCNG-Dependents Pay In-State Tuition.	Senator Thomas
SB 906	Placing Students in Seclusion.	Senator Dorsett
SB 821	Permissible School Bus Routes Modified.	Senator Jenkins
SB 862	Special Diplomas to Korea and Vietnam Vets.	Senator Berger

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education — April 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Dick Carlton	NCNGA
Tommy Phelps	National Guard
Rep Phillip Frye	House 84
Marcus Downs	NCAE
J.D. GASKINS	NCNGA
LARRY E. Tetherton	American Legion
Charlie Smith	NC Div. of Veterans Affairs
Tripp Melton	Sen. Stevens office
Derek Graham	NCDPI
Suzanne Bielfeldt	Gov. Office

VISITOR REGISTRATION SHEET

Education/Higher Education — April 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allison Bowen	Governor's Advocacy Council for Persons with Disabilities
Renee Palmer	Carolina Legal Assistance
MT Burnett	Governor's Advocacy Council
Lou Russell	CJPC
Ellen Russell	The Arc of NC
Betsy Thompson	The Autism Society of NC
Julian Ayers	SBE/DPI
Jessica Sage	NC Family Policy Council
Jeffrey Watson	YAIO
Adrian Wallace	MHA/NC
Linda Gorman	The Arc of NC

VISITOR REGISTRATION SHEET

Education/Higher Education — April 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Gov's office
Hal Miller	NCACCT
	NC
KEVIN LACY	NCDOT
CL Andersen	DJJDP
	Public School Forum
Sharon Spence	Lee County Schools
Rebecca Troutman	NCACC
Molly Ryan	NCSBA
Hilary Arthur	NCASA

VISITOR REGISTRATION SHEET

Education/Higher Education — April 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Breeden Blackwell	NC Assoc of Co. Commissioners
Lyn Bowl	Wake Forest
Mark Fleming	University
Peggy Myers	[illegible]
Jon Hayes	[illegible]
Sylvia Hayes	VP
Lisa Martin	NC Home Builders Assoc.

VISITOR REGISTRATION SHEET

Education/Higher Education — April 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Mallyck	Gov ass't
Shaila Tabor-DeWitt	JWP Civitas Institute
Shannah Smith	UNC Center for Civil Rights
BRIAN LEWIS	Covenant w NC's Children
Michael Houser	NCAE
Chip Killian	Nelson Mullins

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, May 4, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:07 AM on May 4, 2005, in Room 643 of the Legislative Office Building. Seventeen members of the committee were present. Senator A. B. Swindell IV presided.

Senator Swindell introduced the pages and recognized Senator Thomas to present SB 725, An Act To Modify The Tuition Assistance Program for Members of the North Carolina National Guard. Senator Thomas moved for adoption of the Proposed Committee Substitute, which was adopted by unanimous voice vote. Senator Thomas requested that staff explain the change in Bill 725. Staff stated that the change was technical. Senator Thomas asked that Lt. Colonel Retired, Doug Phelps be acknowledged to speak. Senator Swindell recognized Lt. Colonel Retired Phelps who supports SB 725. Questions from committee members were asked and answered. Senator Tillman moved for unfavorable report as to original bill, but favorable to committee substitute. Seconded by Senator Swindell and adopted by unanimous voice vote, to be re-referred to the Appropriations Committee.

Senator Swindell recognized Senator Jacumin, who presented SB 510, An Act Authorizing the Use of Personnel and Facilities At Western Piedmont Community College In Support Of Academic Development. Questions from committee members were asked and answered. Senator Forrester moved for a favorable report. Senator Allran seconded. Motion was carried by unanimous voice vote.

The meeting adjourned at 10:17 A.M.

Senator A. B. Swindell IV, Presiding

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, May 04, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **510** Western Piedmont Comm. Coll./Umstead Act.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **725** NCNGuard-Tuition Assistance Program Changes.
Draft Number: PCS75305
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 510*

Short Title:	Western Piedmont Comm. Coll./Umstead Act.	(Public)
Sponsors:	Senator Jacumin.	
Referred to:	Education/Higher Education.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE USE OF PERSONNEL AND FACILITIES AT WESTERN PIEDMONT COMMUNITY COLLEGE IN SUPPORT OF ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(3c) The use of the personnel and facilities of Western Piedmont Community College, with the consent of the trustees of the college, in support of economic development through the operation of the East Campus and its companion facilities as an event venue."

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

SENATE BILL 510:
Western Piedmont Comm. Coll./Umstead Act

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	May 4, 2005
Introduced by:	Senator Jacumin	**Summary by:**	Drupti Chauhan
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 510 would authorize the use of facilities at Western Piedmont Community College as an event venue in support of economic development.

CURRENT LAW: As a general rule, G.S. 66-58 (the Umstead Act) prohibits State agencies from competing with private businesses in certain commercial activities. However, there are a number of exceptions that have been made including allowing a community college to permit the use of its personnel or facilities in support of or by a private business enterprise located on the campus of the community college campus or its service areas in support of economic development. Examples would be small business incubators, product testing services, and videoconferencing services provided to the public. There is also an exemption for the sale of products raised or produced incident to the operation of a community college viticulture/enology program.

BILL ANALYSIS: Senate Bill 510 would authorize Western Piedmont Community College, with the consent of its board of trustees, to use its personnel and facilities to support economic development of its East Campus and companion facilities as an event venue.

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

BACKGROUND: Western Piedmont Community College has plans to build a "dirty classroom" for classes related to outdoor training for law enforcement. The college would like to use the facility for classes during the weekdays and then rent out on the weekends to bring various trade shows and events to the area.

S0510e1-SMRQ

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 725
PROPOSED COMMITTEE SUBSTITUTE S725-PCS75305-RJ-12

Short Title: NCNGuard–Tuition Assistance Program Changes. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE TUITION ASSISTANCE PROGRAM FOR MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 127A-193 reads as rewritten:

"**§ 127A-193. Benefit.**

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed ~~two thousand dollars ($2,000) per academic year~~ the highest amount charged by a State educational institution per academic year or a lesser amount, as prescribed by the Secretary, to remain within the funds appropriated, to qualifying members of the North Carolina national guard. Benefits shall be payable for a period of one academic year at a time, renewable at the option of the ~~Secretary for a maximum of eight thousand dollars ($8,000).~~Secretary."

SECTION 2. G.S. 127A-195(c) reads as rewritten:

"(c) All tuition benefit disbursements shall be made to the business or trade school or State or private educational institution concerned, for credit to the tuition account of each recipient."

SECTION 3. G.S. 127A-195 is amended by adding a new subsection to read:

"(f) Any balance of the monetary educational assistance grant up to the maximum for the academic year remaining after tuition is paid pursuant to subsection (c) of this section may be disbursed to the recipient as reimbursement for required course books and materials. The manner of obtaining the reimbursement payment for these required books and materials shall be as prescribed by the Secretary."

SECTION 4. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 725

Short Title:	NCNGuard–Tuition Assistance Program Changes.	(Public)
Sponsors:	Senators Thomas; Apodaca, Bingham, Brown, Dalton, Forrester, Garwood, Hoyle, Jenkins, Rand, and Weinstein.	
Referred to:	Education/Higher Education.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE TUITION ASSISTANCE PROGRAM FOR MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 127A-193 reads as rewritten:

"**§ 127A-193. Benefit.**

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed ~~two thousand dollars ($2,000) per academic year~~ the highest amount charged by a State educational institution per academic year or a lesser amount, as prescribed by the Secretary, to remain within the funds appropriated, to qualifying members of the North Carolina national guard. Benefits shall be payable for a period of one academic year at a time, renewable at the option of the ~~Secretary for a maximum of eight thousand dollars ($8,000).~~Secretary."

SECTION 2. G.S. 127A-195(c) reads as rewritten:

"(c) All tuition benefit disbursements shall be made to the business or trade school or State or private educational institution concerned, for credit to the tuition account of each recipient."

SECTION 3. G.S. 127A-195 is amended by adding a new subsection to read:

"(f) Any balance of the monetary educational assistance grant up to the maximum for the academic year remaining after tuition is paid pursuant to subsection (c) of this section may be disbursed to the applicant as reimbursement for required course books and materials. The manner of obtaining the reimbursement payment for these required books and materials shall be as prescribed by the Secretary."

SECTION 4. This act becomes effective July 1, 2005.

SENATE BILL 725:
NCNGuard-Tuition Assistance Program Changes

BILL ANALYSIS

Committee:	Senate Education/Higher Ed	**Introduced by:**	Senator Thomas
Date:	May 4, 2005	**Summary by:**	Sara Kamprath
Version:	PCS for First Edition (S725-CSRJ-12[v.1])		Committee Analyst

SUMMARY: Senate Bill 725 increases the maximum annual award for educational assistance under the North Carolina National Guard Tuition Assistance program and authorizes reimbursement for the cost of books and materials.

The Proposed Committee Substitute (S725-CSRJ-12[v.1]) amends the bill on line 22 to change "applicant" to "recipient."

CURRENT LAW:

Currently, G.S. 127A-193 provides that the amount awarded to qualifying members of the North Carolina National Guard under the National Guard Tuition Assistance Act shall not exceed $2,000 and that benefits payable for a period of one academic year are renewable at the option of the Secretary for a maximum of $8,000. Currently there is no provision in the statutes for reimbursing payment for books and materials.

BILL SUMMARY:

Senate Bill 725 amends G.S. 127A-193 to specify that the amount of benefit awarded to qualifying members of the North Carolina National Guard under the National Guard Tuition Assistance Act shall not exceed the highest amount charged by a State educational institution per academic year or a lesser amount, as prescribed by the Secretary of Crime Control and Public Safety, to remain within the funds appropriated. Additionally, the eight thousand dollars ($8,000) maximum amount of benefits cap is removed.

The bill amends G.S. 127A-195(c) to specify that the disbursements made to the business or trade school or State or private educational institution for credit to the tuition account of each recipient are "tuition" benefit disbursements.

The bill adds a new subsection to G.S. 127A-195 to allow reimbursement for required books and materials. *The Proposed Committee Substitute amends the bill on line 22 to change "applicant" to "recipient" in this section.* Once tuition benefit disbursements are made under G.S. 127-195(c), the balance, up to the maximum for the academic year, may be disbursed to the recipient as reimbursement for required course books and materials. The manner for obtaining reimbursement for required course books and materials will be prescribed by the Secretary of Crime Control and Public Safety.

This act would become effective July 1, 2005.

ADDITIONAL INFORMATION:

According to information provided by Fiscal Research staff, the community college tuition is uniform across the System and the current rate is $1,216 for full-time Fall and Spring. The annual tuition rate (based on a 12 hour minimum) for institutions in the UNC system ranges from $2,473.50 to $4,359.52 for undergraduate total resident tuition and fees and up to $4,560.02 for graduate students.

S725-CSRJ-001 Theresa Matula contributed significantly to this summary.

Senate Education/Higher Education Committee

Wednesday

May 4, 2005

10:00 AM

643 LOB

AGENDA

Senator A. B. Swindell IV, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

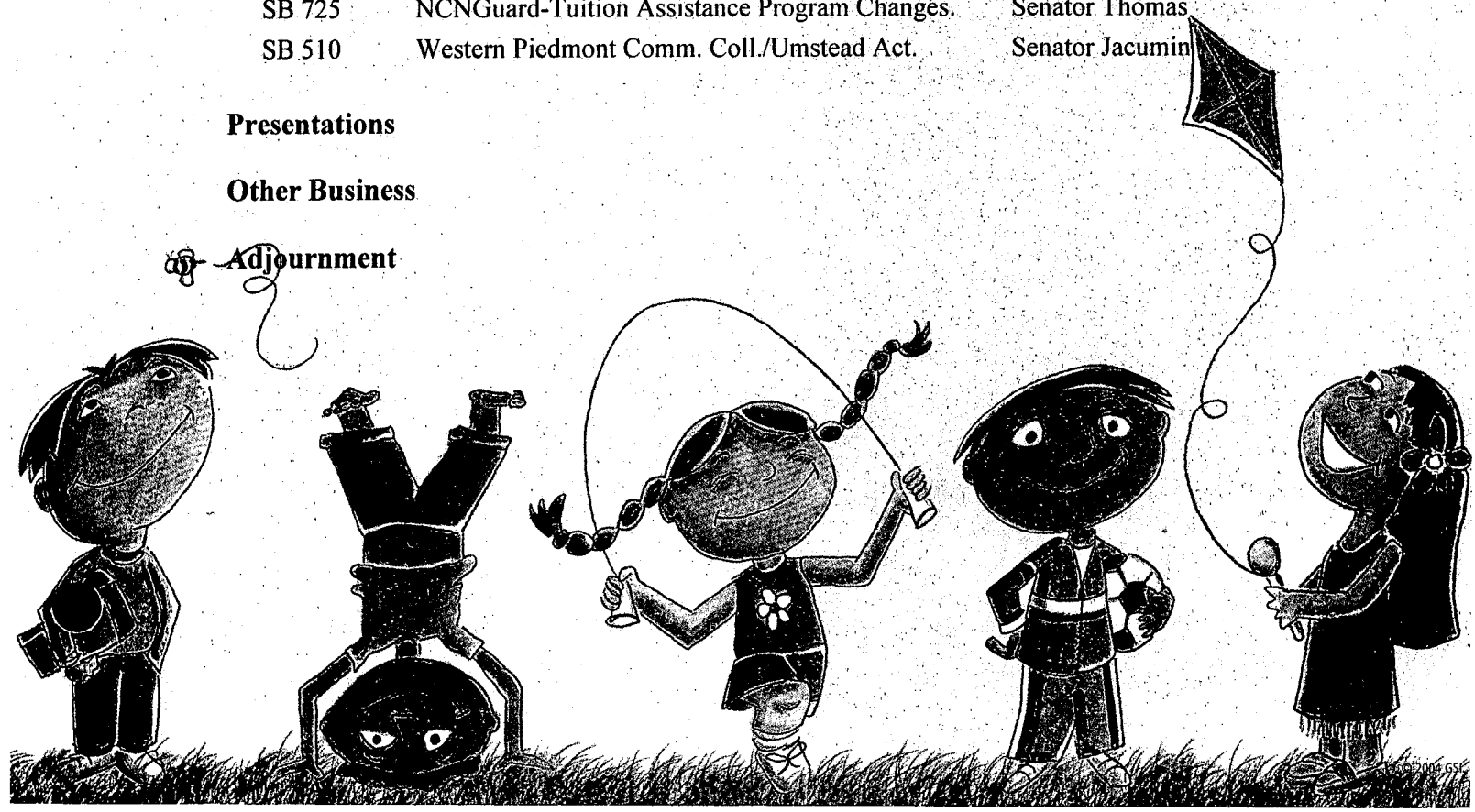
Bills

SB 725	NCNGuard-Tuition Assistance Program Changes.	Senator Thomas
SB 510	Western Piedmont Comm. Coll./Umstead Act.	Senator Jacumin

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education — May 4, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dirk Carlton	NCNGA
Doug Phelps	National Guard
Miriam Gray	National Guard
Michael Houser	NCAE
Mark Fleming	work for Michael Houser
Kaye Gattis	NC State Ports Authority
J.D. Gaskins	NCNGA President
Marvin R Waters	CCPS
[illegible]	NC MSC

VISITOR REGISTRATION SHEET

Education/Higher Education — May 4, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ceri Bark	NCATE
René Payne	Nurse of the Day
Melanie Walker	Doctor of the Day

VISITOR REGISTRATION SHEET

Education/Higher Education — May 4, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hal Miller	NCACCT
Jeff Mazur	CMS
Anne Clayton	PCAC

VISITOR REGISTRATION SHEET

Education/Higher Education
Name of Committee

May 4, 2005
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Bateman	DJJDP
Debbie Hotwitz	YALO

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, May 11, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:15 AM on May 11, 2005, in Room 643 of the Legislative Office Building. Twenty members of the committee were present. Senator Jeanne H. Lucas presided.

Senator Lucas recognized Senator Presnell to present HB 415, An Act To Give Flexibility To Make Up Instructional Days Missed During The 2004-2005 School Year In Local School Administrative Units Located in Whole Or In Part In The Counties Of The United States Declared To Be Disaster Areas For Hurricanes Frances and Ivan. Senator Presnell moved for adoption of the Proposed Committee Substitute, which was adopted by unanimous voice vote. Senator Presnell recommended passage of HB 415. Senator Forrester moved for acceptance of HB 415. Senator Apodaca moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. Senator Tillman seconded the motion and the motion was carried by unanimous voice vote.

The meeting adjourned at 10:20 AM.

Jeanne H. Lucas
Senator Jeanne H. Lucas, Presiding

Tonia Butler Perez
Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Thursday, May 12, 2005

Senator LUCAS,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **415** Sch. Calendar Flex. After Hurricane Flooding.

Draft Number:	PCS60459
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Title Change

PUBLIC BILL

~~Proposed~~ Committee Substitute For
H.B. 415
ID = SB 254

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO GIVE FLEXIBILITY TO MAKE UP INSTRUCTIONAL DAYS MISSED DURING THE 2004-2005 SCHOOL YEAR IN LOCAL SCHOOL ADMINISTRATIVE UNITS LOCATED IN WHOLE OR IN PART IN THE COUNTIES THAT THE PRESIDENT OF THE UNITED STATES DECLARED TO BE DISASTER AREAS FOR HURRICANES FRANCES AND IVAN.

Introduced by Representative(s): FRYE.

Principal Clerk's Use Only

Committee on PRE SCHOOL, ELEM & SEC ED
jority being present, having considered
bill, recommend that it do ✓ pass.
REPS. GLAZIER, PARMON
For the Committee

FAVORABLE TO COMM. SUB
UNFAVORABLE TO BILL
TITLE CHANGE
APR 19 2005
AND PLACED ON
366 CALENDAR FOR
4-19-05

120-0 EV VV
PASSED 2nd & 3rd READING
APR 19 2005

ORDERED SENT TO SENATE
Denise Weeks

RECEIVED
APR 20 2005
From House of Representatives
By Clerk 8:51 AM/PM

PASSED 1st READING
APR 20 2005
AND REFERRED TO COMMITTEE
Ed / Higher Ed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 415*

Committee Substitute Favorable 4/13/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H415-PCS60459-RH-20

Short Title: Make Up Instructional Days/Hurricanes. (Public)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO GIVE FLEXIBILITY TO MAKE UP INSTRUCTIONAL DAYS MISSED DURING THE 2004-2005 SCHOOL YEAR IN LOCAL SCHOOL ADMINISTRATIVE UNITS LOCATED IN WHOLE OR IN PART IN THE COUNTIES THAT THE PRESIDENT OF THE UNITED STATES DECLARED TO BE DISASTER AREAS FOR HURRICANES FRANCES AND IVAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-84.2(a)(1) reads as rewritten:

"(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of either 180 days ~~and~~ or 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~180~~ instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

If, due to inclement weather, a local board of education complies with this subdivision by scheduling 1,000 hours of instruction on less than 180 days, the local school administrative unit is deemed to have a

minimum of 180 days of instruction, teachers employed for a 10-month term are deemed to have been employed for 180 instructional days, and all other employees shall be compensated as if they had worked their regularly scheduled hours for 180 instructional days."

SECTION 2. This act applies only to local school administrative units located in whole or in part in the counties that (i) were declared by the President of the United States to be a disaster area for Hurricane Frances, Hurricane Ivan, or both and (ii) have missed more than 13 instructional days during the 2004-2005 school year due to all inclement weather including flooding from Hurricane Frances, Hurricane Ivan, or both.

SECTION 3. This act applies to the 2004-2005 school year only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 415*
Committee Substitute Favorable 4/13/05

Short Title: Make Up Instructional Days/Hurricanes. (Public)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO GIVE FLEXIBILITY TO MAKE UP INSTRUCTIONAL DAYS MISSED DURING THE 2004-2005 SCHOOL YEAR IN LOCAL SCHOOL ADMINISTRATIVE UNITS LOCATED IN WHOLE OR IN PART IN THE COUNTIES THAT THE PRESIDENT OF THE UNITED STATES DECLARED TO BE DISASTER AREAS FOR HURRICANES FRANCES AND IVAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-84.2(a)(1) reads as rewritten:

"(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of either 180 days ~~and~~ or 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~180~~ instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

If, due to inclement weather, a local board of education complies with this subdivision by scheduling 1,000 hours of instruction on less than 180 days, the local school administrative unit is deemed to have a minimum of 180 days of instruction, teachers employed for a 10-month term are deemed to have been employed for 180

instructional days, and all other employees shall be compensated as if they had worked their regularly scheduled hours for 180 instructional days."

SECTION 2. This act applies only to local school administrative units located in whole or in part in the counties that (i) were declared by the President of the United States to be a disaster area for Hurricane Frances, Hurricane Ivan, or both and (ii) have missed more than 10 instructional days during the 2004-2005 school year due to all inclement weather, including flooding from Hurricane Frances, Hurricane Ivan, or both.

SECTION 3. This act applies to the 2004-2005 school year only.

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

HOUSE BILL 415:
Make Up Instructional Days/Hurricanes

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	May 11, 2005
Introduced by:	Rep. Frye	**Summary by:**	Shirley Iorio, Ph D
Version:	PCS to Second Edition H415-CSRH-20 [v.1]		Legislative Analyst

SUMMARY: ***The PCS to House Bill 415 would create an exception to the required time for instruction for all school systems in North Carolina. The bill would apply to local school administrative units located in whole or in part in certain counties that have missed instructional days due to inclement weather including flooding from Hurricane Frances, Hurricane Ivan, or both.***

The bill would provide that local boards of education that comply with this exception by scheduling 1,000 hours on less than 180 days due to inclement weather are deemed to have a minimum of 180 days of instruction, and employees must be compensated accordingly.

The bill would apply only to the 2004-2005 school year, and would become effective when it becomes law.

The PCS changes from "more than 10" to "more than 13" the number of days an LEA must have missed due to inclement weather to qualify for this exception.

CURRENT LAW: The NC Constitution requires that the State provide "for a general and uniform system of free public schools, which shall be maintained at least nine months in every year." This is echoed in G.S. 115C-1, which requires the operation in every LEA of "a uniform school term of nine months."

School calendars must have a minimum of 215 days, all of which fall in the fiscal year. Of those days, local boards must adopt annual school calendars consisting of 180 days AND 1,000 hours of instruction during nine calendar months. The remaining 35 days must be scheduled as follows:

- 10 as annual vacation leave days;
- 10-11 as holidays;
- 5 days, as designated by the local board, for use as teacher workdays. These days are protected for teachers to complete instructional and classroom administrative duties. The local boards must designate on which of these days teachers with accumulated vacation leave may take that leave.
- 9-10 days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes, including vacation days for teachers with accumulated vacation leave. A local board may designate any of these days as additional make-up days for days missed due to school closing because of inclement weather. These make-up days are to be scheduled after the last day of student attendance.
- School cannot be held on Sundays or Veteran's Day. Actual workdays for teachers employed for 10-month terms cannot exceed 195 days, and, in most cases, there must be 42 consecutive days when teacher attendance is not required.

The State Board has authority to order general school closings during any emergency in any section of the State where emergency conditions make it necessary.

The school calendar must include a plan for making up days and instructional hours missed when schools are closed due to inclement weather.

Local boards are required to set the first instructional day of school no earlier than August 25 and the last day no later than June 10 for all schools except year-round schools. A local board of education may ask the State Board of Education for a waiver of this requirement if it can show good cause. The State Board also may waive this requirement for an educational purpose.

BILL ANALYSIS: This bill would amend G.S. 115C-84.2(a)(1) by changing the word "and" to the word "or" in reference to the required time for instruction. The bill also specifies that if a local board, due to inclement weather, schedules 1000 hours of instruction on less than 180 days, the local school administrative unit is deemed to have a minimum of 180 days of instruction, teachers employed for a 10 month term are deemed to have been employed for 180 instructional days, and all other employees must be compensated as if they had worked their regularly scheduled hours for 180 instructional days. These changes would apply only to the 2004-2005 school year.

This bill would only apply to local school administrative units who meet the following criteria:

- *Are located in whole or in part in the counties that were declared by the President of the United States to be a disaster area for Hurricane Frances, Hurricane Ivan, or both; and
- *Have missed more than 13 instructional days during the 2004-2005 school year due to all inclement weather including flooding from Hurricane Frances, Hurricane Ivan, or both.

*See attached chart

EFFECTIVE DATE: The bill would become effective when it becomes law and would apply only to the 2004-2005 school year.

BACKGROUND: The laws governing the school calendar have evolved over the past 90 years. The first major rewrite seems to have occurred in 1987. At that time, the law was rewritten to require local boards to have school calendars that provided for 180 days of instruction. (The State Board had a rule that defined the minimum number of hours of instruction in a school day.) The law also required the calendar to include makeup days for school closings due to hazardous weather, natural disaster, or other emergencies. The required number of makeup days varied from one school system to another. The law required the "greater of (i) five days or (ii) the average number of days missed in five of the last six school years in which the least number of days were missed." If a local board used all of its scheduled makeup days, it was permitted to excuse up to three additional days when it found it was "impracticable to make up the additional days." (This had to be reported to the State Board of Education.) In addition to those three days, the State Board was allowed to forgive an unlimited number of additional days when it found that "conditions justify such suspension of school." If the State Board forgave days, then teachers and students were not required to make them up, and the first 15 of those days did not affect teachers' pay.[1] In addition to the general law, local legislation was introduced (and usually adopted) creating additional exceptions, almost every Session.

By 1997, legislators and policymakers had become concerned because so many exceptions and reasons to excuse days of instruction had appeared over time. Their primary concern was that research strongly correlates instructional time with student learning. In addition, the concerns included: (i) it seemed too easy for local boards to cancel school and then not schedule makeup days; (ii) there did not appear to be a difference from one part of the state to another, even though winter weather tends to be worse in the

[1] Interestingly, these 15 days originated in 1971 at which time school could be suspended up to 60 days "due to low average of daily attendance, or the needs of agriculture, or any other condition."

western part; and (iii) the growing belief that the exceptions eroded the constitutional mandate of a nine-month school year.

In 1997 the law was significantly amended. The goals were to simplify the statute, put more responsibility at the local level for planning for makeup days, and provide much more flexibility to local boards when they "build" their school calendars. The flexibility was provided so that school systems could prepare for and anticipate events such as snow and ice storms and other generally unpredictable events that interfere with the act of getting to the schoolhouse.

In 1999, after Hurricane Floyd, there was legislation that provided a limited exception to G.S. 115C-84.2(a)(1) by changing the word "and" to the word "or" in reference to the required time for instruction. That legislation was limited to counties affected by the hurricane and applied only to that school year. However, there were several lawsuits filed, some of which were settled out of court. In two counties (Guilford and Union), the North Carolina Association of Educators (NCAE) brought lawsuits concerning extra pay for teachers and other staff members. In both cases the lawsuits have been settled. Teachers and certain other employees received one annual leave day to be used during a specified period of time.

In 2003, a bill similar to the 1999 Hurricane Floyd bill was enacted. However, this bill contained a provision which clarified that local boards that made up instructional time by adding instructional hours to previously scheduled instructional days were deemed to have a minimum of 180 days of instruction and employees were deemed to have been employed for the days being made up and must be compensated accordingly.

In 2004, legislation was passed that reduced the number of required days in the school calendar; required schools to open for students no earlier than August 25 and close by June 10 except in unusual circumstances or in year-round schools; reduced the number of teacher workdays; and provided that salaries were not reduced as a result of the reduction in teacher workdays.

CONSTITUTIONAL ISSUES

Article IX, Sec. 2, NC Const. There is a question as to how the courts would interpret the mandate that "[t]he General Assembly shall provide ... for a ... system of free public schools, which shall be maintained at least nine months in every year." On the one hand, it could merely mean that there are school calendars covering nine calendar months, not necessarily limited to instructional time. If it means instructional time, then there remains a question as to whether it means a minimum number of days or minimum number of hours. And it is unclear whether days or hours, or both, can be waived.

Leandro. The State is obligated to provide to all students the opportunity for a sound basic education. There is a question as to whether the State can forgive instructional time and still meet this responsibility.

House Bill 415
School Calendar Flexibility After Hurricane Flooding

Inclement Weather
2004-05 School Year

Designated Disaster Counties	Total Days Missed Due to Weather	Days Missed for Hurricanes	Comments/Notes
Avery	22	7	
Buncombe	10	4	
Asheville City	9	4	
Burke	5	3	
Caldwell	3	1	
Haywood	13	4	
Henderson	6	2	
Jackson	8	3	
Macon	1	1	
Madison	13	3	
McDowell	5	3	
Mitchell	11	2	
Polk	3	2	
Rutherford	2	1	
Transylvania	6	3	
Watauga	15	4	
Yancey	14	5	

Note: Hurricane Frances - 15 counties were declared as disaster areas by the President
Hurricane Ivan – The same 15 counties were declared as disaster areas with one addition – Macon County

Senate Education/Higher Education Committee
Wednesday, May 11, 2005

10:00 AM

643 LOB

AGENDA

Senator Jeanne H. Lucas, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 269	Public Laws - 3.	Senator Purcell
HB 415	Sch. Calendar Flex. After Hurricane Flooding.	Representative Frye

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education — May 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	NCASA
Molly Ryan	NCSBA
[illegible]	NCICU
[illegible]	NCCCS
Gene Causby	NCSPTSA
Paul Holmes	Haen Tech Center
Ann McArthur	Governor's Off

VISITOR REGISTRATION SHEET

Education/Higher Education — May 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ruth Lewter	SEANC
JB Buxton	Gov's office
Phil Telfer	" "
Cindy S Marion	Mt. Airy City Schools
Lynn Hoggard	NCDPI, Child Nutrition Svcs.
Glenn Morris	Public School Forum
Jessica Sage	NC Family Policy Council
John Cyrus	NCSG
Hal Miller	NCACCT
Leanne Winner	NCSBA
Jeff Nelson	
Susan Harris	Wake County

VISITOR REGISTRATION SHEET

Education/Higher Education — May 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Arnold	NWTF
Janice Daugherty, MD	Doctor of the Day / Brody School of Medicine ECU
Jennifer M. Bennett	East Carolina Univ. Brody School of Medicine Student
Kristin Ratcliff, RN	Nurse of the Day, WFUBMC Nurse Anesthesia Program
Jeff A. Marks	Cumberland Co. Democratic Chairman Fayetteville, NC 910-494-1295 3805 Clearwater Drive
Suzanne Buckley	GOV OFFICE
John Motley	Gov office
Starla McKenney	NC DHHS
Michael Houser	NCAE
Joanne Stevens	nursing

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, May 18, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:07 AM on May 18, 2005, in Room 643 of the Legislative Office Building. Twenty-four members of the committee were present. Senator John Garwood presided.

Senator Garwood introduced the pages and recognized Senator Hagan to explain SB 912, Teach Financial Literacy In Public Schools. Senator Dannelly moved for adoption of the Proposed Committee Substitute for discussion, which was adopted by unanimous vote with a show of hands. Senator Hagan explained SB 912 and introduced Reverend Odell Cleveland, President and CEO of Welfare Reform Liaison Project OIC-Community Action Agency, who explained why support is needed for SB 912. Questions from the committee members were raised and answered. Committee members made recommendations. No action was taken. Action is to be taken at next meeting.

Representative Tolson was recognized by Senator Garwood to explain HB 583 Community College/ Lead Agency For Job Training. Senator Horton moved to adopt the Proposed Committee Senate Substitute for discussion, which was adopted by unanimous voice vote. Senator Garrou was recognized by the Chair to explain that the PCS was needed to include 'allowing intellectually gifted youths to attend community college.' She urged support of SB 583. Questions from the committee members were raised and answered. Senator Horton moved for a favorable report to the Proposed Committee Senate Substitute, unfavorable to the original. Senator Garwood moved for the motion and it was carried by unanimous voice vote.

The meeting adjourned at 10:45 AM.

Senator John Garwood, Presiding Chair

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, May 18, 2005

Senator GARWOOD,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **583** Comm. Coll./Lead Agency for Job Training.

Draft Number:	PCS 80406
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 583

Second Edition Engrossed 4/4/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H583-PCS80406-RH-24

Short Title: Comm. Coll./Lead Agency for Job Training. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT DESIGNATING THE COMMUNITY COLLEGES SYSTEM OFFICE AS THE PRIMARY LEAD AGENCY FOR DELIVERING WORKFORCE DEVELOPMENT TRAINING, LITERACY, AND ADULT EDUCATION IN THE STATE, AND TO ALLOW INTELLECTUALLY GIFTED YOUTHS TO ATTEND COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-1 reads as rewritten:

"**§ 115D-1. Statement of purpose.**

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the youth development center to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission.

The Community Colleges System Office is designated as the primary lead agency for delivering workforce development training, adult literacy training, and adult education programs in the State."

SECTION 2. Section 4 of S.L. 2001-312, as amended by Section 76 of S.L. 2001-487, reads as rewritten:

"**SECTION 4.** Section 2 of this act is effective when it becomes law, and shall apply ~~to~~ beginning with the 2001-2002 academic year. Section 2 of this act expires September 1, ~~2004.~~ 2008. The remainder of this act is effective when it becomes law."

SECTION 3. G.S. 115D-1.1, as reenacted by Section 2 of this act, reads as rewritten:

"**§ 115D-1.1. Discretion in admissions.**

(a) Notwithstanding G.S. 115D-1, a student under the age of 16 may enroll in a community college if the following conditions are met:

(1) The president of the community college or the president's designee finds, based on criteria established by the State Board of Community Colleges, that the student is intellectually gifted and that the student has the maturity to justify admission to the community college; and

(2) One of the following persons approves the student's enrollment in a community college:

a. The local board of education, or the board's designee, for the local school administrative unit in which the student is domiciled or is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the student is enrolled.

c. The person who provides the academic instruction in the home school in which the student is enrolled.

d. The designee of the board of directors of the charter school in which the student is enrolled.

e. The administrator of the college or university where the student is enrolled.

(b) The State Board of Community Colleges, in consultation with the Department of Public Instruction, shall adopt rules to implement this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 583

Second Edition Engrossed 4/4/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H583-CSRH-24 [v.3]

5/18/2005 8:50:30 AM

Short Title: Comm. Coll./Lead Agency for Job Training. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT DESIGNATING THE COMMUNITY COLLEGES SYSTEM OFFICE AS THE PRIMARY LEAD AGENCY FOR DELIVERING WORKFORCE DEVELOPMENT TRAINING, LITERACY, AND ADULT EDUCATION IN THE STATE, AND TO ALLOW INTELLECTUALLY GIFTED YOUTHS TO ATTEND COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-1 reads as rewritten:

"**§ 115D-1. Statement of purpose.**

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the youth development center to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission.

The Community Colleges System Office is designated as the primary lead agency for delivering workforce development training, adult literacy training, and adult education programs in the State."

SECTION 2. Section 4 of S.L. 2001-312, as amended by Section 76 of S.L. 2001-487, reads as rewritten:

"**SECTION 4.** Section 2 of this act is effective when it becomes law, and shall apply ~~to~~ beginning with the 2001-2002 academic year. Section 2 of this act expires September 1, ~~2004.~~ 2008. The remainder of this act is effective when it becomes law."

SECTION 3. G.S. 115D-1.1, as reenacted by Section 2 of this act, reads as rewritten:

"**§ 115D-1.1. Discretion in admissions.**

(a) Notwithstanding G.S. 115D-1, a student under the age of 16 may enroll in a community college if the following conditions are met:

(1) The president of the community college or the president's designee finds, based on criteria established by the State Board of Community Colleges, that the student is intellectually gifted and that the student has the maturity to justify admission to the community college; and

(2) One of the following persons approves the student's enrollment in a community college:

a. The local board of education, or the board's designee, for the local school administrative unit in which the student is domiciled or is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the student is enrolled.

c. The person who provides the academic instruction in the home school in which the student is enrolled.

d. The designee of the board of directors of the charter school in which the student is enrolled.

e. The administrator of the college or university where the student is enrolled.

(b) The State Board of Community Colleges, in consultation with the Department of Public Instruction, shall adopt rules to implement this section."

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

HOUSE BILL 583:
Comm. Coll./Lead Agency for Job Training

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	May 18, 2005
Introduced by:	Reps. Sauls, Tolson, England	**Summary by:**	Robin Johnson
Version:	PCS to Second Edition H583-CSRH-24[v.3]		Committee Counsel

SUMMARY: ***House Bill 583, originally recommended by the State Board of Community Colleges, would designate the Community Colleges System Office as the lead agency for delivering workforce development training, adult literacy training, and adult education programs.***

The PCS would change the "Community College System" to the "Community Colleges System Office" as the lead agency. The PCS also would add a new Section to reenact and amend a statute that provided a procedure for intellectually gifted students under the age of 16 to enroll in a community college. This statute, which was enacted in 2001, expired last September.

CURRENT LAW: Generally, students under the age of 16 may not enroll at a community college. (There is an exception for students participating in joint programs.)

BILL ANALYSIS: Recommended by the State Board of Community Colleges, Section 1 of House Bill 583 would amend G.S. 115D-1, which sets out the purpose of the Community College System. This Section would provide that the Community Colleges System Office is the State's primary lead agency for delivering workforce development training, adult literacy training, and adult education programs. Similar language was included in the 1995 budget bill (see attached Section 16.7 of S.L. 1995-507), but was never codified.

The remainder of House Bill 583 would revive and amend G.S. 115D-1.1, which was enacted in 2001, applied to the 2001-2002 school year, and expired in September 2004. G.S. 115D-1.1 authorized a community college president, based on rules established by the State Board of Community Colleges in consultation with the Department of Public Instruction, to permit intellectually gifted and mature youths under the age of 16 to enroll in community college courses. G.S. 115D-1 required a board member, an administrator, or a designee of one of the following to approve this enrollment: the local school administrative unit, nonpublic school, home school, or charter school in which the student is enrolled. House Bill 583 would amend that provision to allow a board member or designee of the local school administrative unit where the student is domiciled or the administrator of a college or university where the student is enrolled to approve the student's enrollment at a community college. G.S. 115D-1.1, as reenacted by this bill would sunset September 1, 2008.

EFFECTIVE DATE: This bill would be effective when it becomes law.

S.L.1995-507

Requested by: Senators Perdue, Plexico, Winner, Conder, Representatives Grady, Preston, Cummings

MISSION OF THE COMMUNITY COLLEGE SYSTEM

Sec. 16.7. (a) The General Assembly hereby designates the North Carolina Community College System as the primary lead agency for delivering job training, literacy, and adult education programs in the State. The State Board of Community Colleges shall study the facility and equipment needs of the System in order to fulfill this role. In addition, the Community College System shall develop strategies for cooperating with other State agencies in the delivery of workforce preparedness services.

(b) The Governor shall direct all State agencies to compile an inventory of all State and federal funds in their budgets for workforce preparedness and to prepare a plan for cooperating with the Community College System in the delivery of these programs.

(c) The results of the studies, inventories, and plans listed in subsections (a) and (b) of this section shall be reviewed by the State Education Cabinet and reported to the Joint Legislative Education Oversight Committee by March 15, 1996.

(d) If the United States Congress consolidates workforce preparedness programs into a block grant, it is the intent of the General Assembly for the Community College System to be the primary provider of job training, literacy, and adult education programs and services.

(e) Nothing in this section shall affect the authority of the Governor to act as the grant recipient for the receipt of federal funds.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 583
Second Edition Engrossed 4/4/05

Short Title:	Comm. Coll./Lead Agency for Job Training.	(Public)
Sponsors:	Representatives Sauls, Tolson, England (Primary Sponsors); B. Allen, Cole, Coleman, Faison, Farmer-Butterfield, Fisher, Parmon, Rapp, Wainwright, and Wray.	
Referred to:	Education Subcommittee on Community Colleges.	

March 10, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-1 reads as rewritten:

"**§ 115D-1. Statement of purpose.**

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the youth development center to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission.

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

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

Senate Education/Higher Education Committee

Wednesday, May 18, 2005

10:00 AM

643 LOB

AGENDA

Senator John Garwood

Welcome and Opening Remarks

Introduction of Pages

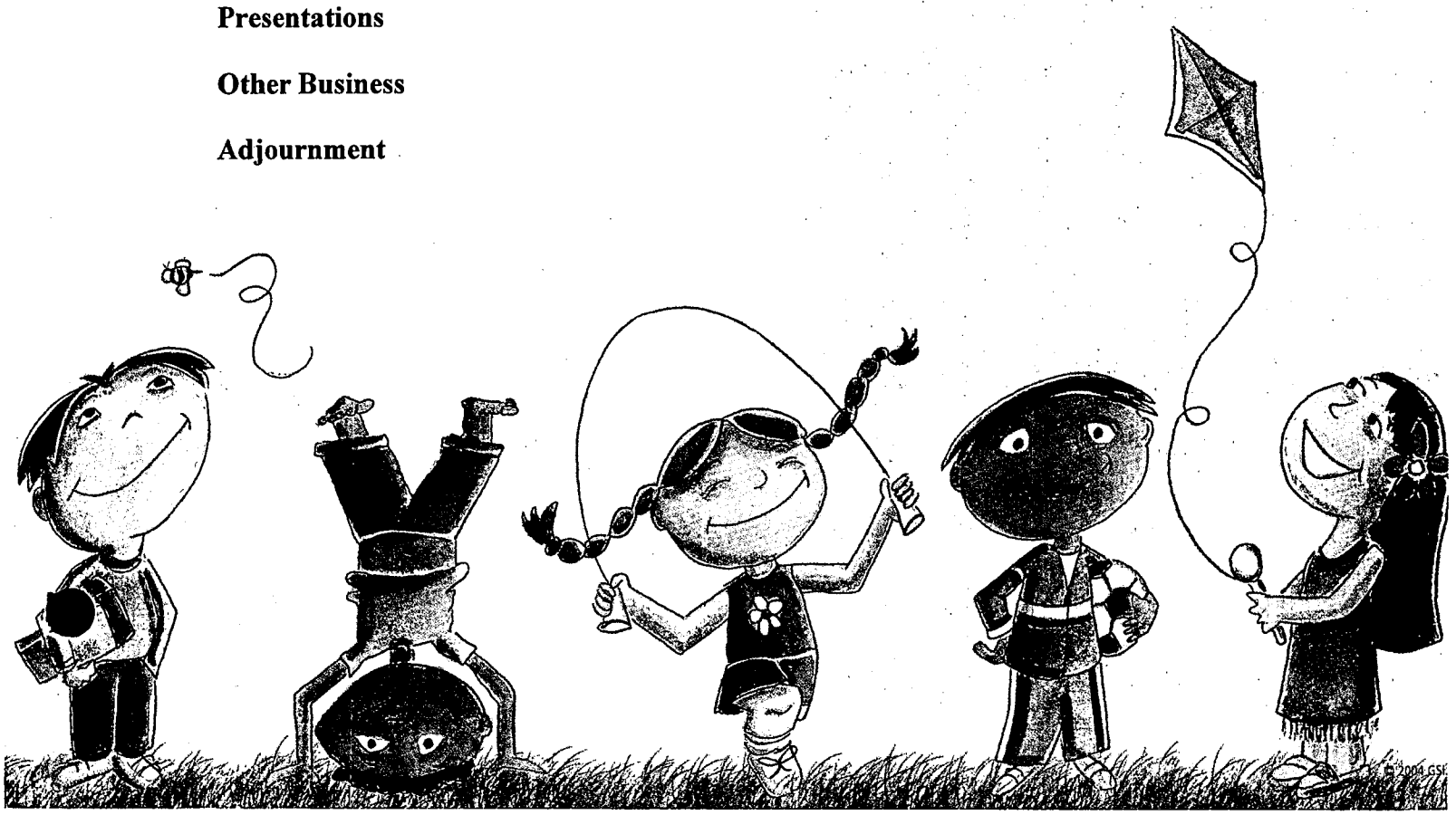
Bills

HB 583	Comm. Coll./Lead Agency for Job Training.	Representative England, M.D. Representative Tolson Representative Sauls
SB 912	Teach Financial Literacy in Public Schools.	Senator Hagan

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education — **Name of Committee**

May 18, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jami Fitzgerald	NCFPC
Kennon Briggs	NCCCS
Tripp Melton	Sen. Stevens office
[illegible]	Ja Smith
Rev. Odell Cleveland	Welfare Reform Liaison Project OIC-Community Action Agency
Suzanne Beasley	SEANC
Andrea Schrag	Rural Ed. Trust.
Hal Miller	NCACCT
Katherine Joyce	NCASA
Ed Regan	
[illegible]	Justice Associate

VISITOR REGISTRATION SHEET

Education/Higher Education — May 18, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stuart Fountain	State Board of Community College

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, May 25, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:04 AM on May 25, 2005, in Room 643 of the Legislative Office Building. Twenty-two members of the committee were present. Senator A. B. Swindell IV presided.

Senator Swindell introduced the pages and recognized Senator Hagan to explain SB 912, Teach Financial Literacy In Public Schools. Senator Dannelly moved for adoption of the Proposed Committee Substitute for discussion, which was adopted by unanimous voice vote. Senator Hagan explained SB 912 and introduced Richard Moore, State Treasurer, Howard Lee, Chairman of State Board of Education, and Iuvina Bastille, student of Tarheel Challenge Academy and former page, who supports SB 912. Senator Dannelly asked for favorable report for the Proposed Committee Substitute. Questions from the committee members were raised and answered. Senator Garrou moved for a favorable report to the Proposed Committee Substitute. It was seconded and adopted by unanimous voice vote.

Senator Dalton was recognized by Senator Swindell to explain SB 1057 Education Improvement Act of 2005. Senator Dalton moved to adopt the Proposed Committee Senate Substitute for discussion, which was adopted by unanimous voice vote. Questions from the committee members were raised and answered. Senator Garrou moved for a favorable report to the Proposed Committee Senate Substitute. Senator Swindell moved for the motion and it was carried by unanimous voice vote.

Senator Swindell recognized Senator Purcell to explain SB 269, Public Laws 3. Senator Purcell moved to take Proposed Committee Substitute for consideration, which was adopted by unanimous voice vote. The Proposed Committee Substitute was amended by Senator Stevens to include the local Director of Child Nutrition as a member of the team to establish nutrition standards in SB 269. Senator Stevens moved to adopt the amendment, which was adopted by unanimous voice vote. Lynn Hoggard of the NCDPI, Child Nutrition Services spoke favorably of SB 269 and answered questions asked by members of the committee. Senator Lucas requested displacement of SB 269, until the Joint Legislative Education Oversight Committee could be included in the Bill to review progress. SB 269 was displaced to amend.

Senator Purcell was recognized to present SB 961, Child Nutrition Standards. Senator Purcell moved to adopt the Proposed Committee Senate Substitute for discussion, which was adopted by unanimous voice vote. Senator Purcell introduced Butch Galls from the N.C. Soft Drink Association and Gene Cosby, of the N. C. Food Services who answered questions asked by the members of the committee. Senator Allran moved for a favorable report to the Proposed Committee Substitute. It was carried and adopted by unanimous voice vote.

Senator Swindell recognized Senator Lucas, who moved to amend SB 269, which was seconded and adopted. Senator Hagan moved for a favorable report to the Proposed Committee Substitute. Senator Swindell moved for a motion and it was adopted by unanimous voice vote.

Senator Snow was recognized by Senator Swindell to present SB 779, In-State Tuition/Paramedic-To-BSN Program. Senator Lucas moved for favorable report because SB779 will need to be referred to Appropriations. The committee members asked questions that were not answered. Due to time restraints, Senator Swindell interrupted Senator Snow. Senator Lucas withdrew her motion. SB 779 will be moved to the next meeting.

The meeting adjourned at 10:58 AM.

Senator A. B. Swindell IV, Presiding Chair

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, May 25, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **912** Teach Financial Literacy in Public Schools.

Draft Number:	PCS65324
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **961** Child Nutrition Standards.

Draft Number:	PCS65325
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Thursday, May 26, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **269** Public Laws - 3.

Draft Number:	PCS 75317
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 912
PROPOSED COMMITTEE SUBSTITUTE S912-PCS65324-SF-19

Short Title: Teach Financial Literacy in Public Schools. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT DIRECTING THE PUBLIC SCHOOLS TO TEACH PERSONAL FINANCIAL LITERACY TO HIGH SCHOOL STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-81 is amended by adding a new subsection to read:

"(i) Both the standard course of study and the Basic Education Program shall include the requirement that the public schools provide instruction in personal financial literacy for all students during the high school years. The State Board of Education shall determine the components of personal financial literacy that will be covered in the curriculum. The State Board shall also review the high school standard course of study to determine in which course the new personal financial literacy curriculum can be integrated."

SECTION 2. When developing the personal financial literacy curriculum, the State Board of Education shall consider the curriculum, materials, and guidelines developed for the pilot programs on financial literacy created by Section 7.35 of S.L. 2003-284. The State Board shall also consider the recommendations from any evaluations of the pilot programs.

SECTION 3. The State Board of Education shall have up to two years to develop the personal financial literacy curriculum and integrate the curriculum into the standard course of study. The State Board shall report to the Joint Legislative Education Oversight Committee on the proposed curriculum before implementation.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 912

Short Title:	Teach Financial Literacy in Public Schools.	(Public)
Sponsors:	Senators Hagan; Atwater and Bingham.	
Referred to:	Rules and Operations of the Senate.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT DIRECTING THE PUBLIC SCHOOLS TO TEACH PERSONAL FINANCIAL LITERACY TO HIGH SCHOOL STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. This act is effective when it becomes law.

SENATE BILL 912:
Teach Financial Literacy in Public Schools

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	May 18, 2005
Introduced by:	Sen. Hagan	**Summary by:**	Shirley Iorio, Ph D
Version:	PCS to First Edition S912-CSSF-19 [v.1]		Legislative Analyst

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 912 would require instruction in personal financial literacy for all high school students. The State Board of Education would have up to two years to develop the personal financial literacy curriculum and integrate it into the standard course of study. When developing this curriculum, the State Board would be required to consider the curriculum used by the pilot programs on teaching personal financial literacy created in 2003 and the recommendation from any evaluations of the pilots. The State Board would be required to report on the proposed curriculum to the Joint Legislative Education Oversight Committee before implementation.***

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

BACKGROUND: S.L. 2003-284, Section 7.35, required the State Board of Education to establish a pilot program authorizing and assisting up to five local school administrative units in the implementation of programs on teaching personal financial literacy. The purpose of the pilot program was to determine the best methods of equipping students with the knowledge and skills they need, before they become self-supporting, to make critical decisions regarding their personal finances.

Currently students in N.C. public schools are not required to take a comprehensive course in personal financial literacy. Students can take the course "Principles of Business and Personal Finance" which is an elective in the Business Technology career pathway of Career-Technical Education. Students may also be exposed to some of the principles of personal financial education in the 10th grade course, Civics and Economics. This course is a graduation requirement.

A 2004 survey conducted by the National Council on Economic Education found that only 7 states require students to take a course in personal finances in order to graduate. Those states are Alabama, Georgia, Idaho, Illinois, Kentucky, New York and Utah. Although they don't require an entire course, 38 states do include ideas about savings, investing, risk management and other financial principles in their standards. However, the survey found that many states do not enforce those standards.

Financial Literacy

"Improving basic financial education at the elementary and secondary school level is essential to providing a foundation for financial literacy that can help prevent younger people from making poor financial decisions that can take years to overcome." [1]

—Alan Greenspan, Chairman of the Federal Reserve Board

Why Elementary and Secondary Schools? Because school attendance is compulsory till age 16, elementary and secondary schools are more superior venues for teaching financial literacy than college; additionally, it is those least likely to graduate college or high school who are most vulnerable to financial exploitation.

Financial Literacy on the decline:

A 2002 Jump$tart Coalition survey of high school seniors show a steep decline in basic financial literacy. Among the findings[2]:

- Only **35% knew** that retirement income paid by a company is called a **pension (a decline from 63.5%** in 1997).
- **Only 60%** realized a sales tax makes things more expensive; **21%** believed there was a **national sales tax**, and **17% believed** the money was deducted from their paycheck.

A 2005 Jump$tart survey found that **31.8% of high school seniors consistently use a credit card**; unfortunately, the survey found that those students using credit cards were **less financially knowledgeable** than the seniors not using credit cards.[3]

College:

- Only 40% of college students ever take an economics or finance course, so most students will leave college without a solid grounding in finance.
- Credit Cards & College Students: **78% of college students have at least one credit card** and many have four or five. The **average balance** of these credit card owning students is **$2000**; 10% of these students, however, have credit card debt exceeding $7000[4].
- **55%** of college students **acquire their first credit card** during their **freshman year.**[5]

Why Financial literacy matters:

- From 1994 to 2003, the number of **personal bankruptcies** more than **doubled** in the United States from 783,372 filings to 1,625,813[6]; among **adults 25 and under**, bankruptcy filings increased **51%**
- Household credit card is on the rise; between 1992 and 2001 the amount of **credit card debt** the average US household held **increased 38%** from

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[1] Lexington Herald, April 7, 2001
[2] Financial Literacy 2010, Newsletter Spring 2002 Vol. 4, issue 2
[3] Jump$tart Press Release, April 13, 2005
[4] National Summit on Economic Literacy
[5] Jumpstart, Making the Case for Financial Literacy—2005, pg. 4
[6] Administrative Office of the Courts, Press Release Dec. 1, 1995 and Nov. 14, 2003

$2,991 to $4,126 (in 2001 dollars). **For young adults** the increase during that period was **55%**, raising their credit card debt burden from $2,640 to **$4,088.**[7]

- US citizens have the **lowest savings rate** in the industrialized world
- **60%** of American households **carry over** some portion of their **credit card debt** every month; the average balance for these individuals exceeds $4000
    - **35 million** Americans pay only the **minimum** required amount, as low as 2% in some cases[8]; a **$4000** credit card balance, for instance, with an 18% interest rate would take more than **42 years to payoff,** accumulating **$10,931 in interest,** paying 2% per month.
    - Interest payments accounted for **14%** of the **average family's** disposable **income** in 2001[9]
- **20%** of families making below $50,000 spend almost **half** their net income on debt payments

Available Programs:

- The National Endowment for Financial Education has coursework that can be taught as a two-and-a-half week dedicated course or blended with the standard curriculum in high school.[10]
- *Financial Fitness for Life* is produced by the National Council on Economic Education, and is age appropriate for grades K-12.

Available Funding:

Title V of the No Child Left Behind act is supposed to make funds available for schools "...to promote consumer, economic, and personal finance education...".[11] But, currently only $1.4 million is annually appropriated and is shared between one major grant recipient and 140 sub-grant recipients.[12]

Other States: As of March 2005, seven states (Alabama, Georgia, Idaho, Illinois, Kentucky, New York and Utah) have made a personal finance course part of the high school graduation requirements.[13] Alabama requires financial literacy content to be included in the middle school curriculum in addition to a required high school class; Georgia requires financial literacy to be taught in grades K-8 in addition to their required high school class.[14] Virginia enacted legislation in March requiring financial literacy to be required coursework in middle and high school starting in 2006.[15]

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[7] Survey of Consumer Finance, 1992 and 2001
[8] PBS.org (*Frontline*: Secret History of the Credit Card)
[9] National Council on Economic Education, *National Summit on Economic Literacy*
[10] Jacksonville Daily News, 7/23/2001
[11] National Council on Economic Education, *National Summit on Financial Education*
[12] Department of Education, http://www.ed.gov/programs/econeducation/awards.html
[13] National Council on Economic Education, Survey of the States, March 2005, pg. 3
[14] National Council on Economic Education, Survey of the States, March 2005, pg. 15
[15] Virginia General Assembly, SB 950, signed by governor March 26, 2005

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1057
PROPOSED COMMITTEE SUBSTITUTE S1057-CSRH-27 [v.4]

5/24/2005 6:40:38 PM

Short Title: Education Improvement Act of 2005. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EDUCATION AND ECONOMIC COMPETITIVENESS ACT OF 2005.

The General Assembly of North Carolina enacts:

PART I. TITLE OF ACT

SECTION 1.1. This act shall be known as the "Education and Economic Competitiveness Act of 2005".

PART II. INVESTING MORE RESOURCES AND DEMANDING MORE ACCOUNTABILITY

REPORTS ON THE EXPENDITURE OF SUPPLEMENTAL FUNDS FOR LOW-WEALTH COUNTIES

SECTION 2.1. Local boards of education shall report to the State Board of Education by August 31 of each year on the expenditure of supplemental funds for low-wealth counties and how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools, such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

EVALUATE THE EFFECTIVENESS OF DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING ON THE IMPROVEMENT OF STUDENT ACHIEVEMENT

SECTION 2.2.(a) The State Board of Education may require local school administrative units receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement.

SECTION 2.2.(b) To remain eligible for funding under the Disadvantaged Student Supplemental Fund, local school administrative units must submit a report to the State Board of Education by August 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

PROVIDE FOR NEW ACCOUNTABILITY FOR THE USE OF FUNDS IN THE AT-RISK AND IMPROVING STUDENT ACCOUNTABILITY ALLOTMENTS

SECTION 2.3.(a) Funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment shall be used consistent with the policies and procedures adopted by the State Board of Education only (i) to provide instructional positions or instructional support positions and/or professional development; (ii) to provide intensive in-school and/or after-school remediation; and (iii) to purchase diagnostic software and progress monitoring tools.

SECTION 2.3.(b) To remain eligible for funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

LOCAL SCHOOL SYSTEM ASSISTANCE PROGRAM

SECTION 2.4. The State Board of Education shall develop: (i) the criteria for LEA Assistance Teams; (ii) the criteria for selecting LEAs and schools to receive assistance; (iii) measurable goals and objectives for the assistance program; and (iv) an explanation of the type of assistance to be provided with these combined resources. The Department shall develop a revised organizational structure and budget for providing assistance services to LEAs to ensure the Department can meet the needs of the LEAs. The State Board of Education must approve this structure and budget.

For 2005-2006 only, the State Board may, with the prior approval of the Office of State Budget and Management, transfer General Fund appropriations between personal service and nonpersonal service line items within this fund to structure itself most efficiently for the delivery of services. All funds transferred under this provision are only for this program and for the services described herein. Funds shall not be used to raise the salary of existing employees.

PART III. RECRUITING AND RETAINING QUALITY TEACHERS AND PRINCIPALS ACROSS THE STATE

TWO-YEAR TEACHING FELLOWS PROGRAM FOR SCIENCE AND MATHEMATICS

SECTION 3.1.(a) Of the funds to the Department of Public Instruction for the administration of a Two Year Teaching Fellows Program focused on preparing math and science teachers for public middle and high schools.

SECTION 3.1.(b) G.S. 115C-363.23A reads as rewritten:

"§ 115C-363.23A. Teaching Fellows Program established; administration.

(a) A Teaching Fellows Program shall be administered by the North Carolina Teaching Fellows Commission. The Teaching Fellows Program shall be used to provide a four-year scholarship loan of six thousand five hundred dollars ($6,500) per year to North Carolina high school seniors interested in preparing to teach in the public schools of the State. Beginning July 1, 2006, the Teaching Fellows Program also may be used to provide 50 two-year scholarship loans of six thousand five hundred dollars ($6,500) per year to North Carolina college juniors who intend to teach mathematics or science in the public middle schools or high schools of the State. The Commission shall adopt very stringent standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarship loans to ensure that only the best high school seniors receive them.

...

(c) The Commission shall form regional review committees to assist it in identifying the best high school seniors or college juniors for the program. The Commission and the review committees shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in teaching to enter the program.

...

(e) The Commission shall forgive ~~the~~ a four-year loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall forgive a two-year loan if, within five years after graduation, the recipient teaches for two years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall also forgive ~~the~~ a two-year or a four-year loan if it finds that it is impossible for the recipient to ~~teach for four years, within seven years after graduation, at a North Carolina public school or at a school~~

~~operated by the United States government in North Carolina, because of~~ fulfill the teaching requirement due to the death or permanent disability of the recipient.

...."

PRINCIPALS EXECUTIVE PROGRAM FOR NEW PRINCIPALS

SECTION 3.2. Of the funds appropriated to the Board of Governors of The University of North Carolina, the sum of one hundred twenty five thousand dollars ($125,000) for the 2005 2006 fiscal year and the sum of one hundred twenty five thousand dollars ($125,000) for the 2006 2007 fiscal year may be used to support the development and implementation of a new program for all new public school principals. The program shall include a focus on the principal's responsibility for instructional leadership, data driven decision making, and positive teacher working conditions. All newly hired principals in North Carolina shall be required to attend this PEP developed program for new principals during their first year of employment as a principal.

TEACH FOR AMERICA

SECTION 3.3. Of the funds appropriated to the Department of Public Instruction, the sum of two hundred thousand dollars ($200,000) for the 2005 2006 fiscal year and the sum of two hundred thousand dollars ($200,000) for the 2006 2007 fiscal year may be used to support the Teach for America Program in North Carolina for the purpose of recruiting teachers into high need schools.

PART IV. TWENTY-FIRST CENTURY HIGH SCHOOLS

SMALL SPECIALTY HIGH SCHOOLS PILOT PROGRAM

SECTION 4.1.(a) Of the funds appropriated to the Department of Public Instruction, the sum of one million four hundred forty-six thousand eight hundred seventy-seven dollars ($1,446,877) for the 2005-2006 fiscal year and the sum of one million four hundred forty-six thousand eight hundred seventy-seven dollars ($1,446,877) for the 2006-2007 fiscal year may be used for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program shall be to improve graduation rates and achieve higher student performance as measured by standard tests and postgraduate gainful employment or admission into an institution of higher education. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

SECTION 4.1.(b) The State Board of Education shall conduct an evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006.

PART V. EFFECTIVE DATE

SECTION 5.1. This act becomes effective July 1, 2005.

SENATE BILL 1057:
Education Improvement Act of 2005

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	May 25, 2005 Robin
Introduced by:	Sen. Dalton	**Summary by:**	Robin Johnson
Version:	PCS to First Edition S1057-CSRH-27[v.4]		Committee Counsel

SUMMARY: The PCS to Senate Bill 1057 includes provisions from the original bill that were not included in the Senate Budget Bill

BILL ANALYSIS:

PART I Title of Act "Education Improvement Act of 2005."

PART II Investing More Resources and Demanding More Accountability

Section 2.1

Background: The Senate Budget Bill would appropriate $1,000,000 for the 2005-2006 fiscal year to evaluate the effectiveness of supplemental education funds.

Section 2.1 would direct local boards of education ("local boards") to report annually by August 31 to the State Board of Education ("State Board"). This report would show how supplemental funds for low-wealth counties are targeted and used to address teacher shortages, close the achievement gap, and establish and maintain safe schools. The State Board would report this information by October 31 to the Office of State Budget and Management (OSBM), the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

Section 2.2

Background: The Senate Budget Bill would appropriate $47,500,000 for each fiscal year of the 2005-2007 biennium for the Disadvantaged Student Supplemental Fund (DSSF). The DSSF is to be used to address the capacity of school systems to meet the educational needs of disadvantaged students. Funds must be used in conjunction with other supplemental funds and must be used in accordance with a plan developed jointly between the school system and the LEA assistance team assigned to that system. The State Board must approve the plan. An additional $1,000,000 for the 2005-2006 fiscal year would be appropriated to evaluate the effectiveness of DSSF and other supplemental funds.

Section 2.2.(a) would allow the State Board to require school systems receiving funding under the DSSF to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement.

Section 2.2.(b) would require school systems, as a condition for continuing to be eligible for funding under the DSSF, to submit annual reports by August 31 to the State Board detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board would report this information annually by October 31 to OSBM, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

Section 2.3

Section 2.3.(a) would specify that the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment must be used only to provide (i) instructional or instructional support positions

or instructional support positions, (ii) professional development; (iii) intensive student remediation; and (iv) diagnostic software and progress monitoring tools.

Section 2.3.(b) would require schools systems, as a condition for continuing to be eligible for these funds, to report annually by October 31 to the State Board detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board would report this information annually by October 31 to OSBM, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

Section 2.4

Background: The State Board assigns assistance teams to school systems to help schools identified as low-performing under the State's ABC's program and to help schools meet adequate yearly progress for each subgroup under the federal No Child Left Behind Act.

Section 2.4 would direct the State Board to develop: (i) the criteria for LEA Assistance Teams; (ii) the criteria for selecting LEAs and schools to receive assistance; (iii) measurable goals and objectives for the assistance program; and (iv) an explanation of the type of assistance to be provided with these combined resources. Subject to the approval of the State Board, the Department of Public Instruction (DPI) would be required to develop a revised organizational structure and budget for providing assistance services to school systems to ensure the school systems' needs are met. Section 2.4 also would authorize the State Board, for 2005-2006 only and with the prior approval of OSBM, to transfer General Fund appropriations between personal service and nonpersonal service line items within this fund to structure itself most efficiently for the delivery of services. These funds would not be used to raise salaries of current employees.

PART III Recruiting and Retaining Quality Teachers and Principals Across the State

Section 3.1

Background: Currently, teaching fellows scholarship loans are provided for four years. Fellows are selected during their senior year of high school. The scholarship loans are forgiven if, within seven years after graduation, the individual teaches for four years in a North Carolina public school or in a school operated by the federal government in North Carolina. They also are forgiven if the recipient dies or is permanently disabled.

Section 3.1.(a) would authorize funds appropriated to DPI for the administration of the Teaching Fellows Program to be used to provide two year Teaching Fellows scholarship loans focused on preparing math and science teachers for public middle and high schools.

Section 3.1.(b) would amend G.S. 115C-363.23A, the law governing the Teaching Fellows Program, to allow funds to be used to provide, beginning July 1, 2006, 50 two-year scholarship loans of $6500 per year to North Carolina college juniors who intend to teach mathematics or science in public middle or high schools. These loans would be forgiven if, within five years after graduation, the individual teaches for two years at a public school in the State or operated by the federal government within the State. They also would be forgiven if the individual dies or is permanently disabled.

Section 3.2

Section 3.2 would allow $125,000 of the funds appropriated in each fiscal year of the 2005-2007 biennium to the Board of Governors of The University of North Carolina to be used to support the development and implementation of a new program for all new public school principals. The program must include a focus on the principal's responsibility for instructional leadership, data driven decision

making, and positive teacher working conditions. All newly hired principals would be required to attend this program their first year of employment as a principal.

Section 3.3

Section 3.3 would authorize $200,000 per fiscal year of the 2005-2007 biennium appropriated to DPI to be used to support the Teach for America Program in North Carolina.

PART IV Twenty-First Century High Schools

Section 4.1

Section 4.1.(a) would authorize $1,446,877 per fiscal year of the 2005-2007 biennium appropriated to DPI to be used for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program would be to improve graduation rates and achieve higher student performance. The State Board would be required to work closely with the Education Cabinet and the New Schools Project in administering the program.

Section 4.1.(b) would direct the State Board to evaluate this program and to report the results to OSBM, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006.

PART V Effective Date July 1, 2005.

S1057e1-SMRH-CSRH-27v4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1057

Short Title:	Education Improvement Act of 2005.	(Public)
Sponsors:	Senators Dalton, Swindell and Lucas.	
Referred to:	Appropriations/Base Budget.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EDUCATION AND ECONOMIC COMPETITIVENESS ACT OF 2005.

The General Assembly of North Carolina enacts:

PART I. TITLE OF ACT AND TABLE OF CONTENTS

SECTION 1.1. This act shall be known as the "Education and Economic Competitiveness Act of 2005".

PART II. INVESTING MORE RESOURCES AND DEMANDING MORE ACCOUNTABILITY

FULLY FUND THE LOW-WEALTH FORMULA OVER TWO YEARS AND REQUIRE REPORTS ON THE EXPENDITURE OF THESE FUNDS

SECTION 2.1.(a) The General Assembly finds that it is appropriate to provide supplemental funds in low-wealth counties to allow those counties to enhance the instructional program and student achievement. Therefore, there is appropriated from the General Fund to the Department of Public Instruction the sum of sixteen million five hundred fifty thousand one hundred eleven dollars ($16,550,111) for the 2005-2006 fiscal year and fifty-eight million five hundred twenty-seven thousand six hundred thirty-five dollars ($58,527,635) for the 2006-2007 fiscal year to be used for supplemental funds for the schools.

SECTION 2.1.(b) Use of Funds for Supplemental Funding. – It is the intent that the additional funds appropriated in 2005-2006 and 2006-2007 be used to recruit and retain high quality teachers. To that end, at least fifteen percent (15%) in the 2005-2006 fiscal year and at least twenty-five percent (25%) in the 2006-2007 fiscal year shall be used for: (i) bonuses to recruit and retain instructional personnel; and/or (ii) to provide full-time mentors for instructional personnel and instructional support

personnel. All remaining funds received pursuant to this section shall be used for: (i) and/or (ii) above and/or; (iii) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks; (iv) for salary supplements for instructional personnel and instructional support personnel; and (v) to pay an amount not to exceed ten thousand dollars ($10,000) of the plant operation contract cost charged by the Department of Public Instruction for services.

SECTION 2.1.(c) Reports on the Expenditure of Funds. – Local boards of education shall report to the State Board of Education by August 31 of each year on the expenditure of these funds and how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools, such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

CONTINUE DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING AND EVALUATE THE EFFECTIVENESS OF IMPROVEMENT STRATEGIES

SECTION 2.2.(a) There is appropriated from the General Fund to the Department of Public Instruction the sum of twenty-two million five hundred thousand dollars ($22,500,000) for the 2005-2006 fiscal year and the sum of twenty-two million five hundred thousand dollars ($22,500,000) for the 2006-2007 fiscal year to address the capacity needs of local school administrative units to meet the needs of disadvantaged students. For the 2005-2006 fiscal year only, these funds shall continue the nonrecurring funding that was provided to local school administrative units in the 2004-2005 fiscal year. For the 2006-2007 fiscal year, these funds shall be allocated under a new formula as determined by the State Board of Education.

SECTION 2.2.(b) There is appropriated from the General Fund to the Department of Public Instruction the sum of one million five hundred eighty-five million dollars ($1,585,000) for the 2005-2006 fiscal year and the sum of one million five hundred ten thousand dollars ($1,510,000) for the 2006-2007 fiscal year to evaluate the Disadvantaged Students Supplemental Fund program. The State Board of Education shall use funds appropriated in this section to annually evaluate the strategies local school administrative units have implemented and to assess their impact on student performance. The State Board of Education shall report the results of the evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division, by February 15, 2006, and by January 15 of each subsequent year.

SECTION 2.2.(c) The State Board of Education shall incorporate into a new funding mechanism: (i) the results of the evaluation of strategies implemented in the 2004-2005 and 2005-2006 school years; and (ii) its review of the variables that are most highly correlated with student academic achievement. The new funding mechanism shall consolidate the Improving Student Accountability allotment category, the

At-Risk/Alternative Schools allotment category, and the Disadvantaged Student allotment category. The State Board of Education shall report on the new formula and funding mechanism to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Education Oversight Committee by February 15, 2006.

The new formula shall be implemented in the 2006-2007 fiscal year.

SECTION 2.2.(d) Funds appropriated under this section shall be used to implement a plan jointly developed by each local school administrative unit and the LEA Assistance Program team that is based upon the needs of the students not achieving grade level proficiency. Prior to the allotment of these funds, the plan shall be approved by the State Board of Education. All funds received pursuant to this section shall be used only consistent with the policies and procedures adopted by the State Board of Education (i) to provide instructional positions or instructional support positions and/or professional development; (ii) to provide intensive in-school and/or after-school remediation; and (iii) to purchase diagnostic software and progress monitoring tools. These funds shall not be used for teacher bonuses and supplements.

SECTION 2.2.(e) The State Board of Education may require local school administrative units receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement.

SECTION 2.2.(f) To remain eligible for the resources provided in this section, local school administrative units must submit a report to the State Board of Education by August 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

PROVIDE FOR NEW ACCOUNTABILITY FOR THE USE OF FUNDS IN THE AT-RISK AND IMPROVING STUDENT ACCOUNTABILITY ALLOTMENTS

SECTION 2.3.(a) Funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment shall be used consistent with the policies and procedures adopted by the State Board of Education only (i) to provide instructional positions or instructional support positions and/or professional development; (ii) to provide intensive in-school and/or after-school remediation; and (iii) to purchase diagnostic software and progress monitoring tools.

SECTION 2.3.(b) To remain eligible for funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

LOCAL SCHOOL SYSTEM ASSISTANCE PROGRAM

SECTION 2.4.(a) All assistance to local school administrative units that is provided on behalf of the State Board of Education by the Department of Public Instruction and its contractors shall be consolidated into the LEA Assistance Program (LEAAP) created in the 2003 Session of the General Assembly. The consolidated program shall reside in the School Improvement Division and shall provide assistance to the State's low-performing Local School Administrative Units (LEAs) and shall assist schools in meeting adequate yearly progress in each subgroup identified in the No Child Left Behind Act of 2001.

SECTION 2.4.(b) To accomplish this, up to six million five hundred thousand dollars ($6,500,000) shall be transferred from within existing appropriations to the LEAAP. These funds shall come from appropriations currently supporting positions and related operating costs within the Department of Public Instruction for school improvement teams and for Closing the Gap, and from the funds appropriated to the State Public School Fund being used for contractual services and associated costs for the assistance teams.

SECTION 2.4.(c) The State Board of Education shall develop: (i) the criteria for LEA Assistance Teams; (ii) the criteria for selecting LEAs and schools to receive assistance; (iii) measurable goals and objectives for the assistance program; and (iv) an explanation of the type of assistance to be provided with these combined resources. The Department shall develop a revised organizational structure and budget for providing assistance services to LEAs to ensure the department can meet the needs of the LEAs. This structure and budget must be approved by the State Board of Education.

For 2005-2006 only, the State Board may, with the prior approval of the Office of State Budget and Management, transfer General Fund appropriations between personal service and nonpersonal service line items within this fund to structure itself most efficiently for the delivery of services. All funds transferred under this provision are only for this program and for the services described herein. Funds shall not be used to raise the salary of existing employees.

SECTION 2.4.(d) The State Board of Education shall report to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Education Oversight Committee on the criteria and the new organizational structure, proposed budget, functions, and projected workloads for the 2005-2006 academic year by August 1, 2005.

The State Board shall report on the prior year's expenditure of these funds by August 31 of each year. This report shall contain: (i) the criteria for selecting LEAs and schools to receive assistance; (ii) measurable goals and objectives for the assistance program; (iii) an explanation of the assistance provided; (iv) findings from the assistance program; (v) actual expenditures by category; (vi) recommendations regarding the continuation of this program; and (vii) any other information the State Board deems necessary.

These funds shall not revert at the end of each fiscal year but shall remain available until expended for this purpose.

PART III. RECRUITING AND RETAINING QUALITY TEACHERS AND PRINCIPALS ACROSS THE STATE

UNC-NCCCS JOINT INITIATIVE FOR TEACHER EDUCATION AND RECRUITMENT

SECTION 3.1.(a) There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of six hundred forty thousand dollars ($640,000) for the 2005-2006 fiscal year and the sum of six hundred forty thousand dollars ($640,000) for the 2006-2007 fiscal year.

SECTION 3.1.(b) These funds shall be used to establish eight personnel positions for The University of North Carolina-North Carolina Community College System (UNC-NCCCS) Joint Initiative for Teacher Education and Recruitment. These employees shall have an office in and work with staff in the Regional Alternative Licensure Centers of the Department of Public Instruction. Their responsibilities shall be to help increase the number of certified teachers in the public schools of North Carolina. Their specific tasks shall be as follows:

(1) Resolve curriculum issues between The University of North Carolina and the community colleges within each region to ensure seamless articulation;

(2) Serve as licensure advisors to prospective teachers and assist with individual reviews for lateral entry candidates;

(3) Offer admissions advice to community college students seeking to transfer to four-year institutions; and

(4) Recruit prospective teachers on community college campuses.

These funds shall also be used to ensure that these staff members can travel routinely among all of The University of North Carolina and community college sites within a region.

SECTION 3.1.(c) Each constituent institution of The University of North Carolina with a teacher education program shall develop a 2+2 program in partnership with one or more constituent institutions in the North Carolina Community College System by June 2007.

SECTION 3.1.(d) The UNC-NCCCS Joint Initiative for Teacher Education and Recruitment shall report on the results of this initiative by September 1, 2006, and annually thereafter to the State Board of Education, the Board of Governors, the State Board of Community Colleges, the Education Cabinet, the Joint Legislative Education Oversight Committee, and the Office of State Budget and Management. The report shall include information on all existing and planned 2+2 teacher education partnership programs and, at a minimum, the following performance outcomes by region in which the advisors are working:

(1) The number of community college students articulated and working toward teacher licensure, their base community college, and The University of North Carolina institution to which they have moved;

(2) The number of lateral entry teachers that these advisors worked with who are actively pursuing certification and the number licensed;
(3) A headcount of the number of students in the process of receiving courses towards certification, their home county, the institutions at which they are taking courses, and whether they are taking courses by regular attendance, via distance education, or both. If both methods are being employed, the report shall contain the percentage of courses taken by each method;
(4) The total FTE and SCH that the headcount represents;
(5) Articulation issues and/or curriculum changes effectively made as a result of these advisors; and
(6) Articulation issues that are under discussion but have not been satisfactorily resolved.

UNC-NCCCS 2+2 E-LEARNING INITIATIVE

SECTION 3.2.(a) There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of one million dollars ($1,000,000) for the 2005-2006 fiscal year and the sum of one million dollars ($1,000,000) for the 2006-2007 fiscal year for the UNC-NCCCS 2+2 E-Learning Initiative.

There is appropriated from the General Fund to the North Carolina Community Colleges System Office the sum of one million dollars ($1,000,000) for the 2005-2006 fiscal year and the sum of one million dollars ($1,000,000) for the 2006-2007 fiscal year for the UNC-NCCCS 2+2 E-Learning Initiative.

SECTION 3.2.(b) These funds shall be used to fund further development of online courses for 2+2 programs. These funds shall also be used in the area of greatest need as determined jointly by the Chair of the State Board of Education, the President of the Community College System, and the President of The University of North Carolina to: (i) support joint technology development and joint systems to track student progress and articulation between a community college and a university campus; and (ii) develop technology needed to support online courses and 2+2 programs.

TWO-YEAR TEACHING FELLOWS PROGRAM FOR SCIENCE AND MATHEMATICS

SECTION 3.3.(a) There is appropriated from the General Fund to the Department of Public Instruction the sum of three hundred thirty thousand dollars ($330,000) for the 2006-2007 fiscal year for the administration of a Two-Year Teaching Fellows Program focused on preparing math and science teachers for public middle and high schools.

SECTION 3.3.(b) G.S. 115C-363.23A reads as rewritten:

"**§ 115C-363.23A. Teaching Fellows Program established; administration.**

(a) A Teaching Fellows Program shall be administered by the North Carolina Teaching Fellows Commission. The Teaching Fellows Program shall be used to provide a four-year scholarship loan of six thousand five hundred dollars ($6,500) per year to

North Carolina high school seniors interested in preparing to teach in the public schools of the State. Beginning July 1, 2006, the Teaching Fellows Program shall also be used to provide 50 two-year scholarship loans of six thousand five hundred dollars ($6,500) per year to North Carolina college juniors who intend to teach mathematics or science in the public middle schools or high schools of the State. The Commission shall adopt very stringent standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarship loans to ensure that only the best high school seniors receive them.

...

(c) The Commission shall form regional review committees to assist it in identifying the best high school seniors or college juniors for the program. The Commission and the review committees shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in teaching to enter the program.

...

(e) The Commission shall forgive ~~the~~ a four-year loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall forgive a two-year loan if, within five years after graduation, the recipient teaches for two years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall also forgive ~~the~~ a two-year or a four-year loan if it finds that it is impossible for the recipient to ~~teach for four years, within seven years after graduation, at a North Carolina public school or at a school operated by the United States government in North Carolina, because of~~ fulfill the teaching requirement due to the death or permanent disability of the recipient.

...."

INCREASE FUNDS FOR THE PROSPECTIVE TEACHER SCHOLARSHIP LOAN PROGRAM

SECTION 3.4.(a) There is appropriated from the General Fund to the Department of Public Instruction the sum of one million dollars ($1,000,000) for the 2005-2006 fiscal year and the sum of one million dollars ($1,000,000) for the 2006-2007 fiscal year for the Prospective Teacher Scholarship Loan Program.

SECTION 3.4.(b) The first priority for awards for these additional funds shall be to students in the 2+2 UNC-NCCCS Teacher Education and Recruitment Initiative.

PRINCIPALS EXECUTIVE PROGRAM FOR NEW PRINCIPALS

SECTION 3.5. There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of one hundred twenty-five thousand dollars ($125,000) for the 2005-2006 fiscal year and the sum of one hundred twenty-five thousand dollars ($125,000) for the 2006-2007 fiscal year to support the development and implementation of a new program for all new public school principals.

The program shall include a focus on the principal's responsibility for instructional leadership, data-driven decision making, and positive teacher working conditions.

All newly hired principals in North Carolina shall be required to attend this PEP-developed program for new principals during their first year of employment as a principal.

TEACHER WORKING CONDITIONS INITIATIVE

SECTION 3.6.(a) There is appropriated from the General Fund to the Department of Public Instruction the sum of two hundred fifteen thousand dollars ($215,000) for the 2005-2006 fiscal year and the sum of two hundred ninety thousand dollars ($290,000) for the 2006-2007 fiscal year to administer the Governor's Teacher Working Conditions Survey. These funds shall be used by the State Board of Education, in collaboration with the Professional Teaching Standards Commission, to administer the survey on a biennial basis, establish an advisory board to oversee implementation of recommendations from the survey, and support the NC Network in providing customized analysis for school improvement teams.

SECTION 3.6.(b) The State Board of Education may supplement these funds with gifts or other private funds donated for this purpose.

TEACH FOR AMERICA

SECTION 3.7. There is appropriated from the General Fund to the Department of Public Instruction the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year and the sum of two hundred thousand dollars ($200,000) for the 2006-2007 fiscal year to support the Teach for America Program in North Carolina for the purpose of recruiting teachers into high-need schools.

STANDARDS REVIEW OF MSA PROGRAMS

SECTION 3.8. The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall review standards for the Masters in School Administration (MSA) programs to ensure that appropriate competencies related to teacher retention, teacher evaluations, teacher support programs, and teacher effectiveness are included and emphasized.

EVALUATION OF SCHOOL PRINCIPALS

SECTION 3.9. The State Board of Education shall ensure that principals are evaluated annually as specified in G.S. 115C-333 and shall revise the standards for the evaluations of school administrators (SBE Policy QP-C-006) to include accountability measures of teacher retention, teacher support, and school climate. The State Board shall revise its evaluation instruments to reflect these changes.

PLANNING TIME FOR TEACHERS

SECTION 3.10. The State Board of Education, in collaboration with the North Carolina Professional Teaching Standards Commission, shall report on best practices from North Carolina schools for providing a minimum of five hours per week

within the instructional day for planning, collaborating with colleagues and parents, and professional development, especially within elementary school schedules. The State Board shall submit its report to the Education Cabinet by December 31, 2005.

The State Board shall disseminate this information about best practices to schools and school systems across the State.

ONLINE PROFESSIONAL DEVELOPMENT RESOURCE CENTER FOR TEACHERS AND PRINCIPALS

SECTION 3.11.(a) The State Board of Education and the Department of Public Instruction, in collaboration with the North Carolina Professional Teaching Standards Commission, shall develop a Web portal that catalogues high-quality professional development opportunities for teachers and principals.

SECTION 3.11.(b) Funds to implement the systems will be requested by the Department of Public Instruction based on the design. The State Budget Director and the Chief Information Officer shall release funding upon approval of the Information Technology project plan.

PART IV. TWENTY-FIRST- CENTURY HIGH SCHOOLS

LEARN AND EARN HIGH SCHOOLS

SECTION 4.1.(a) There is appropriated from the General Fund to the Department of Public Instruction the sum of three million two hundred forty-seven thousand four hundred twenty-six dollars ($3,247,426) in recurring funds and nine hundred seventeen thousand five hundred dollars ($917,500) in nonrecurring funds for the 2005-2006 fiscal year and the sum of nine million two hundred fifty-nine thousand four hundred forty dollars ($9,259,440) in recurring funds and one million dollars ($1,000,000) in nonrecurring funds for the 2006-2007 fiscal year for the Learn and Earn high school workforce development program. The purpose of the program shall be to create rigorous and relevant high school options that provide students with the opportunity and assistance to earn an associate degree or two years of college credit by the conclusion of the year after their senior year in high school. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

SECTION 4.1.(b) These funds shall be used to establish new high schools in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and postsecondary college curricula operate seamlessly and meet the needs of participating employers. Funds shall not be allotted until Learn and Earn high schools are certified as operational.

SECTION 4.1.(c) The State Board of Education in consultation with the State Board of Community Colleges and The University of North Carolina Board of Governors, shall conduct an annual evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; (ii) recommended statutory and

policy changes; and (iii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by September 15 of each year.

SMALL SPECIALTY HIGH SCHOOLS PILOT PROGRAM

SECTION 4.2.(a) There is appropriated from the General Fund to the Department of Public Instruction the sum of one million four hundred forty-six thousand eight hundred seventy-seven dollars ($1,446,877) for the 2005-2006 fiscal year and the sum of one million four hundred forty-six thousand eight hundred seventy-seven dollars ($1,446,877) for the 2006-2007 fiscal year for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program shall be to improve graduation rates and achieve higher student performance as measured by standard tests and postgraduate gainful employment or admission into an institution of higher education. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

SECTION 4.2.(b) The State Board of Education shall conduct an evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006.

THE CENTER FOR TWENTY-FIRST-CENTURY SKILLS

SECTION 4.3.(a) There is established the Center for 21st-Century Skills within the North Carolina Business Committee for Education. The purpose of the Center is to design curriculum, teacher training, and student assessment to support students acquiring the knowledge and skills needed for the emerging workforce of the 21st century.

SECTION 4.3.(b) The North Carolina Business Committee for Education and the Center for 21st-Century Skills shall coordinate their efforts on high school reform with the North Carolina New Schools Project.

SECTION 4.3.(c) The North Carolina Business Committee for Education and the Center for 21st-Century Skills shall work with the North Carolina Science, Mathematics and Technology Education Center, the North Carolina School of Science and Mathematics, the North Carolina Board of Science and Technology, and the governing boards of education to research and propose options to create new or expand existing mathematics and science summer enrichment programs across the State and to establish nonresidential high schools focused on mathematics, science, and technology. The Center shall also support efforts of the Futures for Kids Program to connect students with the workforce needs of their home communities.

FLEXIBILITY FOR HIGH SCHOOL INNOVATION

SECTION 4.4.(a) G.S. 115C-238.51 reads as rewritten:

"(d) The State Board of Education and the State Board of Community Colleges ~~shall approve two cooperative innovative high school programs in each of the State's economic development regions. The State Boards~~ may approve cooperative innovative high school programs recommended by the joint advisory committee or may approve other programs that were not recommended. The State Boards shall approve all applications by March 15 of each year. No application shall be approved unless the State Boards find that the application meets the requirements set out in this Part and that granting the application would achieve the purposes set out in G.S. 115C-238.50. Priority shall be given to applications that are most likely to further State education policies, to address the economic development needs of the economic development regions in which they are located, and to strengthen the educational programs offered in the local school administrative units in which they are located."

SECTION 4.4.(b) G.S. 116C-4 reads as rewritten:

"**§ 116C-4. First in America Innovative Education Initiatives Act.**

(a) The General Assembly strongly endorses the Governor's goal of making North Carolina's system of education first in America by 2010. With that as the goal, the Education Cabinet shall set as a priority cooperative efforts between secondary schools and institutions of higher education so as to reduce the high school dropout rate, increase high school and college graduation rates, decrease the need for remediation in institutions of higher education, and raise certificate, associate, and bachelor degree completion rates. The Cabinet shall identify and support efforts that achieve the following purposes:

(1) Support cooperative innovative high school programs developed under Part 9 of Article 16 of Chapter 115C of the General Statutes.

(2) Improve high school completion rates and reduce high school dropout rates.

(3) Close the achievement gap.

(4) Create redesigned middle schools or high schools.

(5) Provide flexible, customized programs of learning for high school students who would benefit from accelerated, higher-level coursework or early graduation.

(6) Establish high quality alternative learning programs.

(7) Establish a virtual high school.

(8) Implement other innovative education initiatives designed to advance the State's system of education.

Small specialty high schools within existing schools, high school programs that are a cooperative effort between public secondary schools and a constituent institution of The University of North Carolina, and high school programs that are a cooperative effort between public secondary schools and a private college or university are exempt from laws and rules applicable to local boards of education, local school administrative units, community colleges, and constituent institutions of The University of North Carolina.

(b) The Education Cabinet shall identify federal, State, and local funds that may be used to support these initiatives. In addition, the Cabinet is strongly encouraged to pursue private funds that could be used to support these initiatives.

(c) The Cabinet shall report by January 15, 2004, and annually thereafter, to the Joint Legislative Education Oversight Committee on its activities under this section. The annual reports may include recommendations for statutory changes needed to support cooperative innovative initiatives, including programs approved under Part 9 of Article 16 of Chapter 115C of the General Statutes."

PART V. SUPPORTING FAMILIES AND CHILDREN FOR SCHOOL SUCCESS

SCHOOL-BASED CHILD AND FAMILY SUPPORT TEAMS

SECTION 5.1.(a) There is appropriated from the General Fund to the Department of Public Instruction the sum of ten million six hundred sixty-five thousand seven hundred fifty-four dollars ($10,665,754) in recurring funds and five hundred thousand dollars ($500,000) in nonrecurring funds for the 2005-2006 fiscal year and the sum of thirteen million three hundred eighty-two thousand one hundred ninety-two dollars ($13,382,192) for the 2006-2007 fiscal year to establish 100 school-based child and family support teams to support the educational achievement of at-risk children. The purpose of the program is to better connect public schools with the health, mental health, and social services needed by their students and families.

SECTION 5.1.(b) These funds shall be used to support 100 school nurses and 100 school social workers responsible for multidisciplinary assessments and for referral and care coordination for at-risk students and their families at 100 public schools in North Carolina.

COMMUNITIES IN SCHOOLS SUPPORT AND EXPANSION

SECTION 5.2. There is appropriated from the General Fund to the Department of Public Instruction the sum of five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year and the sum of five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year to support the Communities in Schools of North Carolina program. These funds shall be used to establish an 18-county Communities in Schools partnership in the northeast, help new and existing local Communities in Schools programs obtain federal and private grants, and otherwise support the educational achievement of at-risk students.

PART VI. EFFECTIVE DATE

SECTION 6.1. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 269
PROPOSED COMMITTEE SUBSTITUTE S269-PCS75317-RJ-20

Short Title: Child Nutrition Standards. (Public)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO ESTABLISH STATEWIDE NUTRITION STANDARDS FOR SCHOOL MEALS, A LA CARTE FOODS AND BEVERAGES, AND THE AFTER SCHOOL SNACK PROGRAM ADMINISTERED BY THE DEPARTMENT OF PUBLIC INSTRUCTION AND CHILD NUTRITION PROGRAMS OF LOCAL SCHOOL ADMINISTRATIVE UNITS, AS RECOMMENDED BY THE STUDY COMMITTEE FOR CHILDHOOD OVERWEIGHT/OBESITY OF THE HEALTH AND WELLNESS TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 17 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-264.2. Child Nutrition Program standards.**

The State Board of Education, in direct consultation with a cross section of local directors of child nutrition services, shall establish statewide nutrition standards for school meals, a la carte foods and beverages, and the After School Snack Program administered by the Department of Public Instruction and child nutrition programs of local school administrative units. The nutrition standards will promote gradual changes in school meals, a la carte foods and beverages, and items served in the After School Snack Program to increase fruits and vegetables, increase whole grain products, and decrease foods high in total fat, trans fat, saturated fat, and sugar. The nutrition standards adopted by the State Board of Education shall be implemented initially in elementary schools. All elementary schools shall achieve a basic level by the end of the 2007-2008 school year, followed by middle schools and then high schools."

SECTION 2. "Eat Smart: North Carolina's Recommended Standards for all Foods Available in School" and the "United States Dietary Guidelines" may be used as references for establishing nutrition standards. Prior to statewide implementation, the nutrition standards will be piloted in a minimum of eight elementary, eight middle and

eight high schools at a time to be determined by the State Board of Education. The pilots shall be conducted in a manner that will hold the child nutrition program of a participating local school administrative unit financially harmless for its participation in the pilot project. It shall be the responsibility of the Child Nutrition Services Section of the Department of Public Instruction to oversee the pilot project, collect data from the pilots, interpret the data, and develop written guidance based on the outcomes of the pilots. The Child Nutrition Services Section of the Department of Public Instruction shall modify the nutrition standards as needed based on several criteria, including, but not limited to, the results of the pilot projects, current science, best practices in the food and beverage industry, and the availability and affordability of new foods and beverages. The Child Nutrition Services Section of the Department of Public Instruction shall monitor the progress of each local school administrative unit toward achieving the nutrition standards and shall provide technical assistance and training as needed to assist local school administrative units in implementing the nutrition standards. The Child Nutrition Services Section of the Department of Public Instruction shall report annually on the progress of each local school administrative unit to the State Board of Education and to the Joint Legislative Education Oversight Committee.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 269

Short Title:	Public Laws - 3.	(Public)
Sponsors:	Senator Purcell.	
Referred to:	Rules and Operations of the Senate.	

March 1, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE PUBLIC LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. This act amends the public laws of North Carolina.

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

SENATE BILL 269:
Child Nutrition Standards

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	May 24, 2005
Introduced by:	Sen. Purcell	**Summary by:**	Sara Kamprath Committee Analyst
Version:	PCS to First Edition S269-CSRJ-20[v.3]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 269 directs the State Board of Education to establish nutrition standards that will gradually increase the amounts of fruits, vegetables, and whole grain products in available items for school meals, a la carte foods and beverages, and the After School Snack Program. At the same time the standards will promote a decrease in foods high in total fat, trans fat, saturated fat, and sugar. The nutrition standards shall be implemented first in the elementary schools followed by the middle schools and then high schools. Before the nutrition standards are implemented statewide, they shall be piloted at a minimum of 8 elementary, 8 middle schools, and 8 high schools.***

BILL ANALYSIS: The Proposed Committee Substitute requires all elementary schools to reach basic level by the end of the 2007-2008 school year with middle schools and high schools to follow. Before statewide implementation, the State Board of Education shall pilot the nutrition standards in at least 8 elementary schools, 8 middle schools and 8 high schools. The child nutrition programs of participating schools will be held financially harmless during the pilot. The Child Nutrition Services Section of the Department of Public Instruction will be responsible for collecting and interpreting data from the pilots, for modifying the nutrition standards, and for monitoring the progress of the local school administrative units in meeting the standards. The Child Nutrition Services Section shall make an annual report.

CURRENT LAW: G.S. 115C-264 provides that the public schools shall participate in the federal National School Lunch Program when they operate school food programs. Schools may, with the approval of the local board of education, sell soft drinks to students as long as the soft drinks are not sold "(i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program."

State Board of Education policy 16 NCAC 6H.004 (Policy and standards for the National School Lunch Program) regarding a la carte food is below:

.0004 CHILD NUTRITION PROCEDURES

(a) (a) National School Lunch Program policies and standards are as follows:

(1) A la carte sales are limited to foods contributing to the nutritional well-being of the child and aiding in the establishment of good food habits. School food authorities and sponsoring organizations may provide these foods under the following conditions:

(A) Sponsors must operate all food and beverage services during or before the established lunch period through the school food service department.
(B) The school food service department retains all receipts from the sale of these items.

(C) Sponsors must use all food service income for the purpose of the school's non-profit child nutrition programs.

(D) A la carte items may not include food of minimum nutritional value, as follows:

(i) soda water (soda pop),

(ii) water ices,

(iii) chewing gum,

(iv) processed foods made predominately from sweeteners with a variety of minor ingredients. These foods include hard candy, jellies and gums, marshmallow candies, fondant, licorice, spun candy, and candy-coated popcorn; and

(v) confections and carbonated drinks

(E) Adults may purchase individual food items without purchasing a complete lunch.

S0269e1-SMRJ-CSRJ

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 269 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S269-CSR-20 [v.3]

Rep.)
) Stevens
Sen.)

moves to amend the bill on page 1, line 14

( ) WHICH CHANGES THE TITLE

by inserting between the words "Education" and "shall" the phrase "in direct consultation with a cross section of local Directors of Child Nutrition Services"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 269 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) ~~Rucho~~ Lucas
Sen.)

moves to amend the bill on page 2, line 16

( ) WHICH CHANGES THE TITLE

by inserting after "Education" the phrase "and to the Joint Legislative Education Oversight Committee."

SIGNED Jeanne Lucas

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 961*
PROPOSED COMMITTEE SUBSTITUTE S961-PCS65325-RH-30

Short Title: Child Nutrition Standards. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATEWIDE STANDARD FOR VENDING PRODUCTS SOLD DURING THE SCHOOL DAY, AS RECOMMENDED BY THE STUDY COMMITTEE FOR CHILDHOOD OVERWEIGHT/OBESITY OF THE HEALTH AND WELLNESS TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-264 reads as rewritten:

"**§ 115C-264. (Effective August 1, 2005) Operation.**

(a) In the operation of their public school ~~food~~ nutrition programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School ~~Food~~ Support, Child Nutrition Services of the Department of Public Instruction and in accordance with federal guidelines as established by the ~~Child Nutrition Division~~ Food and Nutrition Service of the United States Department of Agriculture.

(b) For nutritional purposes, the public schools shall not (i) use cooking oils in their school food programs that contain trans-fatty acids or (ii) sell processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

~~Each school may, with the approval of the local board of education, sell soft drinks to students so long as soft drinks are not sold (i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program.~~

(c) All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation"~~shall be defined as~~ means the actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of

nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" ~~shall be defined as food service~~ means child nutrition supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving ~~food: Provided, that food service~~ food. Child nutrition personnel shall be paid from the funds of food services only for services rendered in behalf of ~~lunchroom services.~~ the child nutrition program. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. Public schools are not required to comply with G.S. 115C-522(a) in the purchase of supplies and food for such school food services."

SECTION 2. Part 2 of Article 17 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-264.2. Vending machine sales.**

(a) Each school may, with the approval of the local board of education, sell to students beverages in vending machines during the school day so long as:

(1) Soft drinks are not sold (i) during the breakfast and lunch periods, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program;

(2) Sugared carbonated soft drinks, including mid-calorie carbonated soft drinks, are not offered for sale in middle schools;

(3) Not more than fifty percent (50%) of the offerings for sale to students in high schools are sugared carbonated soft drinks;

(4) Diet carbonated soft drinks are not considered in the same category as sugared carbonated soft drinks; and

(5) Bottled water products are available in every school that has beverage vending.

(b) Nothing in subsection (a) of this section prohibits a school from adopting stricter policies with respect to beverage vending. The provision of G.S. 143-64 requiring separate bids for contracts for the sale of juice and bottled water shall not apply to this subsection.

(c) Snack vending in all schools shall, by school year 2006-2007, meet the Proficient Level of the NC Eat Smart Nutrition Standards, such that in elementary schools, no snack vending is available to students, and in middle and high schools, seventy-five percent (75%) of snack vending products have not more than 200 calories per portion or snack vending package.

SECTION 3. This act becomes effective August 1, 2005, and applies to contracts for vending services executed or renewed on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 961*

Short Title:	Child Nutrition Standards.	(Public)
Sponsors:	Senator Purcell.	
Referred to:	Education/Higher Education.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT PERTAINING TO SNACK AND BEVERAGE VENDING IN PUBLIC SCHOOLS, AS RECOMMENDED BY THE STUDY COMMITTEE FOR CHILDHOOD OVERWEIGHT/OBESITY OF THE HEALTH AND WELLNESS TRUST FUND COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. This act is effective when it becomes law and applies to contracts for vending services executed or renewed on and after that date.

SENATE BILL 961: Child Nutrition Standards

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	May 25, 2005
Introduced by:	Sen. Purcell	**Summary by:**	Robin Johnson
Version:	PCS to First Edition S961-CSRH-30[v.1]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute, which completely rewrites the original bill, is a recommendation of the Study Committee for the Prevention and Treatment of Childhood Overweight/Obesity in North Carolina established by the North Carolina Health and Wellness Trust Fund. The PCS would establish statewide standards for the sale of soft drinks and snacks in school vending machines.***

CURRENT LAW: G.S. 115C-264, which governs the public schools nutrition program, allows schools, subject to the approval of their local board of education, to sell soft drinks to students with the following limitations: (i) they cannot be sold during the lunch period; (ii) they cannot be sold at elementary schools; and (iii) they must be in compliance with the requirements of the federal National School Lunch Program.

The schools' purchases of soft drinks and snack foods are subject to the requirements of Article 8 of Chapter 143 of the General Statutes, which govern public contracts. In addition, G.S. 143-64 (see attached) specifically requires local school administrative units, community colleges, and UNC's constituent institutions to competitively bid contracts involving the sale of juice or bottled water. A provision added last year requires these sales to be bid separately from one another and separately from any other contract, including contracts for other beverages or vending machine services.

An elementary school is one that has all or part of grades one through eight and has a kindergarten or other early childhood program. A middle school is one that has all or part of grades six through nine. A high school is one that includes all or part of grades nine through twelve and that offers the minimum high school course of study.

BILL ANALYSIS: The PCS would amend G.S. 115C-264 to make technical changes and to delete the provision that authorizes schools to sell soft drinks. Section 2 of the PCS would create a new G.S. 115C-264.2 that would govern vending machine sales. This new law would include the provision for the sale of soft drinks that currently is in G.S. 115C-264 and would add new requirements. The law would set the following requirements for beverages that are sold in vending machines in public schools:

- Soft drinks cannot be sold during the breakfast and lunch periods
- Soft drinks cannot be sold contrary to the requirements of the National School Lunch Program.
- Soft drinks cannot be sold at elementary schools.
- Sugared carbonated soft drinks may not be sold in a middle school.
- Sugared carbonated soft drinks in high school are limited to a maximum of 50% of the offerings.
- Diet carbonated soft drinks are not in the same category as sugared carbonated soft drinks.
- Bottled water products must be available in all schools that have beverage vending.

The PCS would specify that these requirements apply to beverage vending during the school day. The PCS would permit schools to adopt stricter policies for beverage vending.

Last year's provision in G.S. 143-64 (see attached) requiring separate bids for contracts for the sale of juice and bottled water would not apply to beverages sold in vending machines.

The PCS also would provide that by the 2006-2007 school year, there would be no snack vending available to students in elementary schools and 75% of the snack vending products available in middle and high schools will have no more than 200 calories per portion or package.

EFFECTIVE DATE: Senate Bill 961 would become effective August 1, 2005, and would apply to contracts for vending services executed or renewed on or after that date.

BACKGROUND: The General Assembly created the North Carolina Health and Wellness Trust Fund (NCHWTF) as one of three entities to invest North Carolina's portion of the Tobacco Master Settlement Agreement. By statute, it is composed of persons in public health, operation of healthcare delivery systems, healthcare practice, health research, tobacco-related healthcare issues, health promotion and disease prevention, health policy trends, healthcare for underserved populations, and child healthcare.

The NCHWTF established a study committee to address the State's overweight/obesity epidemic among children and youth. The PCS is a recommendation from this committee.

S0961e1-SMRH-CSRH-30v1

§ 115C-522. Provision of equipment for buildings.

(a) It shall be the duty of local boards of education to purchase or exchange all supplies, equipment, and materials, and these purchases shall be made in accordance with Article 8 of Chapter 143 of the General Statutes. These purchases may be made from contracts made by the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal year. The State Board of Education shall adopt rules regarding equipment standards for supplies, equipment, and materials related to student transportation. The State Board may adopt guidelines for any commodity that needs safety features. If a commodity that needs safety features is available on statewide term contract, any guidelines adopted by the State Board must at a minimum meet the safety standards of the statewide term contract. Compliance with Article 8 of Chapter 143 of the General Statutes is not mandatory for the purchase of published books, manuscripts, maps, pamphlets, and periodicals.

(1) Where competition is available, local school administrative units may utilize the:

a. E-Quote service of the NC E-Procurement system as one means of solicitation in seeking informal bids for purchases subject to the bidding requirements of G.S. 143-131; and

b. Division of Purchase and Contract's electronic Interactive Purchasing System as one means of advertising formal bids on purchases subject to the bidding requirements of G.S. 143-129 and applicable rules regarding advertising. This sub-subdivision does not prohibit a local school administrative unit from using other methods of advertising.

(2) In order to provide an efficient transition of purchasing procedures, the Secretary of the Department of Administration and the local school administrative units shall establish a local school administrative unit purchasing user group. The user group shall be comprised of a proportionate number of representatives from the Department of Administration and local school administrative unit purchasing and finance officers. The user group shall examine any issues that may arise between the Department of Administration and local school administrative units, including the new relationship between the Department and the local school administrative units, the appropriate exchange of information, the continued efficient use of E-Procurement, appropriate bid procedures, and any other technical assistance that may be necessary for the purchase of supplies and materials.

(b) It shall be the duty of the local boards of education to provide suitable school furniture and apparatus, as provided in G.S. 115C-521(b).

(c) It shall be the duty of local boards of education and tax-levying authorities to provide suitable supplies for the school buildings under their jurisdictions. These shall include, in addition to the necessary instructional supplies, proper window shades, blackboards, reference books, library equipment, maps, and equipment for teaching the sciences.

Likewise, it shall be the duty of said boards of education and boards of county commissioners to provide every school with a good supply of water, approved by the Department of Environment and Natural Resources, and where such school cannot be connected to water-carried sewerage facilities, there shall be provided sanitary privies for the boys and for the girls according to specifications of the Commission for Health Services. Such water supply and sanitary privies shall be considered an essential and necessary part of the equipment of each public school and may be paid for in the same manner as desks and other essential equipment of the school are paid for.

§ 143-64. Beverages contracts.

Notwithstanding any other provision of law, local school administrative units, community colleges, and constituent institutions of The University of North Carolina shall competitively bid contracts that involve the sale of juice or bottled water. Contracts for the sale of juice and contracts for the sale of bottled water shall each be bid separately from each other and separately from any other contract, including contracts for other beverages or vending machine services. The local school administrative units, community colleges, and constituent institutions may set quality standards for these beverages, and these standards may be used to accept or reject a bid.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Tuesday, May 31, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1057** Education Improvement Act of 2005.

Draft Number:	PCS85252
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1057
PROPOSED COMMITTEE SUBSTITUTE S1057-PCS85252-RH-27

Short Title: Education Improvement Act of 2005. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EDUCATION AND ECONOMIC COMPETITIVENESS ACT OF 2005.

The General Assembly of North Carolina enacts:

PART I. TITLE OF ACT

SECTION 1.1. This act shall be known as the "Education and Economic Competitiveness Act of 2005".

PART II. INVESTING MORE RESOURCES AND DEMANDING MORE ACCOUNTABILITY

REPORTS ON THE EXPENDITURE OF SUPPLEMENTAL FUNDS FOR LOW-WEALTH COUNTIES

SECTION 2.1. Local boards of education shall report to the State Board of Education by August 31 of each year on the expenditure of supplemental funds for low-wealth counties and how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools, such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

EVALUATE THE EFFECTIVENESS OF DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING ON THE IMPROVEMENT OF STUDENT ACHIEVEMENT

SECTION 2.2.(a) The State Board of Education may require local school administrative units receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement.

SECTION 2.2.(b) To remain eligible for funding under the Disadvantaged Student Supplemental Fund, local school administrative units must submit a report to the State Board of Education by August 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

PROVIDE FOR NEW ACCOUNTABILITY FOR THE USE OF FUNDS IN THE AT-RISK AND IMPROVING STUDENT ACCOUNTABILITY ALLOTMENTS

SECTION 2.3.(a) Funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment shall be used consistent with the policies and procedures adopted by the State Board of Education only: (i) to provide instructional positions or instructional support positions and/or professional development; (ii) to provide intensive in-school and/or after-school remediation; and (iii) to purchase diagnostic software and progress monitoring tools.

SECTION 2.3.(b) To remain eligible for funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

LOCAL SCHOOL SYSTEM ASSISTANCE PROGRAM

SECTION 2.4. The State Board of Education shall develop: (i) the criteria for LEA Assistance Teams; (ii) the criteria for selecting LEAs and schools to receive assistance; (iii) measurable goals and objectives for the assistance program; and (iv) an explanation of the type of assistance to be provided with these combined resources. The Department shall develop a revised organizational structure and budget for providing assistance services to LEAs to ensure the Department can meet the needs of the LEAs. The State Board of Education must approve this structure and budget.

For fiscal year 2005-2006 only, the State Board may, with the prior approval of the fiscal year Office of State Budget and Management, transfer General Fund appropriations between personal service and nonpersonal service line items within this fund to structure itself most efficiently for the delivery of services. All funds transferred under this provision are only for this program and for the services described herein. Funds shall not be used to raise the salary of existing employees.

PART III. RECRUITING AND RETAINING QUALITY TEACHERS AND PRINCIPALS ACROSS THE STATE

TWO-YEAR TEACHING FELLOWS PROGRAM FOR SCIENCE AND MATHEMATICS

SECTION 3.1.(a) Of the funds appropriated to the Department of Public Instruction for the Teaching Fellows Program, funds may be used for the administration of a Two Year Teaching Fellows Program focused on preparing math and science teachers for public middle and high schools.

SECTION 3.1.(b) G.S. 115C-363.23A reads as rewritten:

"**§ 115C-363.23A. Teaching Fellows Program established; administration.**

(a) A Teaching Fellows Program shall be administered by the North Carolina Teaching Fellows Commission. The Teaching Fellows Program shall be used to provide a four-year scholarship loan of six thousand five hundred dollars ($6,500) per year to North Carolina high school seniors interested in preparing to teach in the public schools of the State. Beginning July 1, 2006, the Teaching Fellows Program also may be used to provide 50 two-year scholarship loans of six thousand five hundred dollars ($6,500) per year to North Carolina college juniors who intend to teach mathematics or science in the public middle schools or high schools of the State. The Commission shall adopt very stringent standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarship loans to ensure that only the best high school seniors receive them.

...

(c) The Commission shall form regional review committees to assist it in identifying the best high school seniors or college juniors for the program. The Commission and the review committees shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in teaching to enter the program.

...

(e) The Commission shall forgive ~~the~~ a four-year loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall forgive a two-year loan if, within five years after graduation, the recipient teaches for two years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall also forgive ~~the~~ a two-year or a four-year loan if it finds that it is impossible for the recipient to ~~teach for four years, within seven years after graduation, at a North Carolina public school or at a school operated by the United States government in North Carolina, because of~~ fulfill the teaching requirement due to the death or permanent disability of the recipient.

...."

PRINCIPALS EXECUTIVE PROGRAM FOR NEW PRINCIPALS

SECTION 3.2. Of the funds appropriated to the Board of Governors of The University of North Carolina, the sum of one hundred twenty-five thousand dollars

($125,000) for the 2005-2006 fiscal year and the sum of one hundred twenty-five thousand dollars ($125,000) for the 2006-2007 fiscal year may be used to support the development and implementation of a new program for all new public school principals. The program shall include a focus on the principal's responsibility for instructional leadership, data driven decision making, and positive teacher working conditions. All newly hired principals in North Carolina shall be required to attend this PEP developed program for new principals during their first year of employment as a principal.

TEACH FOR AMERICA

SECTION 3.3. Of the funds appropriated to the Department of Public Instruction, the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year and the sum of two hundred thousand dollars ($200,000) for the 2006-2007 fiscal year may be used to support the Teach for America Program in North Carolina for the purpose of recruiting teachers into high need schools.

PART IV. TWENTY-FIRST CENTURY HIGH SCHOOLS

SMALL SPECIALTY HIGH SCHOOLS PILOT PROGRAM

SECTION 4.1.(a) Of the funds appropriated to the Department of Public Instruction, the sum of one million four hundred forty-six thousand eight hundred seventy-seven dollars ($1,446,877) for the 2005-2006 fiscal year and the sum of one million four hundred forty-six thousand eight hundred seventy-seven dollars ($1,446,877) for the 2006-2007 fiscal year may be used for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program shall be to improve graduation rates and achieve higher student performance as measured by standard tests and postgraduate gainful employment or admission into an institution of higher education. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

SECTION 4.1.(b) The State Board of Education shall conduct an evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006.

PART V. EFFECTIVE DATE

SECTION 5.1. This act becomes effective July 1, 2005.

Senate Education/Higher Education Committee

Wednesday, May 25, 2005

10:00 AM

643 LOB

AGENDA

Senator A. B. Swindell, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

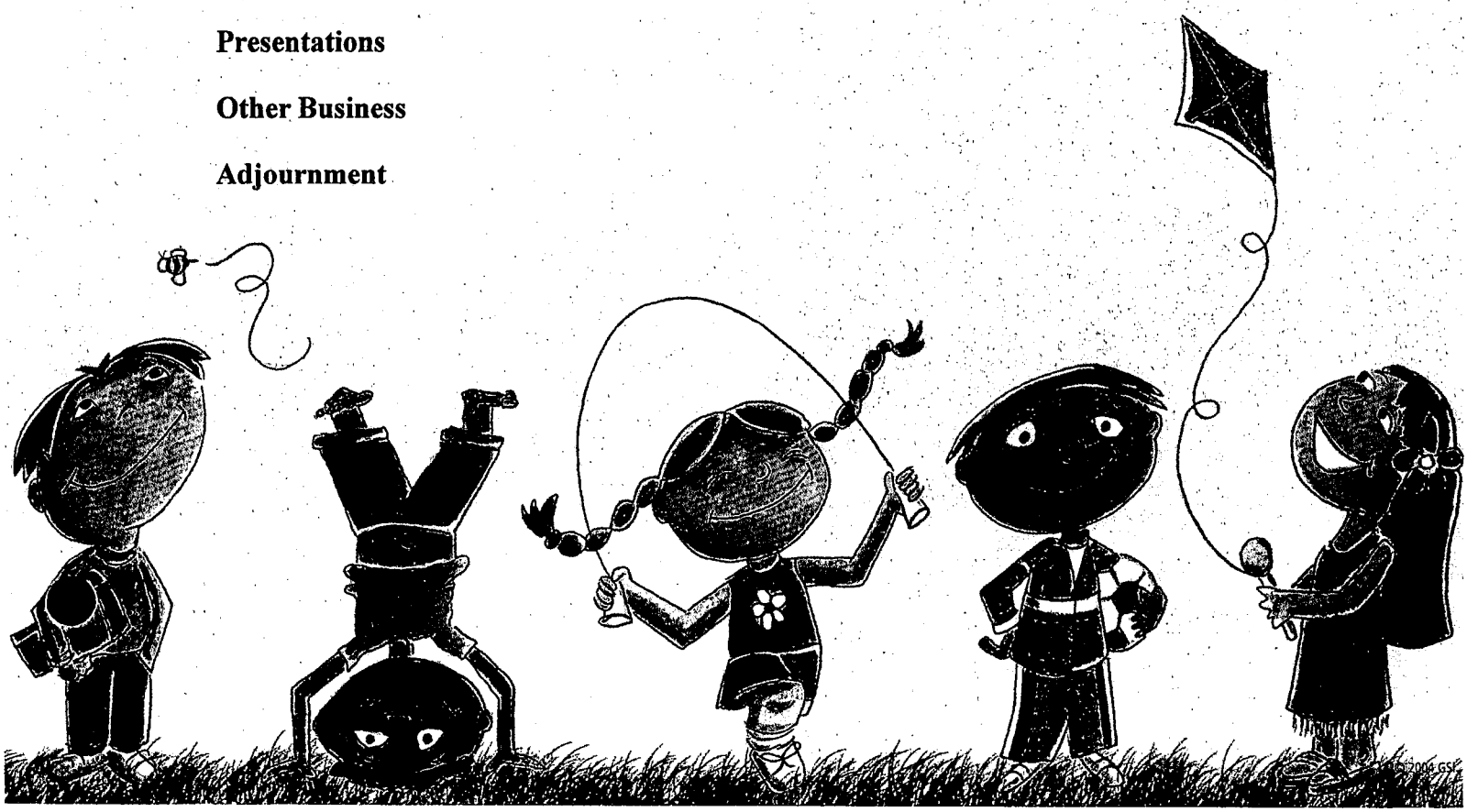
Bills

SB 912	Teach Financial Literacy in Public Schools.	Senator Hagan
SB 1057	Education Improvement Act of 2005.	Senator Dalton
SB 269	Public Laws - 3.	Senator Purcell
SB 961	Child Nutrition Standards.	Senator Purcell
SB 779	In-State Tuition/Paramedic-to-BSN Program.	Senator Snow, Jr.

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education — May 25, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
NEAL A. HARRIS	TARHEEL CHALLENGE ACADEMY SALEMBURG, NC
Iuvina Basile	Tarheel challenge Academy
Eric F. Fletcher	State Treasurer's Office
ANDREA SCHRAG	Rural Ed. Trust.
Paula A. Wolf.	El Pueblo
Lee Hodges	KCLH
Paul Stock	NC Bankers Assn.
LORI ANN HARRIS	LHHA
Jeff Walston	SAIO
Dang. Song	ISD
Hal Miller	NCACCT

VISITOR REGISTRATION SHEET

Education/Higher Education — May 25, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Huntaff	Coca Cola
Bob Landers	Pepsi - Charlotte
Jim Edgerton	DHHC
Judy Daniels	Capitol Group
Mark Benson	Capitol Group

VISITOR REGISTRATION SHEET

Education/Higher Education — May 25, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Greenwood	OSBM
[signature]	OSBM
Trey O'Quinn	OSBM
Suzanne Brekky	Gov. Office
John McHugh	Gov. Office
Jessica Hagy	NCFPC
John Rueth	NCFPC
Margaret Brooks	NCFPC
Gene Causby	NCSFA
Cindy Marie	NCSFSA
Mary Donny	VTF

VISITOR REGISTRATION SHEET

Education/Higher Education — May 25, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	UCCC
	WCPSS
	NCSFSA
Mark Lanier	UNCW
	PEAC
Molly Ryan	NCSBA
Katherine Joyce	NCASA
Leanne Winner	NCSBA

VISITOR REGISTRATION SHEET

Education/Higher Education — May 25, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patricia Rourke	NCACC
Stephanie Erba	SBE
Linda Suggs	SBE
Mike Arnold	Lt. Gov. office
Lynn Hoggard	NCDPI - Child Nutrition Svcs.
Ben Matthews	"
Bladen Crockett	NCDPI - Business + Info. Tech. Ed.
ESTHER DUNNEGAN	NCDPI - Secondary Education
Ellen Richardson	NCDST
Brett Joyal	NCDST
Stephanie Coplin	NCDST

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Tuesday, May 31, 2005
at 3:10 PM
Senate Chamber

MINUTES

Session recessed. The Senate Education/Higher Education Committee met at 3:10 PM on May 31, 2005, in the Senate Chamber. Nineteen members of the committee were present. Senator Lucas presided.

Senator Lucas convened the meeting by recognizing Senator Boseman who presented Senate Bill 1096, Flag, Pledge, and Symbols Taught In Schools. Senator Dorsett moved to adopt the Proposed Committee Substitute, which was adopted for discussion. Questions from committee members were raised and answered. Senator Goodall moved for favorable report as to committee substitute. It was moved by the Chair and adopted by unanimous voice vote.

The meeting adjourned at 3:12 PM.

Senator Jeanne Lucas, Presiding Chair

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Tuesday, May 31, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1096** Flag, Pledge, and Symbols Taught in Schools.

Draft Number:	pcs65327
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1096
PROPOSED COMMITTEE SUBSTITUTE S1096-PCS65327-SM-1

Short Title: Flag, Pledge, and Symbols Taught in Schools. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING LOCAL BOARDS OF EDUCATION TO ADOPT POLICIES (I) PROVIDING FOR THE DISPLAY OF THE FLAG OF THE UNITED STATES AND OF NORTH CAROLINA, (II) ENSURING THAT STUDENTS HAVE AN OPPORTUNITY TO RECITE THE PLEDGE OF ALLEGIANCE ON A DAILY BASIS, (III) PROVIDING FOR INSTRUCTION ON THE MEANING AND HISTORICAL ORIGINS OF THE FLAG AND THE PLEDGE OF ALLEGIANCE AND THE VALUES AND PRINCIPLES THEY REPRESENT, AND (IV) PROVIDING FOR INSTRUCTION ON THE STATE SYMBOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-47(29a) reads as rewritten:

"**§ 115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

...

(29a) To ~~Encourage~~ Require the Display of the United States and North Carolina Flags, and to ~~Encourage~~ Require the Recitation of the Pledge or Oath of Allegiance. – Local boards of education ~~are encouraged to~~ shall adopt policies to (i) ~~provide for~~ require the display of the United States and North Carolina ~~flags~~ flags, when available, in each classroom, (ii) ~~provide the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis,~~ require the daily recitation of the Pledge of Allegiance or Oath of Allegiance, and (iii) provide age appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom."

SECTION 2. G.S. 115C-81(g) is amended by adding a new subdivision to read:

"(g) Civic Literacy. –

(3c) Local boards of education shall adopt policies that require age-appropriate instruction on the meaning and historical origins of the United States flag and the Pledge of Allegiance, and the values and principles they represent. Local boards of education shall also adopt policies that require age-appropriate instruction on the meaning and historical origins of the North Carolina flag and the State motto, and the values and principles they represent and on other State symbols."

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

SENATE BILL 1096:
Flag, Pledge, and Symbols Taught in Schools

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	May 30, 2005
Introduced by:	Sen. Boseman	**Summary by:**	Drupti Chauhan
Version:	PCS to First Edition S1096-PCS65327-SM-1		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 1096 would require local boards of education to adopt policies providing for the display of the United States and North Carolina flags and requiring the daily recitation of the Pledge of Allegiance. Local boards of education are also required to adopt policies that require the instruction about the United States and North Carolina flags, Pledge of Allegiance and various State symbols.***

CURRENT LAW: G.S. 115C-47(29a) encourages local boards of education to adopt policies for (i) the display of the United States and North Carolina flags in each classroom and for (ii) the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis and for (iii) the age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. The policies may not compel any person to stand, salute the flag, or recite the Pledge of Allegiance.

BILL ANALYSIS: The PCS to Senate Bill 1096 would require local boards of education to adopt policies that require the display of the United States and North Carolina flags, when available, in each classroom and that require the daily recitation of the Pledge of Allegiance or the Oath of Allegiance.

The PCS to the bill would also add a new subdivision to G.S. 115C-81(g) directing local boards of education to adopt policies requiring the age-appropriate instruction on the meaning and historical origins of the United States flag and the Pledge of Allegiance and the values representing by both. Local boards of education would also be directed to adopt policies that require age-appropriate instruction on the meaning and historical origins of the North Carolina flag and the State motto, and the values and principles represented by both and other State symbols.

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

BACKGROUND: Approximately 35 states require schools to include recitation of the Pledge of Allegiance during the school day. However, in the 1943 case of West Virginia Board of Education v. Barnette, the US Supreme Court held that states may not compel any person to salute and say the Pledge. In 2004, the US Supreme Court reversed a 9th Circuit Court of Appeals decision that stated that teacher-led recitation of the Pledge when it contained the words "under God" was unconstitutional.

S1096e1-SMRQ-PCS65327-SM-1

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, June 1, 2005
10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:04 AM on June 1, 2005, in Room 643 of the Legislative Office Building. Twenty-seven members of the committee were present. Senator Jeanne Lucas presided.

Senator Lucas recognized Senator Snow, who presented SB 779, In-State Tuition/Paramedic-to-BSN Program. Senator Snow introduced Mr. Kenan Briggs, Vice President of Business Affairs of the Community Colleges and Dr. Norm Oglesby, President of Tri-County Community Colleges, who urged the committee members to support SB 779. Committee members asked questions and made comments. Due to restraints on time and questions asked, the Chair moved to put SB 779 on hold.

The meeting adjourned at 10:26 AM.

Jeanne H. Lucas
Senator Jeanne H. Lucas, Presiding Chair

Tonia Butler Perez
Tonia Butler Perez, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

REVISED

BILL NUMBER: Senate Bill 779 (First Edition)

SHORT TITLE: In-State Tuition/Paramedic-to-BSN Program.

SPONSOR(S): Senator Snow

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
RECEIPTS: WSSU	($216,000)	($432,000)	($432,000)	($432,000)	($432,000)
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Winston-Salem State University

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

BILL SUMMARY:

S.B. 779 allows out-of-state students enrolling in the Paramedic to Bachelor of Science in Nursing programs offered concurrently by Tri-County Community College (TCCC) and Winston-Salem State University (WSSU) to receive the in-state tuition rate at TCCC and WSSU as long as they remain in good standing in the program.

ASSUMPTIONS AND METHODOLOGY:

The Paramedic to BSN program offered by Winston-Salem State University (WSSU) at Tri County Community College (TCCC) in Cherokee County allows paramedics located in the western part of the State to obtain a BSN from WSSU on the TCCC Campus. Courses are taught either via distance education or by resident WSSU faculty. The following assumptions and

methodology were used to determine the cost of granting residency status for tuition purposes to out-of-state students:

1. Paramedics enrolling in the program will have completed all of their lower level courses and will matriculate directly into upper level (i.e. university) courses. Therefore, all of the students enrolled in the program will be paying university tuition.

2. The bill will result in a loss of receipts to the enrolling institution. Therefore, the cost shown in the table above represents the difference between in-state and out-of-state tuition. In-state tuition at Winston-Salem State University is $1,451 per year; out-of-state tuition is $10,091. The difference is $8,640. Therefore, for each out-of-state student enrolled in the program, Winston-Salem State University would realize $8,640 less if the out-of-state student pays in-state tuition.

3. University tuition is estimated to increase by approximately $200 per year for in-state and out-of state students.

4. Students will take two years to complete the program.

5. There are currently 23 students enrolled in the Paramedic to BSN program. All of those students are North Carolina residents. Tri-County Community College estimates that enrollment in FY05-06 will be 25 to 50 full-time equivalent (FTE) students. Of those, approximately 50% will be from out-of-state if the bill becomes law. (TCCC does not believe out-of-state enrollment will be as significant if tuition is not reduced for those out-of-state students.) The estimate shown in the table above assumes a maximum out-of-state enrollment of 25 students in the first year. In the second year, 25 new students will begin the program, while the original 25 students complete it, for a total of 50 FTE in the second year.

SOURCES OF DATA:
Tri-County Community College
Winston-Salem State University
UNC-General Administration

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION: (919) 733-4910

Official
Fiscal Research Division
Publication

PREPARED BY: Kristine Leggett

APPROVED BY: James D. Johnson Director
Fiscal Research Division

Signed Copy Located in the NCGA Principal Clerk's Offices

DATE: May 25, 2005

SENATE BILL 779:
In-State Tuition/Paramedic-to-BSN Program

BILL ANALYSIS

Committee:	Senate Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget	**Date:**	May 24, 2005
Introduced by:	Sen. Snow	**Summary by:**	Sara Kamprath Committee Analyst
Version:	First Edition		

BILL ANALYSIS: Senate Bill 779 would make students who are enrolled in the Paramedic-to-BSN Program at Tri-County Community College by Winston-Salem State University and in the Paramedic-to-BSN Program at Winston-Salem State University eligible for in-State tuition without waiting to qualify as a "resident for tuition purposes" as outlined in G.S. 143.1.

North Carolina students at Tri-County Community College will have a separate early registration period for acceptance into the program to ensure that no out-of-student displaces a North Carolina resident.

Both institutions shall evaluate the effects of the program on the production, retention, and utilization of registered nurses in the State. Winston-Salem State University and Tri-County Community College shall report their recommendations on continuing the program to the UNC Board of Governors and the State Board of Community Colleges before January 1, 2009.

This bill has a serial re-referral to the Senate Appropriations Committee.

EFFECTIVE DATE: The bill is effective when it becomes law and expires on July 31, 2009. Students who enter the program before July 31, 2009 shall continue to receive in-State tuition until they complete the program as long as they remain in good standing in the program.

CURRENT LAW: See attached G.S. 116-143.1 Provisions for determining resident status for tuition purposes.

S0779e1-SMRJ

§ 116-143.1. Provisions for determining resident status for tuition purposes.

(a) As defined under this section:

(1) A "legal resident" or "resident" is a person who qualifies as a domiciliary of North Carolina; a "nonresident" is a person who does not qualify as a domiciliary of North Carolina.

(2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "nonresident for tuition purposes" is a person who does not qualify for the in-State tuition rate.

(3) "Institution of higher education" means any of the constituent institutions of the University of North Carolina and the community colleges under the jurisdiction of the State Board of Community Colleges.

(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the State.

(c) To be eligible for classification as a resident for tuition purposes, a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(d) An individual shall not be classified as a resident for tuition purposes and, thus, not rendered eligible to receive the in-State tuition rate, until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which the individual seeks the in-State tuition rate.

(e) When an individual presents evidence that the individual has living parent(s) or court-appointed guardian of the person, the legal residence of such parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, that the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in this State the five consecutive years prior to enrolling or reregistering at the institution of higher education at which resident status for tuition purposes is sought.

(f) In making domiciliary determinations related to the classification of persons as residents or nonresidents for tuition purposes, the domicile of a married person, irrespective of sex, shall be determined, as in the case of an unmarried person, by reference to all relevant evidence of domiciliary intent. For purposes of this section:

(1) No person shall be precluded solely by reason of marriage to a person domiciled outside North Carolina from establishing or maintaining

legal residence in North Carolina and subsequently qualifying or continuing to qualify as a resident for tuition purposes;

(2) No persons shall be deemed solely by reason of marriage to a person domiciled in North Carolina to have established or maintained a legal residence in North Carolina and subsequently to have qualified or continued to qualify as a resident for tuition purposes;

(3) In determining the domicile of a married person, irrespective of sex, the fact of marriage and the place of domicile of his or her spouse shall be deemed relevant evidence to be considered in ascertaining domiciliary intent.

(g) Any nonresident person, irrespective of sex, who marries a legal resident of this State or marries one who later becomes a legal resident, may, upon becoming a legal resident of this State, accede to the benefit of the spouse's immediately precedent duration as a legal resident for purposes of satisfying the 12-month durational requirement of this section.

(h) No person shall lose his or her resident status for tuition purposes solely by reason of serving in the armed forces outside this State.

(h1) Any member of a North Carolina National Guard unit who is a nonresident shall be eligible to be charged the in-State tuition rate and shall pay the full amount of the in-State tuition rate and applicable mandatory fees. This subsection applies to members in a reserve or active duty status.

(i) A person who, having acquired bona fide legal residence in North Carolina, has been classified as a resident for tuition purposes but who, while enrolled in a State institution of higher education, loses North Carolina legal residence, shall continue to enjoy the in-State tuition rate for a statutory grace period. This grace period shall be measured from the date on which the culminating circumstances arose that caused loss of legal residence and shall continue for 12 months; provided, that a resident's marriage to a person domiciled outside of North Carolina shall not be deemed a culminating circumstance even when said resident's spouse continues to be domiciled outside of North Carolina; and provided, further, that if the 12-month period ends during a semester or academic term in which such a former resident is enrolled at a State institution of higher education, such grace period shall extend, in addition, to the end of that semester or academic term.

(j) Notwithstanding the prima facie evidence of legal residence of an individual derived pursuant to subsection (e), notwithstanding the presumptions of the legal residence of a minor established by common law, and notwithstanding the authority of a judicially determined custody award of a minor, for purposes of this section, the legal residence of a minor whose parents are divorced, separated, or otherwise living apart shall be deemed to be North Carolina for the time period relative to which either parent is entitled to claim and does in fact claim the minor as a dependent for North Carolina individual income tax purposes. The provisions of this subsection shall pertain only to a minor who is claimed as a dependent by a North Carolina legal resident.

Any person who immediately prior to his or her eighteenth birthday would have been deemed under this subsection a North Carolina legal resident but who achieves

majority before enrolling at an institution of higher education shall not lose the benefit of this subsection if that person:

(1) Upon achieving majority, acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina; and

(2) Begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission at such institution.

(k) Notwithstanding other provisions of this section, a minor who satisfies the following conditions immediately prior to commencement of an enrolled term at an institution of higher education, shall be accorded resident tuition status for that term:

(1) The minor has lived for five or more consecutive years continuing to such term in North Carolina in the home of an adult relative other than a parent, domiciled in this State; and

(2) The adult relative has functioned during those years as a de facto guardian of the minor and exercised day-to-day care, supervision, and control of the minor.

A person who immediately prior to his or her eighteenth birthday qualified for or was accorded resident status for tuition purposes pursuant to this subsection shall be deemed upon achieving majority to be a legal resident of North Carolina of at least 12 months' duration; provided, that the legal residence of such an adult person shall be deemed to continue in North Carolina only so long as the person does not abandon legal residence in this State.

(l) Any person who ceases to be enrolled at or graduates from an institution of higher education while classified as a resident for tuition purposes and subsequently abandons North Carolina domicile shall be permitted to reenroll at an institution of higher education as a resident for tuition purposes without necessity of meeting the 12-month durational requirement of this section if the person reestablishes North Carolina domicile within 12 months of abandonment of North Carolina domicile and continuously maintains the reestablished North Carolina domicile at least through the beginning of the academic term(s) for which in-State tuition status is sought. The benefit of this subsection shall be accorded not more than once to any one person. (1971, c. 845, ss. 7-9; 1973, cc. 710, 1364, 1377; 1975, c. 436; 1979, cc. 435, 836; 1981, cc. 471, 905; 1987, c. 564, s. 19; 1989, c. 728, s. 1.3; 1991 (Reg. Sess., 1992), c. 1030, s. 32; 2004-130, s. 2.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 779*

Short Title:	In-State Tuition/Paramedic-to-BSN Program.	(Public)
Sponsors:	Senators Snow and Garrou.	
Referred to:	Education/Higher Education.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE STUDENTS ENROLLED IN THE PARAMEDIC-TO-BSN PROGRAM OFFERED AT TRI-COUNTY COMMUNITY COLLEGE BY WINSTON-SALEM STATE UNIVERSITY ELIGIBLE FOR IN-STATE COMMUNITY COLLEGE TUITION AND TO MAKE STUDENTS ENROLLED IN THE PARAMEDIC-TO-BSN PROGRAM OFFERED AT WINSTON-SALEM STATE UNIVERSITY ELIGIBLE FOR IN-STATE UNIVERSITY TUITION.

The General Assembly of North Carolina enacts:

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

"**§ 115D-39. Student tuition and fees.**

(a) The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and G.S. 116-143.3, shall apply to students attending institutions operating pursuant to this Chapter; provided, however, that when an employer other than the armed services, as that term is defined in G.S. 116-143.3, pays tuition for an employee to attend an institution operating pursuant to this Chapter and when the employee works at a North Carolina business location, the employer shall be charged the in-State tuition rate; provided further, however, a community college may charge in-State tuition to up to one percent (1%) of its out-of-state students, rounded up to the next whole number, to accommodate the families transferred by business, the families transferred by industry, or the civilian families transferred by the military, consistent with the provisions of G.S. 116-143.3, into the State. Notwithstanding these requirements, a refugee who lawfully entered the United States and who is living in this State shall be deemed to qualify as a domiciliary of this State under G.S. 116-143.1(a)(1) and as a State resident

for community college tuition purposes as defined in G.S. 116-143.1(a)(2). Also, a nonresident of the United States who has resided in North Carolina for a 12-month qualifying period and has filed an immigrant petition with the United States Immigration and Naturalization Service shall be considered a State resident for community college tuition purposes. A student who is in the Paramedic-to-BSN Program offered at Tri-County Community College by Winston-Salem State University shall be considered a State resident for community college tuition purposes so long as the student remains in good standing in the Program."

SECTION 2. Article 14 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-143.6. Tuition of certain students in the Paramedic-BSN-Program at Winston-Salem State University.**

Notwithstanding G.S. 116-143.1, any student who enrolls in the Paramedic-to-BSN Program offered at Winston-Salem State University shall be eligible to be charged the in-State tuition rate for courses relevant to that Program so long as the student remains in good standing in the Program."

SECTION 3. There shall be a separate early registration period for in-State students for the Paramedic-to-BSN Program offered at Tri-County Community College by Winston-Salem State University to ensure that no out-of-state student displaces an in-State student in the Program.

SECTION 4. Winston-Salem State University and Tri-County Community College shall thoroughly evaluate the effects of the grant of in-State tuition in this act on the production, retention, and utilization of registered nurses in the State. They shall report their findings and their recommendation on continuing the grant of in-State tuition to the Board of Governors of The University of North Carolina and the State Board of Community Colleges prior to January 1, 2009.

SECTION 5. This act is effective when it becomes law and expires July 31, 2009. Students who enter the Paramedic-to-BSN Program offered at Tri-County Community College by Winston-Salem State University or enter the Program at Winston-Salem State University prior to July 31, 2009, shall continue to receive in-State tuition in the Program until they complete it so long as they remain in good standing in the Program.

§ 116-143.1. Provisions for determining resident status for tuition purposes.

(a) As defined under this section:

(1) A "legal resident" or "resident" is a person who qualifies as a domiciliary of North Carolina; a "nonresident" is a person who does not qualify as a domiciliary of North Carolina.

(2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "nonresident for tuition purposes" is a person who does not qualify for the in-State tuition rate.

(3) "Institution of higher education" means any of the constituent institutions of the University of North Carolina and the community colleges under the jurisdiction of the State Board of Community Colleges.

(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the State.

(c) To be eligible for classification as a resident for tuition purposes, a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(d) An individual shall not be classified as a resident for tuition purposes and, thus, not rendered eligible to receive the in-State tuition rate, until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which the individual seeks the in-State tuition rate.

(e) When an individual presents evidence that the individual has living parent(s) or court-appointed guardian of the person, the legal residence of such parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, that the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in this State the five consecutive years prior to enrolling or reregistering at the institution of higher education at which resident status for tuition purposes is sought.

(f) In making domiciliary determinations related to the classification of persons as residents or nonresidents for tuition purposes, the domicile of a married person, irrespective of sex, shall be determined, as in the case of an unmarried person, by reference to all relevant evidence of domiciliary intent. For purposes of this section:

(1) No person shall be precluded solely by reason of marriage to a person domiciled outside North Carolina from establishing or maintaining

legal residence in North Carolina and subsequently qualifying or continuing to qualify as a resident for tuition purposes;

(2) No persons shall be deemed solely by reason of marriage to a person domiciled in North Carolina to have established or maintained a legal residence in North Carolina and subsequently to have qualified or continued to qualify as a resident for tuition purposes;

(3) In determining the domicile of a married person, irrespective of sex, the fact of marriage and the place of domicile of his or her spouse shall be deemed relevant evidence to be considered in ascertaining domiciliary intent.

(g) Any nonresident person, irrespective of sex, who marries a legal resident of this State or marries one who later becomes a legal resident, may, upon becoming a legal resident of this State, accede to the benefit of the spouse's immediately precedent duration as a legal resident for purposes of satisfying the 12-month durational requirement of this section.

(h) No person shall lose his or her resident status for tuition purposes solely by reason of serving in the armed forces outside this State.

(h1) Any member of a North Carolina National Guard unit who is a nonresident shall be eligible to be charged the in-State tuition rate and shall pay the full amount of the in-State tuition rate and applicable mandatory fees. This subsection applies to members in a reserve or active duty status.

(i) A person who, having acquired bona fide legal residence in North Carolina, has been classified as a resident for tuition purposes but who, while enrolled in a State institution of higher education, loses North Carolina legal residence, shall continue to enjoy the in-State tuition rate for a statutory grace period. This grace period shall be measured from the date on which the culminating circumstances arose that caused loss of legal residence and shall continue for 12 months; provided, that a resident's marriage to a person domiciled outside of North Carolina shall not be deemed a culminating circumstance even when said resident's spouse continues to be domiciled outside of North Carolina; and provided, further, that if the 12-month period ends during a semester or academic term in which such a former resident is enrolled at a State institution of higher education, such grace period shall extend, in addition, to the end of that semester or academic term.

(j) Notwithstanding the prima facie evidence of legal residence of an individual derived pursuant to subsection (e), notwithstanding the presumptions of the legal residence of a minor established by common law, and notwithstanding the authority of a judicially determined custody award of a minor, for purposes of this section, the legal residence of a minor whose parents are divorced, separated, or otherwise living apart shall be deemed to be North Carolina for the time period relative to which either parent is entitled to claim and does in fact claim the minor as a dependent for North Carolina individual income tax purposes. The provisions of this subsection shall pertain only to a minor who is claimed as a dependent by a North Carolina legal resident.

Any person who immediately prior to his or her eighteenth birthday would have been deemed under this subsection a North Carolina legal resident but who achieves

majority before enrolling at an institution of higher education shall not lose the benefit of this subsection if that person:

(1) Upon achieving majority, acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina; and

(2) Begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission at such institution.

(k) Notwithstanding other provisions of this section, a minor who satisfies the following conditions immediately prior to commencement of an enrolled term at an institution of higher education, shall be accorded resident tuition status for that term:

(1) The minor has lived for five or more consecutive years continuing to such term in North Carolina in the home of an adult relative other than a parent, domiciled in this State; and

(2) The adult relative has functioned during those years as a de facto guardian of the minor and exercised day-to-day care, supervision, and control of the minor.

A person who immediately prior to his or her eighteenth birthday qualified for or was accorded resident status for tuition purposes pursuant to this subsection shall be deemed upon achieving majority to be a legal resident of North Carolina of at least 12 months' duration; provided, that the legal residence of such an adult person shall be deemed to continue in North Carolina only so long as the person does not abandon legal residence in this State.

(l) Any person who ceases to be enrolled at or graduates from an institution of higher education while classified as a resident for tuition purposes and subsequently abandons North Carolina domicile shall be permitted to reenroll at an institution of higher education as a resident for tuition purposes without necessity of meeting the 12-month durational requirement of this section if the person reestablishes North Carolina domicile within 12 months of abandonment of North Carolina domicile and continuously maintains the reestablished North Carolina domicile at least through the beginning of the academic term(s) for which in-State tuition status is sought. The benefit of this subsection shall be accorded not more than once to any one person. (1971, c. 845, ss. 7-9; 1973, cc. 710, 1364, 1377; 1975, c. 436; 1979, cc. 435, 836; 1981, cc. 471, 905; 1987, c. 564, s. 19; 1989, c. 728, s. 1.3; 1991 (Reg. Sess., 1992), c. 1030, s. 32; 2004-130, s. 2.)

Senate Education/Higher Education Committee

Wednesday, June 1, 2005

10:00 AM

643 LOB

AGENDA

Senator Jeanne H. Lucas, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

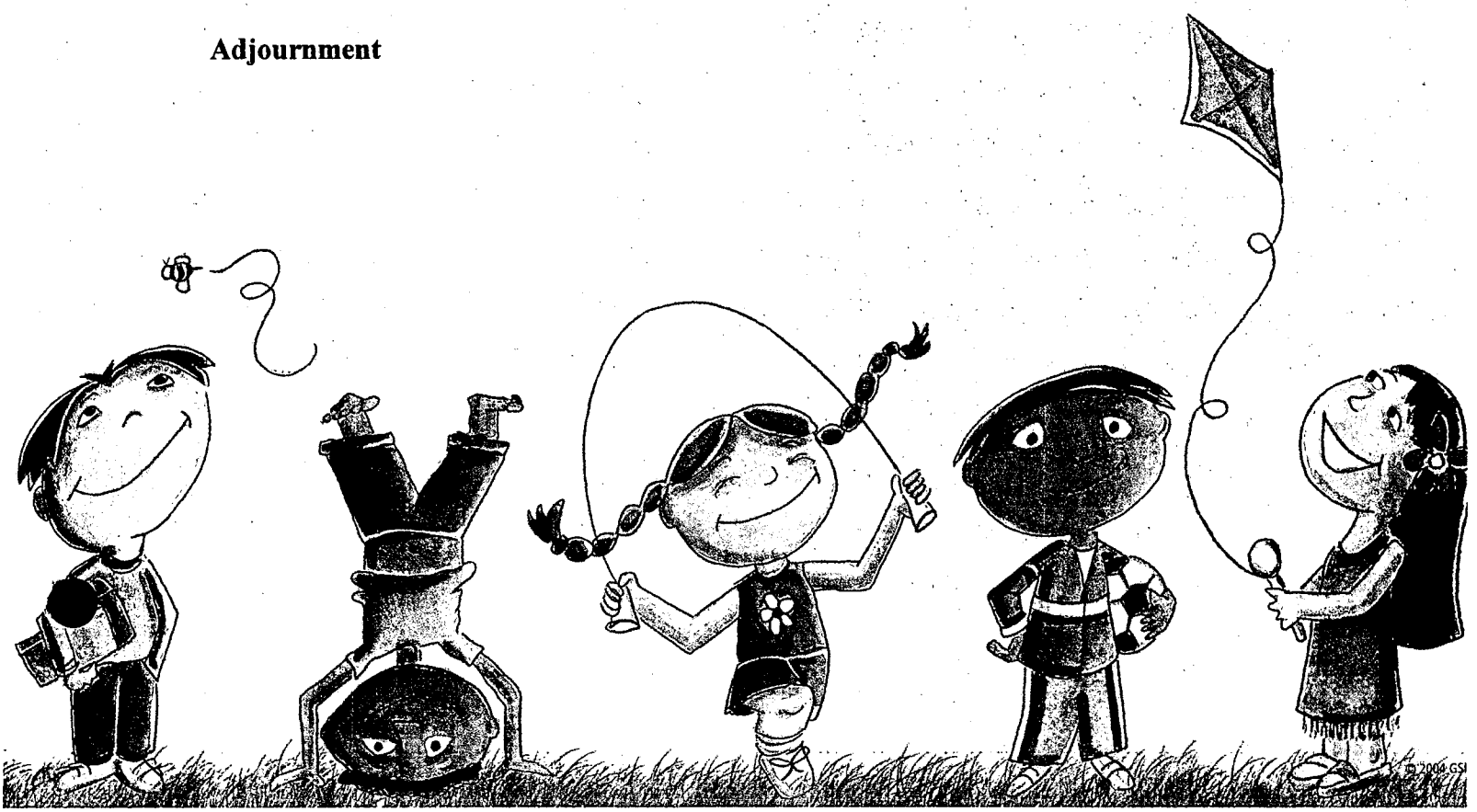
Bills

SB 779	In-State Tuition/Paramedic-to-BSN Program.	Senator Snow, Jr.

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education — June 1, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Meredith	NC State Grange
Norm Oglesby	Pres, Tri-County CC / Murphy
Kevin Bye	NCCCS
Bill Wilson	NCATL
Karen Carpenter	NCPC
Julie Woodson	NCPC
Molly Ryan	NCSBA
Hilary Arthur	NCASA
Tom Boron	NC Environmental Defense
Erin Kinsey	NC Conservation Network
Shaila Tatton-Delwitt	JWP Civitas Institute

VISITOR REGISTRATION SHEET

Education/Higher Education — June 1, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ann McArthur	Governor's Ofc.
Andrea Schray	Rural Trust.
Ted Maynard	CMS
Cara Carey	BPMHZ
Joanne Stevens	Nursing
Deep Throat	
[illegible]	NCICU

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, June 22, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:09 AM on June 22, 2005, in Room 643 of the Legislative Office Building. Fourteen members of the committee were present. Senator John A. Garwood presided.

Senator Garwood introduced the pages and recognized Representative Sutton to explain HB 371, An Act Designating the University of North Carolina at Pembroke as North Carolina's Historically American University. Senator Dannelly moved for favorable report. Senator Horton seconded the motion and it was carried by unanimous voice vote. Senator Weinstein will present HB 371 to the Senate.

Representative Glazier was recognized by Senator Garwood to explain HB 403, An Act to Amend the Law Regarding the Purchase of the Preliminary Scholastic Aptitude Test (PSAT) for the Public Schools. Senator Stevens moved for a favorable report and Senator Dorsett seconded the motion. The motion was carried by unanimous voice vote.

Representative Glazier was recognized by Senator Garwood to explain HB 404, An Act to Repeal a Duplicative School Accreditation Requirement. Senator Dannelly moved for a favorable report. The motion was carried by unanimous voice vote. Senator Dorsett will present HB 403 and HB 404 to the Senate.

Senator Garwood recognized Senator Swindell to present HB 677, An Act Authorizing the Treasurer to Designate a Person to Represent the Treasurer on the State Board of Community Colleges. Questions from the committee members were raised and answered. Senator Dannelly moved for a favorable report. The motion was carried by unanimous voice vote. Senator Swindell will present HB 677 to the Senate.

Senator Garwood recognized Representative Adams to explain HB 1552, An Act to Extend the Regulatory Authority Over Campus Parking to the Board of Trustees of North Carolina A&T State University. Senator Swindell moved for adoption of the Proposed Committee Substitute for discussion, which was adopted by unanimous voice vote. Representative Adams explained HB 1552. Senator Dorsett moved for favorable report to the Proposed Committee Substitute, unfavorable to the original Bill. It was seconded by Senator Stevens and adopted by unanimous voice vote. Senator Dorsett will present HB 1552 on the Senate floor.

The meeting adjourned at 10:25 AM.

Senator John Garwood, Presiding Chair

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Corrected

Wednesday, June 22, 2005

Senator GARWOOD,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **371** UNC-Pembroke/Historically American Indian U.
Sequential Referral: None
Recommended Referral: None

H.B. **403** Amend Law on Purchase of PSAT for Schools.
Sequential Referral: None
Recommended Referral: None

H.B. **404** Repeal Duplicative School Accreditation Req.
Sequential Referral: None
Recommended Referral: None

H.B. **677** Treasurer's Designee on Comm. Coll. Bd.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1552** N.C. A&T University Campus Parking.
Draft Number: pcs 80431
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 371

Short Title:	UNC-Pembroke/Historically American Indian U.	(Public)
Sponsors:	Representatives Sutton, Pierce, Yongue (Primary Sponsors); Alexander, B. Allen, Blackwood, Faison, Harrell, Hill, McAllister, Michaux, and Wilkins.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 24, 2005

A BILL TO BE ENTITLED

AN ACT DESIGNATING THE UNIVERSITY OF NORTH CAROLINA AT PEMBROKE AS NORTH CAROLINA'S HISTORICALLY AMERICAN INDIAN UNIVERSITY.

Whereas, the University of North Carolina at Pembroke was originally established in 1887 as Croatan Normal School in response to a petition from the American Indian people in the Robeson County area; and

Whereas, the General Assembly changed the name in 1911 to the Indian Normal School of Robeson County and again in 1913 to the Cherokee Indian Normal School of Robeson County; and

Whereas, in 1926, the Board of Trustees added a two-year normal program beyond high school, and phased out elementary education; and

Whereas, the first 10 diplomas were awarded in 1928, when the State accredited the school as a "standard normal school", and additional college courses were later added with the first college degrees conferred in 1940; and

Whereas, in 1941, the General Assembly changed the name to Pembroke State College for Indians, and the school's curricula further expanded; and

Whereas, in 1945, enrollment was further expanded to include American Indians from other tribes, and in 1949 the name was shortened to Pembroke State College; and

Whereas, in the wake of the 1950s and 1960s civil rights and school desegregation laws, the General Assembly changed the name in 1969 to Pembroke State University and made the school a regional university; and

Whereas, three years later, in 1972, the General Assembly established the 16-campus University of North Carolina System, with Pembroke State University as one of its constituent institutions; and

Whereas, on July 1, 1996, Pembroke State University officially became the University of North Carolina at Pembroke; and

Whereas, The University of North Carolina System currently consists of 16 university campuses, five of which are designated as Historically Black Colleges and Universities, but the University of North Carolina at Pembroke has never been officially acknowledged as a Historically American Indian University; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The University of North Carolina at Pembroke is officially designated as North Carolina's Historically American Indian University.

SECTION 2. G.S. 116-13.1(b) reads as rewritten:

"(b) Equity in University Improvements. – The Board of Governors of The University of North Carolina shall continue to study and monitor any inequities in funding for capital improvements and facilities needs which may still exist on North Carolina's Public Historically Black Colleges and Universities and North Carolina's Historically American Indian University, the University of North Carolina at Pembroke, beyond the funding of the projects provided for in this act, and shall report annually to the Joint Legislative Commission on Governmental Operations on any remaining inequities found, including recommendations as to how those inequities should be addressed."

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

HOUSE BILL 371:
UNC-Pembroke/Historically American Indian U

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 21, 2005
Introduced by:	Reps. Sutton, Pierce, Yongue	**Summary by:**	Sara Kamprath
Version:	First Edition		Committee Analyst

SUMMARY: ***House Bill 371 designates The University of North Carolina at Pembroke as North Carolina's Historically American Indian University. The bill is effective when it becomes law.***

BACKGROUND: Some of the important dates in the history of The University of North Carolina at Pembroke are:

- March 7, 1887 -- the General Assembly created the Croatan Normal School to train American Indian public school teachers
- Fall 1887 -- the school opened with one teacher and 15 students
- 1911 -- the General Assembly changed the school's name to the Indian Normal School of Robeson County
- 1913 – the General Assembly changed the school's name to the Cherokee Indian Normal School of Robeson County
- 1926 -- elementary education was phased out and two years beyond high school were added to the curriculum.
- 1939 -- the fourth year of college was added to the curriculum and the first baccalaureate degrees were conferred the next year
- 1941 – the General Assembly changed the name to Pembroke State College for Indians
- 1942 – the school was approved to confer non-teaching baccalaureate degrees
- 1949 – the General Assembly shortened the name to Pembroke State College
- until 1953 – this was the only state-supported 4-year college for Indians in the country
- 1969 – the General Assembly changed the name to Pembroke State University and the school became a regional university
- 1972 – Pembroke State University was one of the 16 constituent institutions in the newly created University of North Carolina
- 1978 – The UNC Board of Governors approved the school to offer master's degrees in education
- 1996 -- the General Assembly changed the name to The University of North Carolina at Pembroke

The University of North Carolina at Pembroke is a master's level degree-granting university that offers 55 baccalaureate degrees and 16 master's degrees in business and education. In the fall of 2004, the total enrollment was 5,027 (4,508 undergraduates and 519 graduate) students.

H0371e1-SMRJ

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 403

Short Title:	Amend Law on Purchase of PSAT for Schools.	(Public)
Sponsors:	Representatives Glazier, Parmon (Primary Sponsors); and Harrison.	
Referred to:	Education.	

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE PURCHASE OF THE PRELIMINARY SCHOLASTIC APTITUDE TEST (PSAT) FOR THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-174.18 reads as rewritten:

"**§ 115C-174.18. Opportunity to take Preliminary Scholastic Aptitude Test.**

Every student in the eighth through tenth grades who has completed Algebra I or who is in the last month of Algebra I shall be given an opportunity to take a version of the Preliminary Scholastic Aptitude Test (PSAT) one time at State expense. ~~The State Board of Education shall contract with the College Board for the tests and for comprehensive diagnostic information to accompany PSAT score reports.~~"

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

HOUSE BILL 403:
Amend Law on Purchase of PSAT for Schools

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 20, 2005
Introduced by:	Reps. Glazier, Parmon	**Summary by:**	Drupti Chauhan*
Version:	First Edition		Committee Counsel

SUMMARY: ***The State Board of Education requested House Bill 403. This bill would amend G.S. 115C-174.18 by removing the requirement that the State Board of Education contract with the College Board for the Preliminary Scholastic Aptitude Tests (PSAT) and the diagnostic materials that accompany the PSAT score reports.***

CURRENT LAW: This change would eliminate a practice that the State Board no longer uses to provide LEAs with the Preliminary Scholastic Aptitude Tests (PSAT). Rather than the State Board contracting with the College Board for the tests, the Department of Public Instruction distributes the appropriate State funds to each LEA to purchase the number of PSATs they need. Students in grades eight through ten who have completed Algebra I or students who are in the last month of Algebra I will still have the opportunity to take, free of charge, the PSAT.

BILL ANALYSIS: G.S. 115C-174.18, Opportunity to take Preliminary Scholastic Aptitude Test, was created in 1989. The PSAT (Preliminary SAT) is a test sponsored by The College Board, which measures verbal reasoning, critical reading, math problem solving, and writing skills developed by students over many years, both in and out of school. The test assesses students' ability to reason with facts and concepts as opposed to their ability to recall and recite them.

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

BACKGROUND: Students (usually high school sophomores and juniors) take the PSAT because it is an opportunity for them to practice for the SAT. In addition to providing students an opportunity to practice for the SAT, schools and school systems are provided a comprehensive overview of their students' performance on the PSAT through the Summary of Answers. The optional Summary of Answers report with graphs and tables shows how students compare, item by item, to a comparable group of students and to the national cohort. This diagnostic information assists schools and school systems in identifying students' strengths and weaknesses in verbal, reading, writing, and mathematical reasoning skills. Depending upon the diagnostic results, appropriate course work and/or tutorials may be planned.

Dr. Shirley Iorio, Committee Analyst, substantially contributed to this summary.

H0403e1-SMRQ

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 404

Short Title:	Repeal Duplicative School Accreditation Req.	(Public)
Sponsors:	Representatives Glazier, Parmon (Primary Sponsors); Harrison and Womble.	
Referred to:	Education.	

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO REPEAL A DUPLICATIVE SCHOOL ACCREDITATION REQUIREMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12(9)c. reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

. . .

(9) Miscellaneous Powers and Duties. – All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

. . .

c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education Program.

~~The Board shall develop a State accreditation program that meets or exceeds the standards and requirements of the Basic Education Program. The Board shall require each local school administrative unit to comply with the State accreditation program to the extent that funds have been made available to the local school administrative unit for implementation of the Basic Education Program.~~

~~The Board shall use the State accreditation program to monitor the implementation of the Basic Education Program.~~"

SECTION 2. G.S. 115C-81(a3) reads as rewritten:

"**§ 115C-81. Basic Education Program.**

. . .

(a3) Alcohol and Drug Education Program to Be Recommended and Implemented:

(1) A comprehensive education program that includes alcohol and drug use prevention education must be available to every child in North Carolina schools in kindergarten through high school.

(2) The State Board of Education shall develop and maintain a recommended list of alcohol and drug use prevention education materials that include components for teacher training and ongoing assessment and evaluation to verify success and ensure the use of up-to-date information and strategies.

(3) The Department of Public Instruction will work to strengthen instructional offerings in the content and skill areas of the Basic Education Program in which alcohol and drug use prevention education is addressed. Curricular materials and resources will be developed that meet, extend, and supplement drug and alcohol education as outlined in the North Carolina Standard Course of Study and the Teacher Handbook for the competency-based curriculum.

(4) The Department of Public Instruction shall recommend to the State Board of Education any drug use prevention education support materials that should be removed or added to the recommended list of curricular resources developed and maintained by the State Board of Education.

(5) Local boards of education may select supplemental alcohol and drug use prevention education materials from the list maintained by the State Board of Education, or develop their own supplemental materials to be approved by the State Board of Education.

(6) Local boards of education shall implement alcohol and drug use prevention education as a primary part of their comprehensive health education program.

(7) Local boards of education will provide for ongoing evaluation of drug use prevention education resources, to include participation in on-going evaluations with the Department of Public Instruction.

(8) Local boards of education must implement an approved drug and alcohol education prevention program for kindergarten through sixth grade by the 1990-91 school year, and for seventh grade through twelfth grade by the 1991-92 school year.

~~(9) Local boards of education will meet educational State accreditation standards related to instruction in preventing alcohol and drug use in grades K-12.~~

(10) The Department of Public Instruction, in conjunction with local school districts, will provide for staff development to train educators and support personnel to implement a comprehensive alcohol and drug use prevention education program.

(11) Sequential, age-appropriate instruction will be provided that has the following features:

a. Reaches all students in all grades;

b. Presents a clear and consistent message that the use of alcohol and illicit drugs and the misuse of other drugs is unhealthy and harmful;

c. Reflects current research and theory;

d. Includes all abusable substances;

e. Utilizes information that is current and accurate;

f. Involves students in active "hands-on" learning experiences;

g. Integrates substance abuse education with other health and social issues and other subject and skill areas of the North Carolina Basic Education Program and Standard Course of Study;

h. Promotes understanding and respect for the law and values of society;

i. Encourages health, safe, and responsible attitudes and behaviors;

j. Includes strategies to involve parents, family members, and the community;

k. Includes information on intervention and treatment services;

l. Is continually open to revision, expansion and improvement."

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

HOUSE BILL 404:
Repeal Duplicative School Accreditation Req

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 22, 2005
Introduced by:	Reps. Glazier, Parmon	**Summary by:**	Shirley Iorio, Ph D
Version:	First Edition		Legislative Analyst

SUMMARY: House Bill 404, a recommendation of the State Board of Education, would repeal references to the State Accreditation program. It would become effective when it becomes law.

CURRENT LAW/BACKGROUND: When the General Assembly enacted the Basic Education Program in 1985, one requirement was for the State Board of Education ("Board") to develop a State accreditation program to monitor the implementation of the Basic Education Program ("BEP"). The BEP required the Board to establish a basic (i.e., minimum) curriculum to be provided for all children in kindergarten through 12th grade and to establish minimum competencies, promotion standards, and graduation requirements. These were intended to evolve over time. The BEP, which also established staffing levels, was meant to be fully funded over a period of time and to be used as a funding formula for determining the State operating funds for the public schools. It continues to be used for this purpose, especially when calculating the funds for personnel needed to implement the basic curriculum.

Implementation of the BEP was a recommendation of a legislative council created by the General Assembly in 1983. In its report to the 1985 General Assembly, the council recommended that school systems must show evidence of compliance with the "State Standards of Quality (SOQ) for grades kindergarten through 12." In addition, the council recommended that the Board file an annual financial report for each school system that included a comprehensive financial statement, achievement gains of students, attendance records, dropout rates, promotion and graduate rates, and other performance goals and output measures identified by the Board. It appears, then, that the accreditation requirement was the result of these recommendations as well as of legislators wanting accountability for a significant infusion of new State funds into the public schools.

Over time, and in response to subsequent legislative initiatives, the accreditation program became more of a way to monitor progress in student achievement. Since the implementation of the ABC's and No Child Left Behind, the need for a separate State Accreditation process is no longer necessary. Schools and school systems are publicly rewarded or penalized, depending on their students' progress on State tests (as well as on other measures). They are required to make public reports on the academic progress of their students as well as on the certification of their teachers. In addition, the State now has much more sophisticated data collection abilities and provides more financial supervision than was possible in 1985.

Schools also may opt to become accredited by the Southern Association of Colleges and Schools (SACS), a non-governmental, international, voluntary organization that promotes school improvement through accreditation. This requires schools to provide on a continuous basis that they are meeting research-based standards, engaging in a process of improving teaching and learning, and providing evidence to their stakeholders that they are fulfilling their expressed missions and reaching their goals.

BILL ANALYSIS: House Bill 404 would amend G.S. 115C-12(9)c. to delete the requirement that the Board develop and use a State accreditation program to monitor the implementation of the BEP. The bill also would repeal G.S. 115C-81(a3)(9), which requires boards to meet educational State accreditation standards related to instruction in preventing alcohol and drug use in grades K-12.

The bill would take effect when it becomes law.

H0404e1-SMSF

Robin Johnson substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 677

Short Title:	Treasurer's Designee on Comm. Coll. Bd.	(Public)
Sponsors:	Representatives Tolson, Sauls, and England (Primary Sponsors).	
Referred to:	Education Subcommittee on Community Colleges.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TREASURER TO DESIGNATE A PERSON TO REPRESENT THE TREASURER ON THE STATE BOARD OF COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-2.1(b)(2) reads as rewritten:

"(2) The Treasurer of North Carolina (or a person designated by the Treasurer) shall be a member ex officio."

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

HOUSE BILL 677:
Treasurer's Designee on Comm. Coll. Bd

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 22, 2005
Introduced by:	Reps. Tolson, Sauls, England	**Summary by:**	Robin Johnson
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 677 would allow the Treasurer to designate a person to represent the Treasurer on the State Board of Community Colleges.***

CURRENT LAW: The State Board of Community Colleges consists of 21 members:

- The Lieutenant Governor (or a person designated by the Lieutenant Governor)
- The Treasurer
- 10 members appointed by the Governor (4 from the State at large and 1 members from each of the 6 Trustee Association Regions)
- 8 members elected by the General Assembly
- The President of the North Carolina Comprehensive Community College Student Government Association (does not have a vote)

No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction under the jurisdiction of the State Board are eligible to serve on the State Board and no spouse of any of these persons are eligible to serve on the State Board. Moreover, no person who within the prior five years has been an employee of the Community Colleges System Office is eligible to serve on the Board.

The Lieutenant Governor and the Treasurer are ex officio members of the Board. They are voting members. The Lieutenant Governor's designee represents the Lieutenant Governor as an ex officio member and is allowed to vote.

BILL ANALYSIS: House Bill 677 would authorize the Treasurer to designate a person to represent him as an ex officio member on the State Board of Community Colleges. The designee would be allowed to vote.

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

Drupti Chauhan, co-counsel to this committee, substantially contributed to this summary.

H0677e1-SMRH

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1552
PROPOSED SENATE COMMITTEE SUBSTITUTE H1552-CSRQ-45 [v.1]

Short Title: N.C. A&T University Campus Parking. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE REGULATORY AUTHORITY OVER CAMPUS PARKING TO THE BOARD OF TRUSTEES OF NORTH CAROLINA A&T STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116-44.5 is amended by adding the following new subdivision to read:

"(3c) The Board of Trustees of North Carolina Agricultural and Technical State University may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following streets in the City of Greensboro where parking is not prohibited by an ordinance of the City of Greensboro:

a. Dudley Street between Market Street and Bluford Street.
b. Bluford Street between Regan Street and Luther Street.
c. Laurel Street between Lindsay Street and East Market Street.
d. Benbow Road between Sullivan Street and East Market Street.
e. Sullivan Street between O'Henry Boulevard overpass and Lindsay Street.
f. Beech Street between Bluford Street and Lindsay Street.
g. Obermeyer Street between Bluford Street and Market Street.
h. Daniel Street between Bluford Street and Market Street.
i. Nocho Street between Bluford Street and Market Street.

In addition, the Board of Trustees of North Carolina A&T State University may regulate traffic on the following streets for the portion of those streets that abut the university: Benbow Road, Dudley Street, Lindsay Street, and Market Street, provided that the regulation is not inconsistent with ordinances of the City of Greensboro."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1552

Short Title:	N.C. A&T University Campus Parking.	(Public)
Sponsors:	Representatives Adams; and Coleman.	
Referred to:	Education.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE REGULATORY AUTHORITY OVER CAMPUS PARKING TO THE BOARD OF TRUSTEES OF NORTH CAROLINA A&T STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116-44.5 is amended by adding the following new subdivision to read:

"(3c) The Board of Trustees of North Carolina Agriculture and Technical State University may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following streets in the City of Greensboro where parking is not prohibited by an ordinance of the City of Greensboro:

a. Dudley Street between Market Street and Bluford Street.
b. Bluford Street between Regan Street and Luther Street.
c. East Market Street between North Booker Street and Dudley Street.
d. Laurel Street between Lindsay Street and East Market Street.
e. Benbow Road between Sullivan Street and East Market Street.
f. Sullivan Street between O'Henry Boulevard overpass and Lindsay Street.
g. Beech Street between Bluford Street and Lindsay Street.
h. Obermeyer Street between Bluford Street and Market Street.
i. Daniel Street between Bluford Street and Market Street.
j. Nocho Street between Bluford Street and Market Street.

In addition, the Board of Trustees of North Carolina A&T State University may regulate traffic on the following streets for the portion of those streets that abut the university: Benbow Road, Dudley Street, Lindsay Street, and Market Street, provided that the regulation is not inconsistent with ordinances of the City of Greensboro."

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

HOUSE BILL 1552:
N.C. A&T University Campus Parking

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 21, 2005
Introduced by:	Rep. Adams	**Summary by:**	Drupti Chauhan* Committee Counsel
Version:	PCS to First Edition H1552-CSRQ-45 [v.1]		

SUMMARY: ***House Bill 1552 gives the board of trustees of North Carolina Agricultural and Technical State University authority to prohibit, regulate, and limit by ordinance the parking of motor vehicles on certain named streets in the City of Greensboro where the City does not prohibit parking. Additionally, the board of trustees may regulate traffic on portions of certain named streets that abut the university.***

The Proposed Committee substitute removed lines 15-16 on page 1.

CURRENT LAW: G.S. 116-44.5 currently has similar provisions for the University of North Carolina at Chapel Hill, Appalachian State University, the University of North Carolina at Charlotte, the University of North Carolina at Wilmington, and the University of North Carolina at Greensboro.

Sara Kamprath ,Committee Analyst, substantially contributed to this summary.

H1552e1-SMRQ-CSRQ-45 v1

Senate Education/Higher Education Committee
Wednesday, June 22, 2005, 10:00 AM
643 LOB

AGENDA

Senator John A. Garwood, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

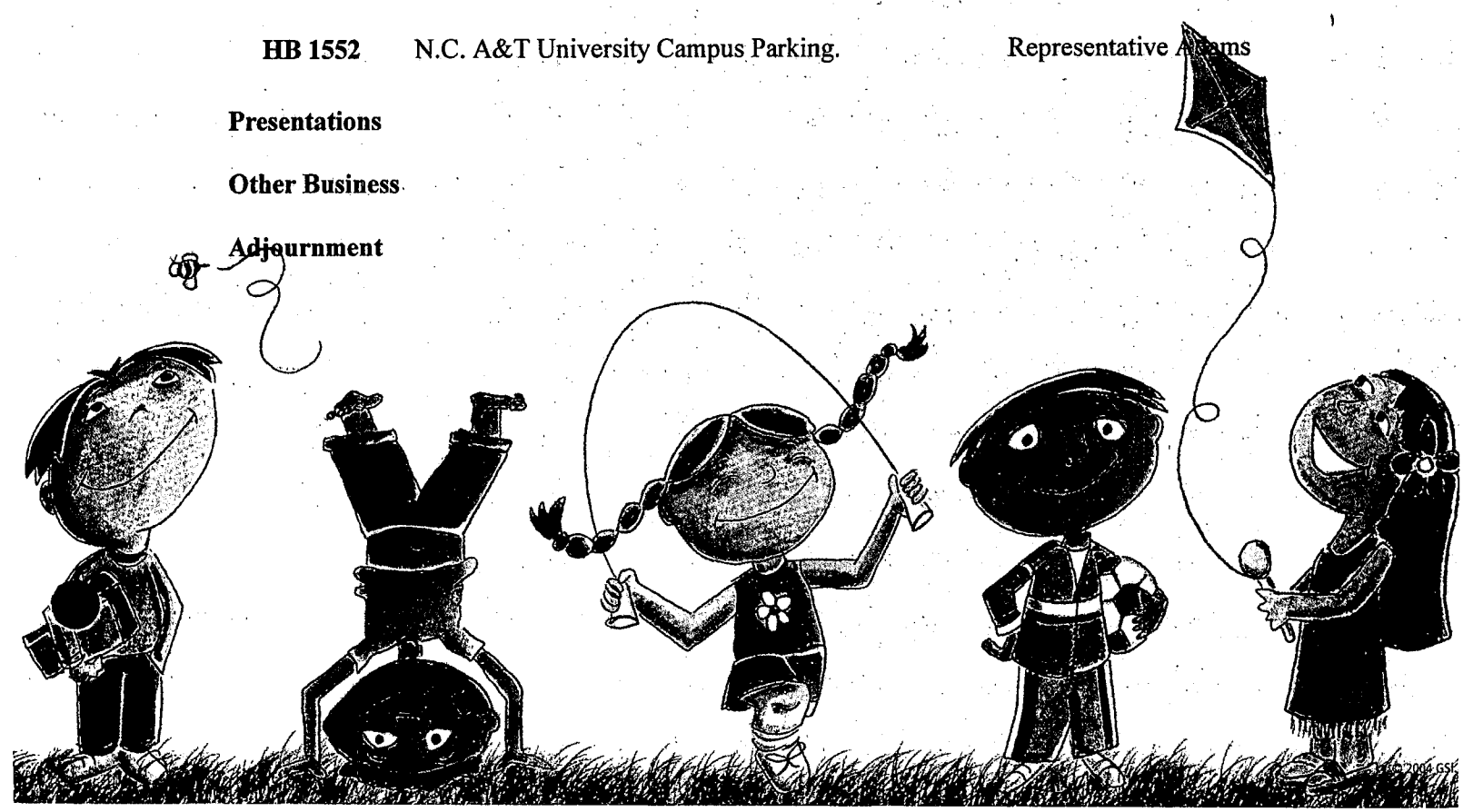
Bills

HB 371	UNC-Pembroke/Historically American Indian U.	Representative Yongue Representative Pierce Representative Sutton
HB 403	Amend Law on Purchase of PSAT for Schools.	Representative Parmon Representative Glazier
HB 404	Repeal Duplicative School Accreditation Req.	Representative Parmon Representative Glazier
HB 677	Treasurer's Designee on Comm. Coll. Bd.	Representative England, M.D. Representative Tolson Representative Sauls
HB 1552	N.C. A&T University Campus Parking.	Representative Adams

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

Education/Higher Education — June 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Sullivan	NCCCS
Richard Succins	NCCCS
[illegible]	SBE/DPI
Leanne Winner	NCSBA
Molly Ryan	NCSBA
Don McCorquodale	SAS
Gene Causby	NCSFSA
[illegible]	NCCCS
[illegible]	NCICU

VISITOR REGISTRATION SHEET

Education/Higher Education — June 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tripp Melton	Sen. Stevens Office
Suzanne Buckley	GOV EASLEY'S OFFICE
Seth Dearmin	UNC Chapel Hill Student Body President
Adrian Johnston	UNC Chapel Hill Vice President
Ryan Pusley	Intern - Rep. Glazier
Gary Robertson	AP
Michael Houser	NCAE
Nancy Keen	NCATC

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, June 29, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:06 AM on June 29, 2005, in Room 643 of the Legislative Office Building. Fourteen members of the committee were present. Senator A. B. Swindell IV presided.

Senator Swindell recognized Representative Tolson, who presented HB 563 Community College May Train Lateral Entry Teachers. Senator Tillman moved to adopt the Proposed Senate Committee Substitute for House Bill 563. The motion carried by unanimous voice vote. Robin Johnson of NCGA staff was recognized to explain the changes made in the Proposed Committee Substitute. Questions from the committee were raised and answered. Mr. Richard Thompson, Vice President of School Programs for UNC and Ms. Deloris Parker Vice President for Academic Services for North Carolina Community Colleges were recognized to answer member questions. Senator Tillman moved for favorable report as to the Proposed Senate Committee Substitute and unfavorable to Committee Substitute. The motion carried by unanimous vote.

The Chair recognized Representative LaRoque to present HB 11 Clarify School Administrators Certification Standards. Senator Dannelly moved for favorable report to accept the Committee Substitute House Bill. Senator Swindell moved to adopt the HB 11 Committee Substitute. The motion carried by unanimous voice vote.

Senator Swindell recognized Senator Dorsett, to explain HB 1032, Placing Students in Seclusion. Senator Dannelly moved to accept the Proposed Senate Committee Substitute for discussion. The motion carried by unanimous voice vote. Senator Swindell recognized Ms. Renee Palmer of Carolina Legal Assistance and Mr. Harry Wilson, Attorney at DPI to answer questions from the committee members. Questions from the committee were raised and answered. Senator Tillman moved for favorable report to the Proposed Senate Committee Substitute. Senator Goodall asked a question which Ms. Palmer answered. The motion carried by unanimous voice vote.

Senator Swindell recognized the pages and thanked them for working in the North Carolina General Assembly.

The meeting adjourned at 10:48.

Senator A. B. Swindell, Presiding

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, June 29, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **11** Clarify Sch. Admin. Certification Standards.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **563** Comm. Coll. May Train Lateral Entry Teachers.
Draft Number: PCS 50470
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

HOUSE BILL 11:
Clarify Sch. Admin. Certification Standards

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 28, 2005
Introduced by:	Rep. LaRoque	**Summary by:**	Sara Kamprath*
Version:	Second Edition		Committee Analyst

SUMMARY: ***This bill would allow an individual to qualify for certification as a school administrator if the individual has education and training that is determined to be equivalent to a graduate degree from an approved public school administration program. The State Board of Education will determine what constitutes equivalent education and training. The individual would also have to meet all the other certification requirements.***

CURRENT LAW: G.S. 115C-290.7 sets out the qualifications for certification as a school administrator. To qualify for this certification an individual must:

- Submit a complete application to the State Board of Education;
- Pay the applicable fee;
- Have a bachelors degree from an accredited college or university;
- Have either (i) a graduate degree from a public school administration program that meets the public school administration program approval standards set by the State Board of Education, or (ii) have a masters degree from an accredited college or university and have completed by December 31, 1999, a public school administration program that meets the public school administration program approval standards set by the State Board of Education; and
- Pass the exam adopted by the State Board.

G.S. 115C-290.2(3) defines school administrators as public school superintendents, deputy superintendents, associate superintendents, assistant superintendents, principals, and assistant principals.

BILL ANALYSIS: Currently, an individual must meet certain criteria to qualify for certification as a school administrator. One of those criteria is a graduate degree from a public school administration program that meets the public school administration program approval standards set by the State Board of Education. The bill would amend G.S. 115C-290.7(b) to allow an individual to qualify for certification as a school administrator by having education and training that the State Board determines are equivalent to having a graduate degree from a public school administration program.

The State Board will have to adopt a policy that establishes the "equivalent" education and training for a school administrator.

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

Shirley Iorio contributed significantly to this summary.

H0011e2-SMRJ

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 11
Committee Substitute Favorable 3/16/05

Short Title: Clarify Sch. Admin. Certification Standards. (Public)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CERTIFICATION REQUIREMENTS FOR SCHOOL ADMINISTRATORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-290.7(b) reads as rewritten:

"(b) To qualify for certification as a school administrator, an individual must:

(1) Submit a complete application to the State ~~Board.~~Board;

(2) Pay the applicable ~~fee.~~fee;

(3) Have a bachelors degree from an accredited college or accredited ~~university.~~university;

(4) Either (i) have a graduate degree from a public school administration program that meets the public school ~~administrator~~ administration program approval standards set by the State Board of Education, ~~or~~ (ii) have a masters degree from an accredited college or accredited university and have completed by December 31, 1999, a public school administration program that meets the public school administration program approval standards set by the State Board of Education, or (iii) have education and training the State Board of Education determines are equivalent; and

(5) Pass the exam adopted by the State Board.

The State Board may designate initial certification as a license. Advanced training may be designated as a certified area of practice."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 563

Committee Substitute Favorable 4/27/05

Committee Substitute #2 Favorable 5/18/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H563-CSRH-50 [v.4]

6/28/2005 4:25:12 PM

Short Title: Comm. Coll. May Train Lateral Entry Teachers. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT PERMITTING THE COMMUNITY COLLEGE SYSTEM TO PROVIDE COURSEWORK TO PERSONS ENTERING THE TEACHING PROFESSION BY LATERAL ENTRY, AND TO REDUCE FROM FIVE YEARS TO THREE YEARS THE LENGTH OF A PROVISIONAL TEACHING CERTIFICATE ISSUED TO A LATERAL ENTRY TEACHER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296(c) reads as rewritten:

"(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. ~~Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation.~~ Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than ~~five~~ three years and shall be required to obtain certification before contracting for a ~~sixth~~ fourth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates."

SECTION 2. G.S. 115C-296(c), as amended by Section 1 of this act, reads as rewritten:

"(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than three years and shall be required to obtain certification before contracting for a fourth year of service with any local administrative unit in this State.

(c1) The State Board of Community Colleges may provide a program of study for lateral entry teachers to complete the coursework necessary to earn a teaching certificate. To this end, the State Board of Education, in consultation with the State Board of Community Colleges, shall establish a competency-based program of study for lateral entry teachers to be implemented within the Community College System no later than May 1, 2006. This program must meet standards set by the State Board of Education.

The State Board of Community Colleges and the State Board of Education shall jointly identify the community college courses and the teacher education program courses that are necessary and appropriate for inclusion in the community college program of study for lateral entry teachers. To the extent possible, any courses that must be completed through an approved teacher education program shall be taught on a community college campus or shall be available through distance learning.

In order to participate in the community college program of study for lateral entry teachers, an individual must:

(1) Hold at least a bachelors degree from a regionally accredited institution of higher education;

(2) Have completed the bachelors degree at least five years before undertaking the program of study under this subsection; and

(3) Hold a lateral entry teaching certificate and be employed as a teacher in a local school administrative unit.

An individual who successfully completes this program of study and meets all other requirements of certification set by the State Board of Education shall be recommended for a North Carolina teaching certificate.

(c2) It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates."

SECTION 3. G.S. 115D-5 is amended by adding a new subsection to read:

"(p) The North Carolina Community College System may offer courses, in accordance with the lateral entry program of study established under G.S. 115C-296(c1), to individuals who choose to enter the teaching profession by lateral entry."

SECTION 4. The State Board of Education and the State Board of Community Colleges shall submit annually to the Joint Legislative Education Oversight Committee a report on the community college program of study for lateral entry teachers established under this act. The initial report is due no later than April 1, 2006. The final report, due no later than April 1, 2011, must include recommendations as to whether this program should continue and, if so, must include the reasons for its continuation and any recommended legislative changes needed to enhance the program.

SECTION 5. This act is effective when it becomes law. Section 1 of this act applies to provisional teaching certificates issued on or after that date. Sections 2, 3, and 4 of this act expire July 1, 2011.

HOUSE BILL 563:
Comm. Coll. May Train Lateral Entry Teachers

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 28, 2005
Introduced by:	Rep. Tolson	**Summary by:**	Robin Johnson
Version:	PCS to Third Edition H563-CSRH-50[v.4]		Committee Counsel

SUMMARY: House Bill 563 would authorize the State Board of Community Colleges to provide for the next five years a program of study for lateral entry teachers to complete the coursework necessary to earn a teaching certificate. The bill also would limit provisional teaching certificates to three years.

The PCS clarifies that the limit on provisional teaching certificates is a permanent change, and makes other technical and clarifying changes.

CURRENT LAW: An individual who has not completed an approved teacher education program may enter the teaching profession through lateral entry. There are two statutory provisions authorizing alternative routes (or lateral entry) for teacher certification:

- ***G.S. 115C-296(c) (See below)*** -- Directs the State Board of Education to develop criteria and procedures to encourage lateral entry into teaching, authorizes the issuance of a provisional teaching certificate for up to five years, and requires an individual who receives this provisional certificate to obtain certification in order to be eligible to contract for a sixth year with any school system.
- ***G.S. 115C-296.1 (See below; scheduled to expire September 1, 2006)*** – Allows a local board of education to employ an individual up to one year on a provisional certificate, so long as certain enumerated criteria are met.

The federal No Child Left Behind Act limits provisional certification for lateral entry teachers to three years. (See attached)

BILL ANALYSIS: Section 1 of House Bill 563 would amend G.S. 115C-296(c) to delete an outdated sentence and to reduce from five years to three years the provisional teaching certificate that is issued to ANY lateral entry teacher.

The next two sections of House Bill 563 would authorize the State Board of Community Colleges (SBCC) to offer a program of study that enables lateral entry teachers to take many of their required courses for a teaching certificate at a community college. The bill would require the State Board of Education (SBE) to work with the SBCC to establish this program, would require the SBE to set the standards for the program, and would direct the SBCC to implement the program by May 1, 2006.

House Bill 563 would direct the two Boards to identify jointly the community college courses and the teacher education program courses that are necessary and appropriate to include in this program. To the extent possible, colleges and universities would be required to teach on a community college campus or offer through distance learning any courses included in this program that must be completed through an approved teacher education program.

The bill also would require that the individuals who participate in this program must be employed by an LEA and have at least a bachelor's degree relevant to their teaching area that they earned at least five years before beginning a program of study for lateral entry teachers at a community college. Therefore, there is no incentive for students in traditional teacher education programs to graduate without

completing the teacher education requirements in order to become a participant in this program at a community college.

Upon successfully completing this program and meeting any other certification requirements set by the SBE, an individual would be recommended for a North Carolina teaching certificate.

Section 4 of House Bill 563 would require the two Boards to report annually to the Joint Legislative Education Oversight Committee on this lateral entry program. The final report, due no later than April 1, 2011, must include recommendations as to whether this program should be continued, and if so, the reasons for its continuation and any recommended legislative changes needed to enhance the program.

EFFECTIVE DATE: The bill would be effective when it becomes law. Section 1 would apply to provisional teaching certificates issued on or after that date. Sections 2, 3 and 4 of the bill would expire July 1, 2011.

BACKGROUND: In response to G.S. 115C-296(c) and to the requirements of the federal No Child Left Behind Act, the SBE has adopted policies governing the requirements for individuals who have not completed an approved teacher education program and who wish to enter the teaching profession through lateral entry. [1]

Lateral Entry to Teaching

Applicants for a lateral entry license[2] must:

- be employed by a North Carolina school system;
- hold at least a bachelor's degree from a regionally accredited college or university in the subject area in which they are employed to teach **or** hold at least a bachelor's degree from a regionally accredited college or university, **and** have taken and passed the Praxis II testing requirements for the license area;
- have a minimum cumulative grade point average (GPA) of 2.5 or have passed the Praxis I exams, **and** have attained one of the following:
    - a GPA of at least 3.0 on all work completed in the senior year;
    - a GPA of at least 3.0 in the major; or
    - a GPA of at least 3.0 in a minimum of 15 semester hours of course work completed within the last five years.

After an individual has obtained a teaching position and a lateral entry teaching license (has met the requirements described above), that individual can pursue a "full" teaching license by successfully completing, within 3 years, a program that includes completing courses or a program of study outlined by a Regional Alternative Licensing Center (Center), taking and passing Praxis subject exam(s), participating in staff development, and completing an initial licensure program. (Lateral entry teachers are considered to be beginning teachers and, therefore, are required to participate in an initial licensure program designed to support new teachers.)

To fulfill the course work requirement, a lateral entry teacher may complete an approved education program in the area of licensure at a college or university that has reviewed the person's transcripts and outlined required courses **or** complete a program of study outlined by a Center.

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[1] The SBE also has a policy governing alternative certification under G.S. 115C-296.1. A local board must request the use of this provision.

[2] The General Statutes use the term "certificate" for teachers; SBE policies use the word "license."

If the person chooses to use a Center, it will partner with the school system's personnel administrator to review an individual's application and supporting documentation (transcripts, copy of Lateral Entry license, etc.). After evaluation, the Center will provide an appropriate plan of study along with a list of suitable courses offered by colleges or universities. Some training or courses may also be provided by the local school system. After an individual completes the plan of study, the personnel administrator will submit documentation to the Center, which will be responsible for giving the approval for a "full" license. The Center will send licensing documentation to the Licensure Section of the Department of Public Instruction, which will issue the teaching license.

H0563e3-SMRH-CSRH-50v4: Dr. Shirley Iorio, Legislative Analyst, substantially contributed to this summary.

STATUTES

§ 115C-296. Board sets certification requirements.

(a) The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes.

The State Board of Education may require an applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. The State Board of Education shall permit an applicant to fulfill any such testing requirement before or during the applicant's second year of teaching provided the applicant took the examination at least once during the first year of teaching. The State Board of Education shall make any required standard initial certification exam sufficiently rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has adequate academic and professional preparation to teach.

...

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than five years and shall be required to obtain certification before contracting for a sixth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

...

§ 115C-296.1. (Expires September 1, 2006) Teacher shortages; certification.

(a) Notwithstanding any other law, if a local board determines there is or anticipates there will be a shortage of qualified teachers with North Carolina certificates available to teach specified subjects or grade levels, then the local board may employ as teachers individuals who do not meet the State Board's requirements for initial or continuing State certification. The local board may employ an individual under this subsection for up to one year under a provisional certificate so long as:

(1) Each individual has a postsecondary degree that is at least a bachelors degree.

(2) Each individual has:

a. An out-of-State certificate authorizing the individual to teach the grade or subject to be taught and at least one year of classroom teaching experience the board considers relevant to the grade or subject to be taught;

b. At least one year of full-time classroom teaching experience as a professor, assistant professor, associate professor, instructor, or visiting lecturer at a constituent institution of

The University of North Carolina, a North Carolina community college, or other institution of higher education as defined in G.S. 90-270.2(5) provided the board considers the experience relevant to the grade or subject to be taught; or

c. Three years of other experience provided the board determines that both the individual's experience and postsecondary education are relevant to the grade or subject to be taught.

(3) Each individual is eligible for re-employment by his or her prior employer.

(4) The board has developed a plan to determine the individual's competence as a teacher. The board's plan shall include a review of the performance of students taught by the individual.

(5) During the period of employment under this subsection, the board provides a mentor teacher if the individual does not have a year of classroom teaching experience.

(6) During the period of employment under this subsection, the individual receives an annual evaluation and multiple observations under G.S. 115C-333(a).

(b) A local board may re-employ as a teacher an individual the board initially employed under subdivision (a)(2)a of this section. This individual is then deemed to have satisfied the academic and professional preparation required to receive an initial or continuing State teacher certificate and is not required to take and pass a standard examination to demonstrate that preparation. An individual who receives an initial or continuing State certificate under this subsection is subject to the same requirements for continuing certification and certificate renewal as other teachers who hold initial or continuing State teacher certificates.

(c) A local board may re-employ as a teacher an individual the board initially employed under subdivisions (a)(2)b and (a)(2)c of this section. If the individual, either prior to initial employment or within one year after initial employment, takes and passes any required standard examination adopted by the State Board under G.S. 115C-296(a) that is or was applicable to the grade or subject the individual is employed to teach, then upon re-employment the individual is deemed to have satisfied the academic and professional preparation required to receive an initial State teacher certificate. An individual who receives an initial certificate under this subsection is subject to the same requirements for continuing certification as other teachers who hold initial State teacher certificates. If the individual, within one year of the initial employment, does not take and pass any required standard examination adopted by the State Board under G.S. 115C.296(a) that is applicable to the grade or subject the individual is employed to teach, then upon re-employment the individual shall continue to hold a provisional certificate and is subject to G.S. 115C-296(c).

(d) Local boards shall report semi-annually to the State Board the number of individuals employed as teachers under each sub-subdivision of subdivision (2) of subsection (a) of this section.

NO CHILD LEFT BEHIND: §200.56 Definition of "highly qualified teacher."

To be a "highly qualified teacher," a teacher covered under §200.55 must meet the requirements in paragraph (a) and either paragraph (b) or (c) of this section.

(a) *In general.*

(1) Except as provided in paragraph (a)(3) of this section, a teacher covered under §200.55 must—

(i) Have obtained full State certification as a teacher, which may include certification obtained through alternative routes to certification; or

(ii) (A) Have passed the State teacher licensing examination; and

(B) Hold a license to teach in the State.

(2) A teacher meets the requirement in paragraph (a)(1) of this section if the teacher—

(i) Has fulfilled the State's certification and licensure requirements applicable to the years of experience the teacher possesses; or

(ii) Is participating in an alternative route to certification program under which—

(A) The teacher—

(*1*) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(*2*) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(*3*) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(*4*) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(B) The State ensures, through its certification and licensure process, that the provisions in paragraph (a)(2)(ii) of this section are met.

(3) A teacher teaching in a public charter school in a State must meet the certification and licensure requirements, if any, contained in the State's charter school law.

(4) If a teacher has had certification or licensure requirements waived on an emergency, temporary, or provisional basis, the teacher is not highly qualified.

(b) *Teachers new to the profession.* A teacher covered under §200.55 who is new to the profession also must—

(1) Hold at least a bachelor's degree; and

(2) At the public elementary school level, demonstrate, by passing a rigorous State test (which may consist of passing a State certification or licensing test), subject knowledge and teaching skills in reading/language arts, writing, mathematics, and other areas of the basic elementary school curriculum; or

(3) At the public middle and high school levels, demonstrate a high level of competency by—

(i) Passing a rigorous State test in each academic subject in which the teacher teaches (which may consist of passing a State certification or licensing test in each of these subjects); or

(ii) Successfully completing in each academic subject in which the teacher teaches—

(A) An undergraduate major;

(B) A graduate degree;

(C) Coursework equivalent to an undergraduate major; or

(D) Advanced certification or credentialing.

(c) *Teachers not new to the profession.* A teacher covered under §200.55 who is not new to the profession also must—

(1) Hold at least a bachelor's degree; and

(2) (i) Meet the applicable requirements in paragraph (b)(2) or (3) of this section; or

(ii) Based on a high, objective, uniform State standard of evaluation in accordance with section 9101(23)(C)(ii) of the ESEA, demonstrate competency in each academic subject in which the teacher teaches.

(Approved by the Office of Management and Budget under control number 1810–0581)(Authority: 20 U.S.C. 7801(23))[67 FR 71729, Dec. 2, 2002]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 563

Committee Substitute Favorable 4/27/05
Committee Substitute #2 Favorable 5/18/05

Short Title: Comm. Coll. May Train Lateral Entry Teachers. (Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT PERMITTING THE COMMUNITY COLLEGE SYSTEM TO PROVIDE COURSEWORK TO PERSONS ENTERING THE TEACHING PROFESSION BY LATERAL ENTRY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296(c) reads as rewritten:

"(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. ~~Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation.~~ Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than ~~five~~ three years and shall be required to obtain certification before contracting for a ~~sixth~~ fourth year of service with any local administrative unit in this State.

(c1) The State Board of Community Colleges may provide a program of study for lateral entry teachers to complete the coursework necessary to earn a teaching certificate. To this end, the State Board of Education, in consultation with the State Board of Community Colleges, shall establish a competency-based program of study for lateral entry teachers to be implemented within the Community College System no later than May 1, 2006. This program must meet standards set by the State Board of Education.

The State Board of Community Colleges and the State Board of Education shall jointly identify the community college courses and the teacher education program courses that are necessary and appropriate for inclusion in the community college program of study for lateral entry teachers. To the extent possible, any courses that must

be completed through an approved teacher education program shall be taught on a community college campus or shall be available through distance learning.

In order to participate in the community college program of study for lateral entry teachers, an individual must:

(1) Hold at least a bachelors degree from a regionally accredited institution of higher education;

(2) Have completed the bachelors degree at least five years before undertaking the program of study under this subsection; and

(3) Hold a lateral entry teaching certificate and be employed as a teacher in a local school administrative unit.

An individual who successfully completes this program of study and meets all other requirements of certification set by the State Board of Education shall be recommended for a North Carolina teaching certificate.

(c2) It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates."

SECTION 2. G.S. 115D-5 is amended by adding a new subsection to read:

"(o) The North Carolina Community College System may offer courses, in accordance with the lateral entry program of study established under G.S. 115C-296(c1), to individuals who choose to enter the teaching profession by lateral entry."

SECTION 3. The State Board of Education and the State Board of Community Colleges shall submit a report annually to the Joint Legislative Education Oversight Committee on the lateral entry program.

SECTION 4. This act is effective when it becomes law and expires July 1, 2011.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, June 29, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1032** Placing Students in Seclusion.

Draft Number:	PCS 70527
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1032*

Committee Substitute Favorable 4/18/05

Third Edition Engrossed 4/21/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1032-PCS70527-RQ-47

Short Title: Placing Students in Seclusion. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PERMISSIBLE USE OF SECLUSION AND RESTRAINT IN PUBLIC SCHOOLS AND TO PROVIDE FOR TRAINING IN MANAGEMENT OF STUDENT BEHAVIOR.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Deborah Greenblatt Act".

SECTION 2. Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-391.1. Permissible use of seclusion and restraint.**

(a) It is the policy of the State of North Carolina to:

(1) Promote safety and prevent harm to all students, staff, and visitors in the public schools.

(2) Treat all public school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by law.

(3) Provide school staff with clear guidelines about what constitutes use of reasonable force permissible in North Carolina public schools.

(4) Improve student achievement, attendance, promotion, and graduation rates by employing positive behavioral interventions to address student behavior in a positive and safe manner.

(5) Promote retention of valuable teachers and other school personnel by providing appropriate training in prescribed procedures, which address student behavior in a positive and safe manner.

(b) The following definitions apply in this section:

(1) "Assistive technology device" means any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capacities of a child with a disability.

(2) "Aversive procedure" means a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following:

a. Significant physical harm, such as tissue damage, physical illness, or death.

b. Serious, foreseeable long-term psychological impairment.

c. Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice, for example: electric shock applied to the body; extremely loud auditory stimuli; forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting, or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of meals; eating one's own vomit; or denial of reasonable access to toileting facilities.

(3) "Behavioral intervention" means the implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others.

(4) "IEP" means a student's Individualized Education Plan.

(5) "Isolation" means a behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving.

(6) "Law enforcement officer" means a sworn law enforcement officer with the power to arrest.

(7) "Mechanical restraint" means the use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove.

(8) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a student's body.

(9) "School personnel" means:

a. Employees of a local board of education.

b. Any person working on school grounds or at a school function under a contract or written agreement with the public school system to provide educational or related services to students.

c. Any person working on school grounds or at a school function for another agency providing educational or related services to students.

(10) "Seclusion" means the confinement of a student alone in an enclosed space from which the student is:

a. Physically prevented from leaving by locking hardware or other means.
b. Not capable of leaving due to physical or intellectual incapacity.

(11) "Time-out" means a behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting.

(c) Physical Restraint:

(1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:
a. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
b. As reasonably needed to maintain order or prevent or break up a fight.
c. As reasonably needed for self-defense.
d. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior.
e. As reasonably needed to escort a student safely from one area to another.
f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.
g. As reasonably needed to prevent imminent destruction to school or another person's property.

(2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.

(3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

(d) Mechanical Restraint:

(1) Mechanical restraint of students by school personnel is permissible only in the following circumstances:
a. When properly used as an assistive technology device included in the student's IEP or Section 504 plan or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider.
b. When using seat belts or other safety restraints to secure students during transportation.
c. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.

d. As reasonably needed for self-defense.
e. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

(2) Except as set forth in subdivision (1) of this subsection, mechanical restraint, including the tying, taping, or strapping down of a student, shall not be considered a reasonable use of force, and its use is prohibited.

(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices, such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties.

(e) Seclusion:

(1) Seclusion of students by school personnel may be used in the following circumstances:
a. As reasonably needed to respond to a person in control of a weapon or other dangerous object.
b. As reasonably needed to maintain order or prevent or break up a fight.
c. As reasonably needed for self-defense.
d. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property.
e. When used as specified in the student's IEP, Section 504 plan, or behavior intervention plan; and
1. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times.
2. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in the student's IEP or Section 504 plan.
3. The space in which the student is confined has been approved for such use by the local education agency.
4. The space is appropriately lighted.
5. The space is appropriately ventilated and heated or cooled.
6. The space is free of objects that unreasonably expose the student or others to harm.

(2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.

(3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

(f) Isolation. – Isolation is permitted as a behavior management technique provided that:

(1) The space used for isolation is appropriately lighted, ventilated, and heated or cooled.

(2) The duration of the isolation is reasonable in light of the purpose of the isolation.

(3) The student is reasonably monitored while in isolation.

(4) The isolation space is free of objects that unreasonably expose the student or others to harm.

(g) Time-Out. – Nothing in this section is intended to prohibit or regulate the use of time-out as defined in this section.

(h) Aversive Procedures. – The use of aversive procedures as defined in this section is prohibited in public schools.

(i) Nothing in this section modifies the rights of school personnel to use reasonable force as permitted under G.S. 115C-390 or modifies the rules and procedures governing discipline under G.S. 115C-391(a).

(j) Notice, Reporting, and Documentation.

(1) Notice of procedures. – Each local board of education shall provide copies of this section and all local board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.

(2) Notice of specified incidents:

a. School personnel shall promptly notify the principal or principal's designee of:

1. Any use of aversive procedures.

2. Any prohibited use of mechanical restraint.

3. Any use of physical restraint resulting in observable physical injury to a student.

4. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan.

b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.

(3) As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday.

(4) The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a

reasonable period of time, but in no event later than 30 days after the incident. The written incident report shall include:

a. The date, time of day, location, duration, and description of the incident and interventions.

b. The events or events that led up to the incident.

c. The nature and extent of any injury to the student.

d. The name of a school employee the parent or guardian can contact regarding the incident.

(5) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.

(k) Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense."

SECTION 3. G.S. 115C-296 reads as rewritten:

"**§ 115C-296. Board sets certification requirements.**

...

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality

professional development programs that reflect State priorities for improving student achievement.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

The standards for approval of institutions of teacher education shall require that teacher education programs for all students ~~who do not major in special education~~ include demonstrated competencies in (i) the identification and education of children with ~~learning disabilities.~~disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

...

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall include preservice training in (i) the identification and education of children with disabilities and (ii) positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than five years and shall be required to obtain certification before contracting for a sixth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

...."

SECTION 4. G.S. 115C-105.47(b)(9) reads as rewritten:

"(b) Each plan shall include each of the following components:

...

(9) Professional development clearly matched to the goals and objectives of the plan. This professional development shall include a component to train appropriate school personnel in the management of disruptive or dangerous student behavior. Appropriate school personnel may include, but is not limited to, teachers, teacher assistants, school administrators, bus drivers, school resource officers, school psychologists, and school counselors. The training shall include instruction in positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. The appropriate personnel with priority for the training shall include those staff members who are most likely to be called upon to prevent or address disruptive or dangerous student behavior. Each local board of education shall include in this component of its safe school plan procedures to evaluate the effectiveness of this training in preventing or addressing disruptive or dangerous student behavior. Local boards of education are encouraged to use available sources of discretionary revenue to implement the plan to train personnel in the management of disruptive or dangerous student behavior. Local boards may only be required to implement the behavior management training component of the plan to the extent that funds have been appropriated for this purpose by the General Assembly or by local units of government. By January 1, 2006, local boards of education shall amend their safe school plans to include this training component."

SECTION 5. G.S. 115C-47 is amended by adding a new subdivision to read:

"**§ 115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

...

(45) To Report Certain Incidents of Seclusion and Restraint. – Local boards of education shall maintain a record of incidents reported under G.S. 115C-391.1(j)(4) and shall provide this information annually to the State Board of Education."

SECTION 6. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing

construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

SECTION 7. Except as otherwise provided, this act becomes effective July 1, 2006.

HOUSE BILL 1032: Placing Students in Seclusion

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 28, 2005
Introduced by:	Reps. Glazier, Preston, Farmer-Butterfield, Barnhart	**Summary by:**	Drupti Chauhan* Committee Counsel
Version:	PCS to Third Edition H1032-CSRQ-47 [v.3]		

SUMMARY: ***House Bill 1032 would clarify when the use of seclusion and restraint in public schools would be reasonable and permissible. The bill would require that teacher education programs and lateral entry programs include in their training the identification and education of students with disabilities and strategies for the positive management of student behavior. Local boards of education would be required to include a behavior management component in the professional development section of their safe school plans.***

This bill would amend G.S. 143-138(b), the North Carolina State Building Code, by requiring that no State, county, or local building code or regulation prohibit the use of special locking mechanisms for approved seclusion rooms in the public schools, provided that the special locking mechanisms meet certain criteria.

Except as otherwise provided, the bill would become effective July 1, 2006.

The PCS amends the bill to be called the "Deborah Greenblatt Act", adds definitions for "assistive technology device" and "behavioral intervention" and makes technical changes.

CURRENT LAW: G.S. 115C-390 clearly provides that, except as may be restricted or prohibited by local board rules, principals, teachers, substitutes, voluntary teachers, teacher assistants, and student teachers "may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order." On the other hand, there is case law stating that students have a right to be free of excessive physical punishment or restraint.

G.S. 115C-45(c) authorizes an appeal to the local board of education "from any final administrative decision" concerning an alleged violation of a specified federal or State law. A final administrative decision is defined as a decision of a school employee from which no further appeal to a school administrator is available. The appeal to the board may be further appealed to superior court "on the grounds that the local board's decision is in violation of constitutional provisions, is in excess of the statutory authority or jurisdiction of the board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious."

BILL ANALYSIS: Section 1 of the bill would call the bill the "Deborah Greenblatt Act".

Section 2 would add a new section to Chapter 115C of the General Statutes to do the following:

- State that the policy of the State of North Carolina is to promote safety in the public schools, treat all students with dignity and respect, provide school staff with clear guidelines and training concerning appropriate discipline of students, and improve student achievement, attendance, promotion, and graduation rates.
- Define several terms, including "assistive technology devise", "aversive procedure", "behavioral intervention", "isolation", "mechanical restraint", "physical restraint", and "seclusion".
- Prohibit school personnel from physically restraining a student except as reasonably needed in specified circumstances such as obtaining possession of a weapon or other dangerous object, maintaining order, ensuring the safety of the student or another person, or preventing the destruction of property.
- Permit mechanical restraint of students when properly used as included in the student's IEP or other applicable plans, when using seat belts during transportation, or to ensure the safety of the student or

another person. Except as indicated in this section, mechanical restraint, including tying, taping, or strapping down of a student is not considered a reasonable use of force and is prohibited.

- Permit law enforcement officers to use force, mechanical restraint, and seclusion in the lawful exercise of their law enforcement duties.
- Permit seclusion of students in certain circumstances such as when a student's behavior poses a threat to self or others, when properly used as included in the student's IEP or other applicable plans, or to maintain order. Seclusion, however, is not a reasonable use of force when used only as a disclipinary consequence. Moreover, except as indicated in this section, seclusion is not permitted.
- Permit isolation as a behavior management technique provided certain conditions are met.
- Permit time-out.
- Prohibit aversive procedures, as defined in this section, in public schools.
- Require local boards of education to provide copies of any policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.
- Require school personnel to notify the principal of any aversive procedures or prohibited use of restraints or seclusion. The principal must promptly notify the student's parent or guardian and provide the name of the school employee to contact regarding the incident. The parent must be provided with a written incident report no later than 30 days after the incident.
- Protect against retaliation toward an employee who makes a report alleging a prohibited use of physical or mechanical restraint, aversive procedure, or seclusion unless the employee knew or should have known that the report was false.

The bill specifically states that nothing in the section is to be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense.

Section 3 would require that the approval standards for teacher education programs include demonstrated competencies in the identification and education of children with disabilities, positive management of student behavior, and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. Beginning with the 2006-2007 school year, the State Board of Education's criteria and procedures for employing lateral entry teachers would include requiring these same competencies as well as the safe and appropriate use of seclusion and restraint.

Section 4 would require local boards to include in their safe school plans a component to train appropriate school personnel in the management of disruptive or dangerous student behavior, and a procedure to evaluate the effectiveness of this training. Local boards must amend their safe school plans to include this training component by January 1, 2006.

Section 5 would require local boards to maintain a record of incidents reported under this section and provide this information annually to the State Board of Education.

Section 6 would amend G.S. 143-138(b), the North Carolina State Building Code, by requiring that no State, county, or local building code or regulation prohibit the use of special locking mechanisms for approved seclusion rooms in public schools, provided that the special locking mechanisms meet certain criteria.

Section 7 would make this act effective July 1, 2006, except as otherwise provided.

**Shirley Iorio and Robin Johnson substantially contributed to this summary.*

H1032e3-SMRQ-CSRQ-47 v3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1032*

Committee Substitute Favorable 4/18/05
Third Edition Engrossed 4/21/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1032-CSRQ-47 [v.3]

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Short Title: Placing Students in Seclusion. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PERMISSIBLE USE OF SECLUSION AND RESTRAINT IN PUBLIC SCHOOLS AND TO PROVIDE FOR TRAINING IN MANAGEMENT OF STUDENT BEHAVIOR.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Deborah Greenblatt Act".

SECTION 2. Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-391.1. Permissible use of seclusion and restraint.**

(a) It is the policy of the State of North Carolina to:

(1) Promote safety and prevent harm to all students, staff, and visitors in the public schools.

(2) Treat all public school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by law.

(3) Provide school staff with clear guidelines about what constitutes use of reasonable force permissible in North Carolina public schools.

(4) Improve student achievement, attendance, promotion, and graduation rates by employing positive behavioral interventions to address student behavior in a positive and safe manner.

(5) Promote retention of valuable teachers and other school personnel by providing appropriate training in prescribed procedures, which address student behavior in a positive and safe manner.

(b) The following definitions apply in this section:

(1) "Assistive technology device" means any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capacities of a child with a disability.

(2) "Aversive procedure" means a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following:

a. Significant physical harm, such as tissue damage, physical illness, or death.

b. Serious, foreseeable long-term psychological impairment.

c. Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice, for example: electric shock applied to the body; extremely loud auditory stimuli; forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting, or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of meals; eating one's own vomit; or denial of reasonable access to toileting facilities.

(3) "Behavioral intervention" means the implementation of strategies to address behavior that is dangerous, disruptive or otherwise impedes the learning of a student or others.

(4) "IEP" means a student's Individualized Education Plan.

(5) "Isolation" means a behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving.

(6) "Law enforcement officer" means a sworn law enforcement officer with the power to arrest.

(7) "Mechanical restraint" means the use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove.

(8) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a student's body.

(9) "School personnel" means:

a. Employees of a local board of education.

b. Any person working on school grounds or at a school function under a contract or written agreement with the public school system to provide educational or related services to students.

c. Any person working on school grounds or at a school function for another agency providing educational or related services to students.

(10) "Seclusion" means the confinement of a student alone in an enclosed space from which the student is:

a. Physically prevented from leaving by locking hardware or other means.
b. Not capable of leaving due to physical or intellectual incapacity.

(11) "Time-out" means a behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting.

(c) Physical Restraint:

(1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:
a. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
b. As reasonably needed to maintain order or prevent or break up a fight.
c. As reasonably needed for self-defense.
d. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior.
e. As reasonably needed to escort a student safely from one area to another.
f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.
g. As reasonably needed to prevent imminent destruction to school or another person's property.

(2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.

(3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

(d) Mechanical Restraint:

(1) Mechanical restraint of students by school personnel is permissible only in the following circumstances:
a. When properly used as an assistive technology device included in the student's IEP or Section 504 plan or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider.
b. When using seat belts or other safety restraints to secure students during transportation.
c. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.

d. As reasonably needed for self-defense.
e. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

(2) Except as set forth in subdivision (1) of this subsection, mechanical restraint, including the tying, taping, or strapping down of a student, shall not be considered a reasonable use of force, and its use is prohibited.

(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices, such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties.

(e) Seclusion:

(1) Seclusion of students by school personnel may be used in the following circumstances:

a. As reasonably needed to respond to a person in control of a weapon or other dangerous object.
b. As reasonably needed to maintain order or prevent or break up a fight.
c. As reasonably needed for self-defense.
d. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property.
e. When used as specified in the student's IEP, Section 504 plan, or behavior intervention plan; and

1. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times.
2. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in the student's IEP or Section 504 plan.
3. The space in which the student is confined has been approved for such use by the local education agency.
4. The space is appropriately lighted.
5. The space is appropriately ventilated and heated or cooled.
6. The space is free of objects that unreasonably expose the student or others to harm.

(2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.

(3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

(f) Isolation. – Isolation is permitted as a behavior management technique provided that:

(1) The space used for isolation is appropriately lighted, ventilated, and heated or cooled.

(2) The duration of the isolation is reasonable in light of the purpose of the isolation.

(3) The student is reasonably monitored while in isolation.

(4) The isolation space is free of objects that unreasonably expose the student or others to harm.

(g) Time-Out. – Nothing in this section is intended to prohibit or regulate the use of time-out as defined in this section.

(h) Aversive Procedures. – The use of aversive procedures as defined in this section is prohibited in public schools.

(i) Nothing in this section modifies the rights of school personnel to use reasonable force as permitted under G.S. 115C-390 or modifies the rules and procedures governing discipline under G.S. 115C-391(a).

(j) Notice, Reporting, and Documentation.

(1) Notice of Procedures. – Each local board of education shall provide copies of this section and all local board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.

(2) Notice of specified incidents:

a. School personnel shall promptly notify the principal or principal's designee of:

1. Any use of aversive procedures.

2. Any prohibited use of mechanical restraint.

3. Any use of physical restraint resulting in observable physical injury to a student.

4. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan.

b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.

(3) As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday.

(4) The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time, but in no event later than 30 days after the incident. The written incident report shall include:

a. The date, time of day, location, duration, and description of the incident and interventions.
b. The events or events that led up to the incident.
c. The nature and extent of any injury to the student.
d. The name of a school employee the parent or guardian can contact regarding the incident.

(5) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.

(k) Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense."

SECTION 3. G.S. 115C-296 reads as rewritten:

"§ 115C-296. Board sets certification requirements.

...

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

The standards for approval of institutions of teacher education shall require that teacher education programs for all students ~~who do not major in special education~~ include demonstrated competencies in (i) the identification and education of children with ~~learning disabilities.~~disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

...

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall include preservice training in (i) the identification and education of children with disabilities and (ii) positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than five years and shall be required to obtain certification before contracting for a sixth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

...."

SECTION 4. G.S. 115C-105.47(b)(9) reads as rewritten:

"(b) Each plan shall include each of the following components:

...

(9) Professional development clearly matched to the goals and objectives of the plan. This professional development shall include a component to train appropriate school personnel in the management of disruptive or dangerous student behavior. Appropriate school personnel may include, but is not limited to, teachers, teacher assistants, school administrators, bus drivers, school resource officers, school psychologists, and school counselors. The training shall include instruction in positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. The appropriate personnel with priority for the training shall include those staff members who are most likely to be called upon to prevent or address disruptive or dangerous student behavior. Each local board of education shall include in this component of its safe school plan procedures to evaluate the effectiveness of this training in preventing or addressing disruptive or dangerous student behavior. Local boards of education are encouraged to use available sources of discretionary revenue to implement the plan to train personnel in the management of disruptive or dangerous student behavior. Local boards may only be required to implement the behavior management training component of the plan to the extent that funds have been appropriated for this purpose by the General Assembly or by local units of government. By January 1, 2006, local boards of education shall amend their safe school plans to include this training component."

SECTION 5. G.S. 115C-47 is amended by adding a new subdivision to read:

"**§ 115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

...

(45) To Report Certain Incidents of Seclusion and Restraint. – Local boards of education shall maintain a record of incidents reported under G.S. 115C-391.1(j)(4) and shall provide this information annually to the State Board of Education."

SECTION 6. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators,

and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provide further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

SECTION 7. Except as otherwise provided, this act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1032*

Committee Substitute Favorable 4/18/05
Third Edition Engrossed 4/21/05

Short Title: Placing Students in Seclusion. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PERMISSIBLE USE OF SECLUSION AND RESTRAINT IN PUBLIC SCHOOLS AND TO PROVIDE FOR TRAINING IN MANAGEMENT OF STUDENT BEHAVIOR.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-391.1. Permissible use of seclusion and restraint.**

(a) It is the policy of the State of North Carolina to:

(1) Promote safety and prevent harm to all students, staff, and visitors in the public schools.

(2) Treat all public school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by law.

(3) Provide school staff with clear guidelines about what constitutes use of reasonable force permissible in North Carolina public schools.

(4) Improve student achievement, attendance, promotion, and graduation rates by employing positive behavioral interventions to address student behavior in a positive and safe manner.

(5) Promote retention of valuable teachers and other school personnel by providing appropriate training in prescribed procedures, which address student behavior in a positive and safe manner.

(b) The following definitions apply in this section:

(1) "Aversive procedure" means a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following:

a. Significant physical harm, such as tissue damage, physical illness, or death.
b. Serious, foreseeable long-term psychological impairment.
c. Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice, for example: electric shock applied to the body; extreme loud auditory stimuli; forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting, or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of meals; eating one's own vomit; or denial of reasonable access to toileting facilities.

(2) "IEP" means a student's Individualized Education Plan.

(3) "Isolation" means a behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving.

(4) "Law enforcement officer" means a sworn law enforcement officer with the power to arrest.

(5) "Mechanical restraint" means the use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove.

(6) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a student's body.

(7) "School personnel" means:
a. Employees of a local board of education.
b. Any person working on school grounds or at a school function under a contract or written agreement with the public school system to provide educational or related services to students.
c. Any person working on school grounds or at a school function for another agency providing educational or related services to students.

(8) "Seclusion" means the confinement of a student alone in an enclosed space from which the student is:
a. Physically prevented from leaving by locking hardware or other means.
b. Not capable of leaving due to physical or cognitive incapacity.

(9) "Time-out" means a behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting.

(c) Physical Restraint:

(1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:

a. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
b. As reasonably needed to maintain order or prevent or break up a fight.
c. As reasonably needed for self-defense.
d. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior.
e. As reasonably needed to escort a student safely from one area to another.
f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.
g. As reasonably needed to prevent imminent destruction to school or another person's property.

(2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.

(3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

(d) Mechanical Restraint:

(1) Mechanical restraint of students by school personnel is permissible only in the following circumstances:
a. When properly used as an assistive technology device included in the student's IEP or Section 504 plan or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider.
b. When using seat belts or other safety restraints to secure students during transportation.
c. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
d. As reasonably needed for self-defense.
e. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

(2) Except as set forth in subdivision (1) of this subsection, mechanical restraint, including the tying, taping, or strapping down of a student, shall not be considered a reasonable use of force, and its use is prohibited.

(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices, such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties.

(e) Seclusion:

(1) Seclusion of students by school personnel may be used in the following circumstances:

a. As reasonably needed to respond to a person in control of a weapon or other dangerous object.

b. As reasonably needed to maintain order or prevent or break up a fight.

c. As reasonably needed for self-defense.

d. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property.

e. When used as specified in the student's IEP, Section 504 plan, or behavior intervention plan; and

1. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times.

2. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in the student's IEP or Section 504 plan.

3. The space in which the student is confined has been approved for such use by the local education agency.

4. The space is appropriately lighted.

5. The space is appropriately ventilated and heated or cooled.

6. The space is free of objects that unreasonably expose the student or others to harm.

(2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.

(3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

(f) Isolation. – Isolation is permitted as a behavior management technique provided that:

(1) The space used for isolation is appropriately lighted, ventilated, and heated or cooled.

(2) The duration of the isolation is reasonable in light of the purpose of the isolation.

(3) The student is reasonably monitored while in isolation.

(4) The isolation space is free of objects that unreasonably expose the student or others to harm.

(g) Time-Out. – Nothing in this section is intended to prohibit or regulate the use of time-out as defined in this section.

(h) Aversive Procedures. – The use of aversive procedures as defined in this section is prohibited in public schools.

(i) Nothing in this section modifies the rights of school personnel to use reasonable force as permitted under G.S. 115C-390 or modifies the rules and procedures governing discipline under G.S. 115C-391(a).

(1) Notice, Reporting, and Documentation. – Each board of education shall provide copies of this section and all local board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.

(2) Notice of specified incidents:

a. School personnel shall promptly notify the principal or principal's designee of:

1. Any use of aversive procedures.
2. Any prohibited use of mechanical restraint.
3. Any use of physical restraint resulting in observable physical injury to a student.
4. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan.

b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.

(3) As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday.

(4) The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time, but in no event later than 30 days after the incident. The written incident report shall include:

a. The date, time of day, location, duration, and description of the incident and interventions.
b. The events or events that led up to the incident.
c. The nature and extent of any injury to the student.
d. The name of a school employee the parent or guardian can contact regarding the incident.

(5) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms,

conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.

(j) Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense."

SECTION 2. G.S. 115C-296 reads as rewritten:

"**§ 115C-296. Board sets certification requirements.**

...

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

The standards for approval of institutions of teacher education shall require that teacher education programs for all students ~~who do not major in special education~~ include demonstrated competencies in (i) the identification and education of children

with ~~learning disabilities.~~disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

...

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall include preservice training in (i) the identification and education of children with disabilities and (ii) positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than five years and shall be required to obtain certification before contracting for a sixth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

...."

SECTION 3. G.S. 115C-105.47(b)(9) reads as rewritten:

"(b) Each plan shall include each of the following components:

...

(9) Professional development clearly matched to the goals and objectives of the plan. This professional development shall include a component to train appropriate school personnel in the management of disruptive or dangerous student behavior. Appropriate school personnel may include, but is not limited to, teachers, teacher assistants, school administrators, bus drivers, school resource officers, school psychologists, and school counselors. The training shall include

instruction in positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. The appropriate personnel with priority for the training shall include those staff members who are most likely to be called upon to prevent or address disruptive or dangerous student behavior. Each local board of education shall include in this component of its safe school plan procedures to evaluate the effectiveness of this training in preventing or addressing disruptive or dangerous student behavior. Local boards of education are encouraged to use available sources of discretionary revenue to implement the plan to train personnel in the management of disruptive or dangerous student behavior. Local boards may only be required to implement the behavior management training component of the plan to the extent that funds have been appropriated for this purpose by the General Assembly or by local units of government. By January 1, 2006, local boards of education shall amend their safe school plans to include this training component."

SECTION 4. G.S. 115C-47 is amended by adding a new subdivision to read:

"**§ 115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

...

(45) To Report Certain Incidents of Seclusion and Restraint. – Local boards of education shall maintain a record of incidents reported under G.S. 115C-391.1(i)(4) and shall provide this information annually to the State Board of Education."

SECTION 5. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to

preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases

for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provide further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

SECTION 6. Except as otherwise provided, this act becomes effective July 1, 2006.

VISITOR REGISTRATION SHEET

Education/Higher Education — **June 29, 2005**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kelli Jones	Johnston Community College
Andrea Schrag	RT
Teresa Swanhorst	Justice Center
BRIAN LEWIS	Covenant with NC's Children
Gy Mabry	RT
Mark Davis	NCAE
Steve Shaber	Poyner + Spruill
Ann McArthur	Governo's o/c.
Lyd Camm	Edgecombe County
Wayne Hines	" Commissioner
Viola Harris	" "

VISITOR REGISTRATION SHEET

Education/Higher Education — **June 29, 2005**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Landry	Carolina Legal Assistance
MT Burnette	GACPD
Richard Thompson	UNC
Tripp Melton	Sen. Stevens Office
Aden Wilson	Edmisten & Webb
Colleen Kochanek	NCAWA
[illegible]	Rep. Glazier-Staton
Jeffry Walston	DCA-YA10
Debbie Hotwitz	DCA-YA10
CLIFF MITCHELL	NC Community College Faculty Assoc
Priscilla Prevette	Johnston Community College

VISITOR REGISTRATION SHEET

Education/Higher Education — **June 29, 2005**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Sullins	NCCCS
Hal Miller	NCACCT
Mark Fleming	University System
[illegible]	NCCCS
Gene Causby	NC SFSA
Joel Maynard	Charter/Mark School
Beth Clack	NCASA
[illegible]	WCPSS
[illegible]	NCSBA
[illegible]	NCICU
Renee Parham	Carolina Legal Assistance

VISITOR REGISTRATION SHEET

Education/Higher Education — **June 29, 2005**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Houser	NCAE
[signature]	PSF of NC
Stephanie Erba	SBE
Linda Suggs	SBE
Ellen Russell	The Arc of NC
David Humphrey	Sen. Apodaca's Office
[signature]	NCCCS
Delores Parker	"
Mary Wilson	SBE
Patricia Rowan	NCACC
CL Andersen	DJJDP

VISITOR REGISTRATION SHEET

Education/Higher Education — **June 29, 2005**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
T C Chung	Edge C Com
Calvin Anderson	"

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Wednesday, August 10, 2005 at 10:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 10:14 AM on August 10, 2005, in Room 643 of the Legislative Office Building. Twelve members of the committee were present. Senator Jeanne H. Lucas presided.

Senator Lucas introduced the pages and recognized Representative Michaux to explain HB 1310, An Act To Permit Students To Use Their SAT Scores Or Praxis I Scores To Qualify For Admission To Teacher Education Programs. Senator Swindell offered an amendment to change the effective date of the legislation. The Act is effective when it becomes law. The amendment was rolled into the Proposed Committee Substitute and affirmed by unanimous voice vote. Representative Michaux explained HB 1310. Senator Tillman moved for favorable report. The motion was carried by unanimous voice vote. Senator Lucas will present HB 1310 to the Senate.

Senator Lucas recognized Representative Pierce for allowing Representative Glazier to go before him to explain HB 911, An Act to Eliminate The Requirement That The State Board Of Education Develop A High School Exit Exam. Senator Garwood moved to accept the Proposed Committee Substitute. Representative Glazier explained HB 911. Senator Goodall moved for favorable report. The motion was carried by unanimous voice vote. Senator Swindell will present HB 911 to the Senate.

Representative Pierce was recognized by Senator Lucas to explain HB 1414, An Act to Permit Teacher Assistants Who Are Enrolled In Teacher Education Programs To Continue To Work While They Complete Their Student Teaching. Senator Tillman asked questions about budget implications that were answered by staff. Senator Dannelly moved for a favorable report. The motion was carried by unanimous voice vote. Senator Lucas will present HB 1414 to the Senate.

Senator Lucas recognized Representative Tolson to present HB 833, An Act to Authorize The State Board Of Community Colleges To Set Nonacademic Criteria For Admission Into Certain Programs. Senator Swindell moved to amend to change the effective date to when the bill becomes law. The amendment passed by unanimous voice vote. Representative Tolson explained HB 833. Senator Lucas prepared questions for HB 833 and requested that the questions be answered in writing from the Community Colleges before the Education Committee takes a vote. Kennon Briggs and David Sullivan of North Carolina Community College System further explained HB 833. Senator Dannelly asked that these two questions also be answered in writing, (1) what kind of nonacademic standards are they planning to utilize and (2) whether any other community college system in the country are using these tactics? No action was taken.

Senator Snow was recognized by Senator Lucas to explain SB 779, An Act To Provide Scholarship Loans To Students Enrolled In The Paramedic-To-BSN Program Offered At Tri-County Community College By Winston Salem State University. Senator Snow moved for adoption of the Proposed Committee Substitute for discussion, which was adopted by unanimous voice vote. Senator Snow explained SB 779. Senator Dannelly moved for favorable report to the Proposed Committee Substitute. Senator Goodall asked questions that were answered. The motion was carried by unanimous voice vote. SB 779 is referred to Senate Appropriations.

Senator Lucas recognized Representative Current to explain HB 182, An Act To Authorize Existing Charter Schools To Elect To Participate In The Teacher's And State Employee's Retirement System and The North Carolina Teacher's And State Employees' Major Medical Plan. Senator Forrester moved for favorable report. The motion was carried by unanimous voice vote. HB 182 is referred to Pensions and Retirement because of a serial referral.

Representative Fisher was recognized by Senator Lucas to explain HB 485, An Act To Authorize An Existing Charter School To Elect To Participate In the Teacher's And State Employee's Retirement System. Senator Tillman moved for favorable report. Senator Dannelly asked questions that were answered by staff. The motion was carried by voice vote. The actuarial note is for the 1st edition. HB 485 is referred to Pensions and Retirement because of serial referral.

The meeting adjourned at 10:57 AM.

Senator Jeanne H. Lucas, Presiding Chair

Tonia Butler Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE
EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Wednesday, August 10, 2005
Senator LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

S.B.(CS #1) **779** In-State Tuition/Paramedic-to-BSN Program.
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None

H.B. **182** Charter School Retirement Election.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **485** Charter School Retirement Election.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **1414** Help Teacher Assistants Become Teachers.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1310** Testing Requirements/Teacher Educ. Students.
Draft Number: H1310-pcs70548
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **911** Streamline School Testing Program.
Draft Number: H911-pcs80447
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 6

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1310

Committee Substitute Favorable 5/18/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1310-PCS70548-RQ-62

Short Title: Testing Requirements/Teacher Educ. Students. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT STUDENTS TO USE THEIR SAT SCORES OR PRAXIS I SCORES TO QUALIFY FOR ADMISSION TO TEACHER EDUCATION PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296 is amended by adding a new subsection to read:

"(b2) An undergraduate student seeking a degree in teacher education must attain passing scores on a preprofessional skills test prior to admission to an approved teacher education program in a North Carolina college or university. The State Board of Education shall permit students to fulfill this requirement by achieving the prescribed minimum scores set by the State Board of Education for the Praxis I tests or by achieving the appropriate required score, as determined by the State Board of Education, on the verbal and mathematics portions of the SAT. The minimum combined verbal and mathematics score set by the State Board of Education shall be between 900 and 1,200."

SECTION 2. This act is effective when it becomes law and applies to students seeking admission to a teacher education program beginning with the 2006-2007 academic year.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1310 DATE 8/10/05

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) Sumdell

1 moves to amend the bill on page 1, line 17

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 " SECTION 2. This act becomes effective when it becomes law,

5 and applies to ".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 911

Committee Substitute Favorable 4/20/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H911-CSRH-54 [v.4]

8/9/2005 6:51:15 PM

Short Title: Streamline School Testing Program. (Public)

Sponsors:

Referred to:

March 28, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE STATE BOARD OF EDUCATION DEVELOP A HIGH SCHOOL EXIT EXAM.

THE GENERAL ASSEMBLY OF NORTH CAROLINA ENACTS:

SECTION 1. G.S. 115C-12(9a) and G.S. 115C-12(9b) are repealed.

SECTION 2. G.S. 115C-12 is amended by adding a new subdivision to read:

"(9c) Power to develop content standards and exit standards. – The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes.

High school course content standards shall include the knowledge and skills necessary to pursue further postsecondary education or to attain employment in the 21st century economy. The high school

course content standards also shall be aligned with the minimum undergraduate course requirements for admission to the constituent institutions of The University of North Carolina. The Board may develop exit standards that will be required for high school graduation.

The Board also shall develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis. Alignment shall include revising textbook criteria, support materials, State tests, teacher and school administrator preparation, and ongoing professional development programs to be compatible with content standards. The Board shall develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards. The State Board of Education shall work in collaboration with the Board of Governors of The University of North Carolina to ensure that teacher and school administrator degree programs, ongoing professional development, and other university activity in the State's public schools align with the State Board's priorities."

SECTION 3. G.S. 115C-174.11 reads as rewritten:

"**§ 115C-174.11. Components of the testing program.**

...

(c) Annual Testing Program.

(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12. The State Board may develop and implement a plan for high school end-of-course tests that must be aligned with the content standards developed under G.S. 115C-12(9c). Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade. This assistance shall be calculated to prepare the students to pass the competency test administered under subsection (b) of this section. ~~Notwithstanding subsection (a) of this section, the State Board shall develop and implement a study allowing selected local school administrative units that volunteer to administer a standardized test in May, 12 months prior to the third grade end-of-grade test, in order to establish a baseline that will be used to measure academic growth at the end of third grade. Initially, the State Board shall select 12 volunteer local school administrative units that are diverse in geography and size to participate in the study. If the State Board determines that a standardized test administered in May, 12 months prior to the third grade end-of-grade test, is more reliable than a standardized test administered at the beginning of third grade for the purpose of~~

~~measuring academic growth, the State Board may change the test date for additional local school units. The State Board shall report the results of the study to the Joint Legislative Education Oversight Committee by October 15, 2000.~~

~~Baseline measurements administered in May, 12 months prior to the third grade end-of-grade test, are not public records as provided in Chapter 132 of the General Statutes.~~

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states."

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

HOUSE BILL 911:
Streamline School Testing Program

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	August 9, 2005
Introduced by:	Reps. Glazier, Parmon, Carney, Dickson	**Summary by:**	Robin Johnson*
Version:	PCS to Second Edition H911-CSRH-54[v.5]		Committee Counsel

SUMMARY: ***House Bill 911 would stop implementation of the high school exit exam but allow the State Board of Education to develop high school exit standards. The bill would eliminate the requirement that the State Board must administer end-of-course tests for the specific high school courses that constitute the minimum course requirements for admission to a UNC constituent institution, and would substitute a requirement that the Board develop and implement a plan for end-of-course tests in high school that must be aligned to course content standards that are aligned with UNC's minimum course requirements for admission. The bill also makes a technical change by deleting the language referring to a study that has already been conducted.***

The proposed committee substitute would delete the limitation on additional end-of-course tests and the requirement that any new tests must be required by federal law.

BILL ANALYSIS:

House Bill 911 would repeal two provisions, G.S. 115C-12(9a) Power to Develop Content Standards[i]. and G.S. 115C-12(9b) Power to Develop Exit Exams,[ii] and would create a new G.S. 115C-12(9c) Power to Develop Content Standards and Exit Standards. This new statute, which is basically a merger of the language of the two repealed laws, would eliminate the requirement that the State Board develop a plan to implement high school exit exams, student proficiency benchmarks, and end-of-course tests for each of the minimum courses required for admission to a UNC constituent institution.

The State Board would still be required to develop academic content standards. Content standards for high school courses must include the knowledge and skills necessary to pursue further postsecondary education or to attain employment in the 21st century economy. High school content standards also must be aligned with the minimum undergraduate course requirements for admission to a UNC constituent institution.

Section 3 of the bill would authorize the State Board, as part of its system of annual testing for grades three through 12, to develop and implement a plan for end-of-course tests in high school that are aligned with the high school content standards that the Board develops. Section 3 also would repeal outdated language concerning a study that was completed in 2000.

EFFECTIVE DATE: House Bill 911 would become effective when it becomes law.

BACKGROUND: In 1997, the General Assembly enacted legislation that directed the State Board of Education (Board) to revise high school course content standards and the standard course of study so that they would be aligned with the coursework required for admission to a UNC constituent institution. The Board also was directed to align the end-of-course tests to those revised standards. At the same time, the Board was directed to develop a plan to implement high school exit exams, grade-level student

proficiency benchmarks, student proficiency benchmarks for academic courses that UNC requires as its minimum admission requirements, and student proficiency benchmarks for the knowledge and skills needed to enter the workforce.

Minimum Course Requirements for Undergraduate Admission/End-of-Course Testing

Since 1988, the UNC Board of Governors has established minimum course requirements for undergraduate admissions. In April 2000, the Board of Governors adopted a policy to increase the minimum admission requirements, which had been in effect since 1990, by adding:

Two units of one foreign language, effective in the fall semester of 2004.

One more unit of math beyond algebra II, effective in the fall semester of 2006 for all institutions except the NC School of the Arts.

Beginning with high school students who graduated in 2003-04, the minimum undergraduate course requirements are:

English - four course units emphasizing grammar, composition, and literature

- two course units of 1 foreign language (became effective in Fall 2004)

Mathematics - three course units including algebra I, algebra II, and geometry, or a higher level math course for which algebra II is a prerequisite

Science - three course units including at least one unit in a life or biological science, one unit in physical science, and at least one lab course

Social studies – two course units including one unit in US History

Recommended – one math unit in 12th grade.

Currently, high school end-of-course tests are administered as part of the State Testing Program for the following courses: English 1, Algebra 1, Algebra 11, Geometry, Civics and Economics, US History, Physical Science, Biology, Chemistry, and Physics.

High School Exit Exam

In April 1999, the State Board of Education established the Statewide Student Accountability Standards. These standards provided four Gateway Standards for student performance at grades 3, 5, 8 and for high school graduation. The exit exam was being designed to measure a student's ability to communicate, process information, solve problems, and use numbers and data. The exit exam would be taken in the spring of 11th grade and a student would need to pass the test as part of the graduation requirements. The exit exam would have been implemented in 2004 for the graduates of 2005.

However, in the 2002 Budget Act, the General Assembly directed the State Board to delay its implementation of the exit exam until it studied the requirements of the federal No Child Left Behind Act and determined whether any revisions to the State testing program or the ABC's program would be necessary to comply with that Act. The State Board was to report any revisions and a timetable for making the revisions to the Joint Legislative Education Oversight Committee before work on the exit exam could continue.

At its April 2005 meeting, the State Board adopted the report required by the 2002 legislation and found that in order to meet the requirements of No Child Left Behind the exit exam would need revisions to the test specifications. Reconfiguring the exit exam would also require field testing and pilot testing.

According to the report, the process to reconfigure the test would take at least 3 years and cost about $4 million. The State Board recommended that development of the exit exam stop and that the General Assembly consider using the high school exit standards currently being considered by the Board.

High School Exit Standards

After the delay in the implementation of the exit exam and after the State Board explored other options, the Board adopted a framework using the five end-of-course tests that are taken by a majority of students for graduation and a senior project as the components for new high school exit standards. The five end-of-course tests that would be used are Algebra I, Biology, English 1, Civics and Economics, and U.S. History. These new high school exit standards will be in place for students entering ninth grade in the 2006-07 school year and beyond.

**Sara Kamprath, Committee Analyst, substantially contributed to this summary.*

H0911e2-SMRH-CSRH-54v5

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[i] **§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(9a) Power to Develop Content Standards. – The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes.

High school course content standards shall include the knowledge and skills necessary to enter the workforce and also shall be aligned with the coursework required for admission to the constituent institutions of The University of North Carolina. The Board shall develop and implement a plan

for end-of-course tests for the minimum courses required for admission to the constituent institutions. All end-of-course tests shall be aligned with the content standards.

The Board also shall develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis. Alignment shall include revising textbook criteria, support materials, State tests, teacher and school administrator preparation, and ongoing professional development programs to be compatible with content standards. The Board shall develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards. The State Board of Education shall work in collaboration with the Board of Governors of The University of North Carolina to ensure that teacher and school administrator degree programs, ongoing professional development and other university activity in the State's public schools align with the State Board's priorities.

[ii] (9b)Power to Develop Exit Exams. – The Board shall develop a plan to implement high school exit exams, grade-level student proficiency benchmarks, student proficiency benchmarks for academic courses required for admission to constituent institutions of The University of North Carolina, and student proficiency benchmarks for the knowledge and skills necessary to enter the workforce. The State Board may develop student proficiency benchmarks for other courses offered to secondary school students. The high school exit exams and student proficiency benchmarks shall be aligned with G.S. 115C-12(9a) and may contain pertinent components of the school-based accountability annual performance goals.

...

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1414

Committee Substitute Favorable 5/18/05
Committee Substitute #2 Favorable 6/1/05

Short Title: Help Teacher Assistants Become Teachers. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT TEACHER ASSISTANTS WHO ARE ENROLLED IN TEACHER EDUCATION PROGRAMS TO CONTINUE TO WORK WHILE THEY COMPLETE THEIR STUDENT TEACHING.

The General Assembly of North Carolina enacts:

SECTION 1. Article 20 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-310. Teacher assistants engaged in student teaching.**

The State Board of Education shall adopt a program to facilitate the process by which teacher assistants may become teachers.

Teacher assistants who participate in this program:

(1) Shall be enrolled in an approved teacher education program in a North Carolina institution of higher education; and

(2) Shall be employed in a North Carolina public school.

Local school administrative units are encouraged to assign teacher assistants to a different classroom during student teaching than the classroom they are assigned to as a teacher assistant. To the extent possible, they may be assigned to another school within the same local school administrative unit.

At the discretion of the local school administrative unit, teacher assistants may continue to receive their salary and benefits while student teaching in the same local school administrative unit where they are employed as a teacher assistant.

The State Board of Education shall consult with the Board of Governors of The University of North Carolina and the North Carolina Independent Colleges and Universities in the development of the program. Each approved teacher education program and each local school administrative unit shall administer this program beginning with the 2005-2006 academic year."

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

HOUSE BILL 1414:
Help Teacher Assistants Become Teachers

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	August 10, 2005
Introduced by:	Rep. Pierce	**Summary by:**	Shirley Iorio, Ph D
Version:	Third Edition		Legislative Analyst

SUMMARY: House Bill 1414 would direct the State Board of Education (State Board) to adopt a program to help teacher assistants who are enrolled in approved N.C. teacher education programs and who are currently employed in a N.C. public school become teachers. The State Board must consult with the UNC Board of Governors and the N.C. Independent Colleges and Universities in developing the program. The program shall begin with the 2005-06 academic year.

BILL ANALYSIS: The provisions of House Bill 1414 would be codified in a new section of Chapter 115C of the General Statutes. The new section, G.S. 115C-310 - Teacher assistants engaged in student teaching, would do the following things:

- Direct the State Board of Education to adopt a program to facilitate the process by which teacher assistants may become teachers.
- Require that teacher assistants who participate in the program:
    - Must be employed in a North Carolina public school; and
    - Must be enrolled in an approved teacher education program in a North Carolina institution of higher education.
- Encourage local school administrative units (LEAs) to assign teacher assistants to a different classroom to perform their student teaching than the classroom where they are employed as a teacher assistant. To the extent possible, the LEA may assign a teacher assistant to another school within the same LEA to perform their student teaching.
- Give local school administrative units discretion to continue providing teacher assistants with their salary and benefits while they student teach in the same local school administrative unit in which they are employed as a teacher assistant.
- Require the State Board of Education to consult with the UNC Board of Governors and the N.C. Independent Colleges and Universities in the development of the program.
- Require that this program begin with the 2005-2006 academic year.

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

Sara Kamprath, Committee Staff, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

HOUSE BILL 833

Short Title:	Add'l. Standards for Comm. Coll. Admission.	(Public)
Sponsors:	Representatives Tolson, Sauls, England (Primary Sponsors); and Coleman.	
Referred to:	Education Subcommittee on Community Colleges.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF COMMUNITY COLLEGES TO SET NONACADEMIC CRITERIA FOR ADMISSION INTO CERTAIN PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-5 is amended by adding a new subsection to read:

"(a4) Notwithstanding G.S. 115D-1, the State Board may adopt standards for admission that include both academic and nonacademic criteria for any curriculum program or continuing education program that traditionally leads into an occupation or practice that requires licensure or certification under State law."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 833

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

H833-ASF-9 [v.1]

Date _____,2005

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

Senator _____

moves to amend the bill on page 1, line 11, by rewriting the line to read:

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 779*

PROPOSED COMMITTEE SUBSTITUTE S779-PCS55277-LH-29

Short Title: Scholarship Loans/Paramedic-to-BSN Program. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SCHOLARSHIP LOANS TO STUDENTS ENROLLED IN THE PARAMEDIC-TO-BSN PROGRAM OFFERED AT TRI-COUNTY COMMUNITY COLLEGE BY WINSTON-SALEM STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 24 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-209.34. Scholarship loans for certain students enrolled in the Paramedic-to-BSN Program offered by Winston-Salem State University.**

(a) A scholarship loan fund is established for out-of-state students enrolled in the Paramedic-to-BSN Program offered at Tri-County Community College by Winston-Salem State University. The annual amount of each scholarship loan shall be the difference between the in-State and the out-of-state tuition for the program. The State Education Assistance Authority shall administer the fund.

(b) The Authority shall develop the criteria for awarding the scholarship loan, and the criteria shall include all of the following:

(1) All recipients of scholarship loans shall be enrolled in the Paramedic-to-BSN Program;

(2) All recipients shall enter into a legal agreement and promissory note with the Authority to work full-time as a nurse in North Carolina;

(3) All scholarship loans shall be evidenced by notes made payable to the Authority that bear interest at the rate of ten percent (10%) per annum beginning upon completion of the Program or upon termination of the scholarship, whichever is earlier. The Authority may forgive or reduce any loan repayment if the Authority considers that extenuating circumstances exist that would make repayment impossible.

(4) The Authority shall forgive one year of the loan for each year that a recipient works full-time, within two years of completion of the program, as a nurse in North Carolina; and

(5) Any additional criteria that the Authority considers necessary to administer the program effectively.

(c) The Authority shall adopt rules to implement this section."

SECTION 2. There shall be a separate early registration period for in-State students for the Paramedic-to-BSN Program offered at Tri-County Community College by Winston-Salem State University to ensure that no out-of-state student displaces an in-State student in the Program.

SECTION 3. Winston-Salem State University and Tri-County Community College shall thoroughly evaluate the effects of the scholarship loans in this act on the production, retention, and utilization of registered nurses in the State. They shall report their findings and their recommendation on continuing the scholarship loans to the Board of Governors of The University of North Carolina and the State Board of Community Colleges prior to January 1, 2009.

SECTION 4. This act is effective when it becomes law and expires July 31, 2009. Students who enter the Paramedic-to-BSN Program offered at Tri-County Community College by Winston-Salem State University or enter the Program at Winston-Salem State University prior to July 31, 2009, shall continue to receive the scholarship loans while attending the Program so long as they remain in good standing in the Paramedic-to-BSN Program and comply with the criteria established under G.S. 116-209.34 for the Program.

SENATE BILL 779:
In-State Tuition/Paramedic-to-BSN Program

BILL ANALYSIS

Committee:	Senate Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget	**Date:**	August 9, 2005
Introduced by:	Sen. Snow	**Summary by:**	Sara Kamprath Committee Staff
Version:	PCS to First Edition S779-CSLH-29 [v.2]		

Differences between the First Edition and PCS

The PCS does the following:

- Changes the title of the bill
- Rewrites Sections 1 and 2 of the bill to create a scholarship loan program for out-of-state students enrolled in the Paramedic-to-BSN Program offered at Tri-County Community College by Winston Salem State University. The amount of the annual scholarship loan shall equal the difference between the in-state and out-of-state tuition for the program. The State Education Assistance Authority shall develop the criteria for awarding the scholarship loan including provisions for the Authority to forgive one year of the loan for each year that the recipient works full-time as a nurse in the State.
- Changes the phrase "grant of in-State tuition" to "scholarship loans" throughout the bill
- Changes lines 30-32 on page 4 of the bill by adding that the student must comply with the criteria developed for awarding the scholarship loan

BILL ANALYSIS: Sections 1 and 2 of Senate Bill 779 would make students who are enrolled in the Paramedic-to-BSN Program at Tri-County Community College by Winston-Salem State University and in the Paramedic-to-BSN Program at Winston-Salem State University eligible for in-State tuition without waiting to qualify as a "resident for tuition purposes" as outlined in G.S. 116-143.1.

Section 3 of the bill would ensure that North Carolina students at Tri-County Community College will have a separate early registration period for acceptance into the program to ensure that no out-of-State student displaces a North Carolina resident.

Section 4 of the bill provides that both institutions shall evaluate the effects of the program on the production, retention, and utilization of registered nurses in the State. Winston-Salem State University and Tri-County Community College shall report their recommendations on continuing the program to the UNC Board of Governors and the State Board of Community Colleges before January 1, 2009.

This bill has a serial re-referral to the Senate Appropriations Committee.

EFFECTIVE DATE: The bill is effective when it becomes law and expires on July 31, 2009. Students who enter the program before July 31, 2009 shall continue to receive in-State tuition until they complete the program as long as they remain in good standing in the program.

CURRENT LAW: See attached G.S. 116-143.1 Provisions for determining resident status for tuition purposes.

S0779e1-SMRJ-CSRJ

§ 116-143.1. Provisions for determining resident status for tuition purposes.

(a) As defined under this section:

(1) A "legal resident" or "resident" is a person who qualifies as a domiciliary of North Carolina; a "nonresident" is a person who does not qualify as a domiciliary of North Carolina.

(2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "nonresident for tuition purposes" is a person who does not qualify for the in-State tuition rate.

(3) "Institution of higher education" means any of the constituent institutions of the University of North Carolina and the community colleges under the jurisdiction of the State Board of Community Colleges.

(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the State.

(c) To be eligible for classification as a resident for tuition purposes, a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(d) An individual shall not be classified as a resident for tuition purposes and, thus, not rendered eligible to receive the in-State tuition rate, until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which the individual seeks the in-State tuition rate.

(e) When an individual presents evidence that the individual has living parent(s) or court-appointed guardian of the person, the legal residence of such parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, that the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in this State the five consecutive years prior to enrolling or reregistering at the institution of higher education at which resident status for tuition purposes is sought.

(f) In making domiciliary determinations related to the classification of persons as residents or nonresidents for tuition purposes, the domicile of a married person, irrespective of sex, shall be determined, as in the case of an unmarried person, by reference to all relevant evidence of domiciliary intent. For purposes of this section:

(1) No person shall be precluded solely by reason of marriage to a person domiciled outside North Carolina from establishing or maintaining

majority before enrolling at an institution of higher education shall not lose the benefit of this subsection if that person:

(1) Upon achieving majority, acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina; and

(2) Begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission at such institution.

(k) Notwithstanding other provisions of this section, a minor who satisfies the following conditions immediately prior to commencement of an enrolled term at an institution of higher education, shall be accorded resident tuition status for that term:

(1) The minor has lived for five or more consecutive years continuing to such term in North Carolina in the home of an adult relative other than a parent, domiciled in this State; and

(2) The adult relative has functioned during those years as a de facto guardian of the minor and exercised day-to-day care, supervision, and control of the minor.

A person who immediately prior to his or her eighteenth birthday qualified for or was accorded resident status for tuition purposes pursuant to this subsection shall be deemed upon achieving majority to be a legal resident of North Carolina of at least 12 months' duration; provided, that the legal residence of such an adult person shall be deemed to continue in North Carolina only so long as the person does not abandon legal residence in this State.

(l) Any person who ceases to be enrolled at or graduates from an institution of higher education while classified as a resident for tuition purposes and subsequently abandons North Carolina domicile shall be permitted to reenroll at an institution of higher education as a resident for tuition purposes without necessity of meeting the 12-month durational requirement of this section if the person reestablishes North Carolina domicile within 12 months of abandonment of North Carolina domicile and continuously maintains the reestablished North Carolina domicile at least through the beginning of the academic term(s) for which in-State tuition status is sought. The benefit of this subsection shall be accorded not more than once to any one person. (1971, c. 845, ss. 7-9; 1973, cc. 710, 1364, 1377; 1975, c. 436; 1979, cc. 435, 836; 1981, cc. 471, 905; 1987, c. 564, s. 19; 1989, c. 728, s. 1.3; 1991 (Reg. Sess., 1992), c. 1030, s. 32; 2004-130, s. 2.)

HOUSE BILL 182:
Charter School Retirement Election

BILL ANALYSIS

Committee:	Senate Ref to Education/Higher Education. If fav, re-ref to Pensions & Retirement and Aging	**Date:**	August 10, 2005
Introduced by:	Reps. Ray, Clary	**Summary by:**	Drupti Chauhan* Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 182 allows Success Institute, a charter school in Statesville, and Piedmont Community Charter school in Gastonia to elect to participate in the Teachers' and State Employees' Retirement System and the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

CURRENT LAW:

G.S. 135-5.3(b) provides that no later than 30 days after both parties have signed the written charter, the board of directors of a charter school shall elect whether to become a participating employer in the Teachers' and State Employees' Retirement System. The election shall be in writing and filed with the Retirement System and the State Board of Education and is effective for each charter school employee as of the date of that employee's entry into eligible service.

G.S. 135-40.3A(b) provides that no later than 30 days after both parties have signed the written charter, the board of directors of a charter school shall elect whether to become a participating employer in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. The election shall be in writing and filed with the Executive Administrator, the Board of Trustees, and the State Board of Education and is effective for each charter school employee as of the date of the employee's entry into eligible service.

BILL ANALYSIS:

House Bill 182 permits Success Institute, a charter school in Statesville, and Piedmont Community Charter school in Gastonia, to elect to become participating employers in the Teachers' and State Employees' Retirement System and to elect to become participating employing units in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. The bill requires that these elections be made no later than 30 days after the effective date of the act and in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A.

EFFECTIVE DATE:

This act is effective when it becomes law.

Theresa Matula, Legislative Analyst, substantially contributed to this summary.

H0182e1-SMRQ

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 182

Short Title:	Charter School Retirement Election.	(Public)
Sponsors:	Representatives Ray, Clary (Primary Sponsors); Farmer-Butterfield, Holmes, Howard, Rayfield, Setzer, and Steen.	Current,
Referred to:	Pensions and Retirement.	

February 10, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE EXISTING CHARTER SCHOOLS TO ELECT TO PARTICIPATE IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the time limitations contained in G.S. 135-5.3 and G.S. 135-40.3A, the boards of directors of Success Institute, a charter school in Statesville, and Piedmont Community Charter School in Gastonia may elect to become participating employers in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become participating employing units in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A.

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

HOUSE BILL 485:
Charter School Retirement Election

BILL ANALYSIS

Committee:	Senate Ref to Education/Higher Education. If fav, re-ref to Pensions & Retirement and Aging	**Date:**	August 9, 2005
Introduced by:	Reps. Fisher, Goforth, Sherrill	**Summary by:**	Drupti Chauhan* Committee Counsel
Version:	Second Edition		

SUMMARY: House Bill 485 allows Evergreen Charter School in Asheville to elect to participate in the Teachers' and State Employees' Retirement System.

CURRENT LAW:

G.S. 135-5.3(b) provides that no later than 30 days after both parties have signed the written charter, the board of directors of a charter school shall elect whether to become a participating employer in the Teachers' and State Employees' Retirement System. The election shall be in writing and filed with the Retirement System and the State Board of Education and is effective for each charter school employee as of the date of that employee's entry into eligible service.

BILL ANALYSIS:

House Bill 485 permits Evergreen Charter School, a charter school in Asheville, to elect to become a participating employer in the Teachers' and State Employees' Retirement System. The bill requires that this election be made no later than 30 days after the effective date of the act and in accordance with all other requirements of G.S. 135-5.3.

EFFECTIVE DATE:

This act is effective when it becomes law.

**Theresa Matula, Legislative Analyst, substantially contributed to this summary.*

H0485e2-SMRQ

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 485
Committee Substitute Favorable 4/27/05

Short Title: Charter School Retirement Election. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN EXISTING CHARTER SCHOOL TO ELECT TO PARTICIPATE IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the time limitation contained in G.S. 135-5.3, the Board of Directors of Evergreen Charter School, a charter school located in Asheville, may elect to become a participating employer in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes. The election authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3.

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

VISITOR REGISTRATION SHEET

Education/Higher Education — August 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Fleming	University
Hal Miller	NCACCT
John Carr	NCSSFoundation
Jami Fitzgerald	NC Family Policy Council
Tara Leaman	OSBM
DAVE Simpson	CAROLINAS AGC
P. E. Miller	Miller Co
[illegible]	WCPSS
Katherine Joyce	NCPASA
[illegible]	NCICU
John Burton	The UNC
Molly Ryan	NCSBA

VISITOR REGISTRATION SHEET

Education/Higher Education — **Name of Committee**

August 10, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Whitehurst	NC Comm. College System Office
Paula A. Holt	El Pueblo, Inc.
Bill Hester	Allied Domecq
David Sullivan	NCCCS
Kennon Briggs	NCCCS
Ken Whitehurst	NCCCS
Lou Fabrizio	NCDPI
BRIAN LEWIS	Covenant w/ NC's Children
[illegible]	SBE/DPI
[illegible]	DPI
[illegible]	NCCCS

VISITOR REGISTRATION SHEET

Education/Higher Education — August 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Causby	NCSFSA
Emily MacNaughton	NCPAPA
Lloyd Throwe	NCPAPA
[signature]	PSF of NC

Senate Education/Higher Education Committee
Wednesday, August 10, 2005, 10:00 AM
643 LOB

AGENDA

Senator Jeanne Lucas, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

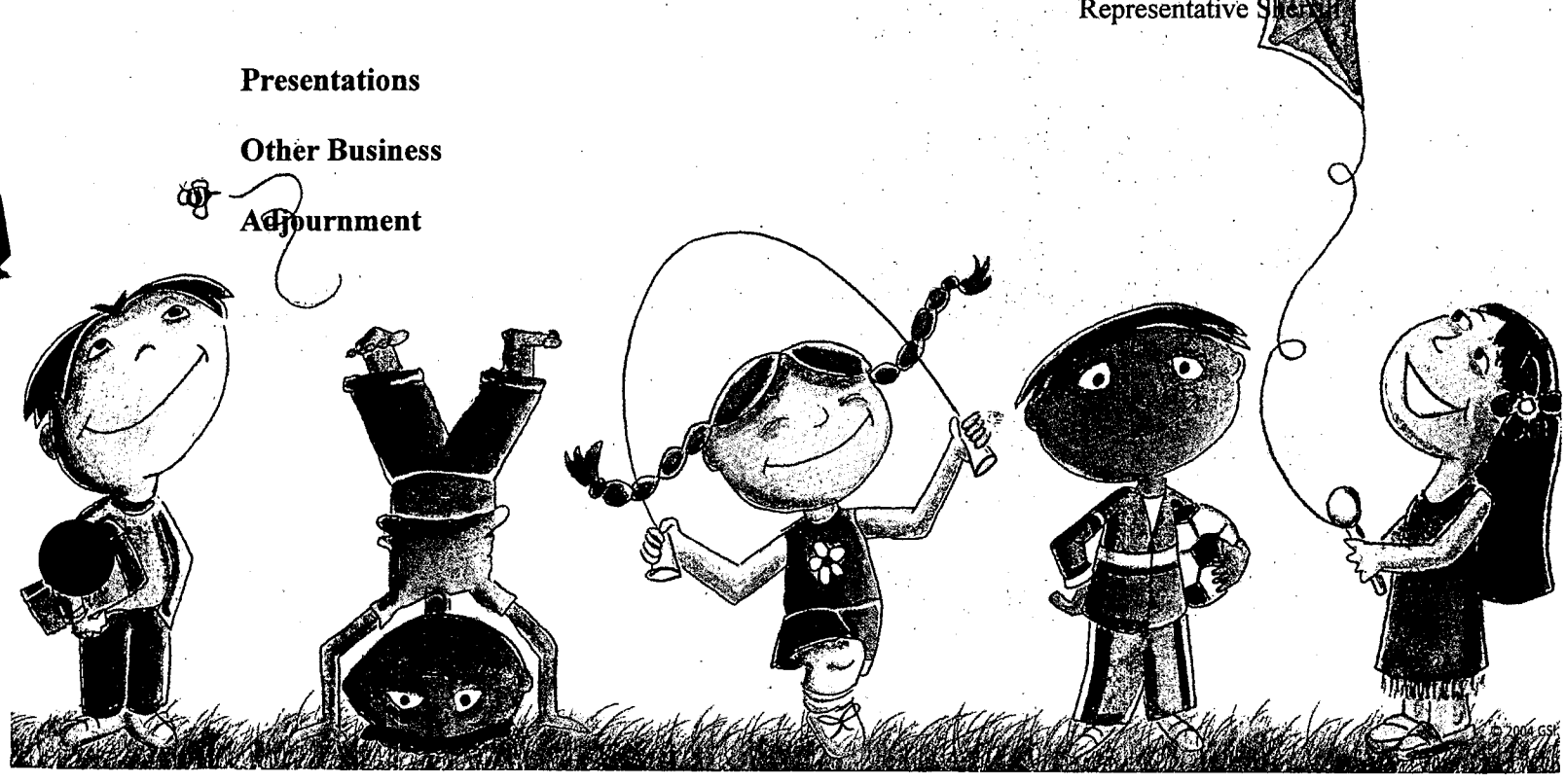
Bills

HB 1310	Testing Requirements/Teacher Educ. Students.	Representative Michaux, Jr.
HB 1414	Help Teacher Assistants Become Teachers.	Representative Pierce
HB 911	Streamline School Testing Program.	Representative Carney Representative Parmon Representative Dickson Representative Glazier
HB 833	Add'l. Standards for Comm. Coll. Admission.	Representative England, M.D. Representative Tolson Representative Sauls
SB 779	In-State Tuition/Paramedic-to-BSN Program.	Senator Snow, Jr.
HB 182	Charter School Retirement Election.	Representative Clary Representative Ray
HB 485	Charter School Retirement Election.	Representative Goforth Representative [illegible] Representative [illegible]

Presentations

Other Business

Adjournment



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Thursday, August 11, 2005

Senator LUCAS,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **779** In-State Tuition/Paramedic-to-BSN Program.

Draft Number:	pcs55277
Sequential Referral:	
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 779*
PROPOSED COMMITTEE SUBSTITUTE S779-PCS55277-LH-29

Short Title: Scholarship Loans/Paramedic-to-BSN Program. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SCHOLARSHIP LOANS TO STUDENTS ENROLLED IN THE PARAMEDIC-TO-BSN PROGRAM OFFERED AT TRI-COUNTY COMMUNITY COLLEGE BY WINSTON-SALEM STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 24 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-209.34. Scholarship loans for certain students enrolled in the Paramedic-to-BSN Program offered by Winston-Salem State University.**

(a) A scholarship loan fund is established for out-of-state students enrolled in the Paramedic-to-BSN Program offered at Tri-County Community College by Winston-Salem State University. The annual amount of each scholarship loan shall be the difference between the in-State and the out-of-state tuition for the program. The State Education Assistance Authority shall administer the fund.

(b) The Authority shall develop the criteria for awarding the scholarship loan, and the criteria shall include all of the following:

(1) All recipients of scholarship loans shall be enrolled in the Paramedic-to-BSN Program;

(2) All recipients shall enter into a legal agreement and promissory note with the Authority to work full-time as a nurse in North Carolina;

(3) All scholarship loans shall be evidenced by notes made payable to the Authority that bear interest at the rate of ten percent (10%) per annum beginning upon completion of the Program or upon termination of the scholarship, whichever is earlier. The Authority may forgive or reduce any loan repayment if the Authority considers that extenuating circumstances exist that would make repayment impossible.

(4) The Authority shall forgive one year of the loan for each year that a recipient works full-time, within two years of completion of the program, as a nurse in North Carolina; and

(5) Any additional criteria that the Authority considers necessary to administer the program effectively.

(c) The Authority shall adopt rules to implement this section."

SECTION 2. There shall be a separate early registration period for in-State students for the Paramedic-to-BSN Program offered at Tri-County Community College by Winston-Salem State University to ensure that no out-of-state student displaces an in-State student in the Program.

SECTION 3. Winston-Salem State University and Tri-County Community College shall thoroughly evaluate the effects of the scholarship loans in this act on the production, retention, and utilization of registered nurses in the State. They shall report their findings and their recommendation on continuing the scholarship loans to the Board of Governors of The University of North Carolina and the State Board of Community Colleges prior to January 1, 2009.

SECTION 4. This act is effective when it becomes law and expires July 31, 2009. Students who enter the Paramedic-to-BSN Program offered at Tri-County Community College by Winston-Salem State University or enter the Program at Winston-Salem State University prior to July 31, 2009, shall continue to receive the scholarship loans while attending the Program so long as they remain in good standing in the Paramedic-to-BSN Program and comply with the criteria established under G.S. 116-209.34 for the Program.

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Friday, August 12, 2005 at 9:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met at 9:00 AM on August 12, 2005, in Room 643 of the Legislative Office Building. Fourteen members of the committee were present. Senator A. B. Swindell, IV presided.

HB 833, An Act to Authorize The State Board Of Community Colleges To Set Nonacademic Criteria For Admission Into Certain Programs was removed from the agenda.

HB 1076, An Act To Direct The State Board Of Education To Adopt Standards For Alternative Learning Programs, And To Require Local Boards OF Education To Develop Proposals That Are Submitted To The State Board Of Education Before Establishing Any Alternative Learning Program Or Alternative School was added to the agenda.

Senator Swindell recognized Representative Doug Yongue to present HB 706, An Act TO Amend The Teacher Certification Law To Facilitate The Hiring Of Teachers. Representative Yongue explained HB 706 and discussed the technical amendment, which rolled into Proposed Committee Substitute. The amendment passed unanimously. Senator Swindell asked Shirley Iorio of NCGA Staff to summarize HB 706. Questions from the committee members were raised and answered by Linda Suggs, Legislative Liaison and Dr. Howard Lee, Chairman of North Carolina Department of Public Instruction. Senator Snow moved for a favorable report for the Senate Committee Substitute Bill. The motion was carried by unanimous voice vote.

Representative Fisher was recognized by Senator Swindell to explain HB 779, An Act To Increase The Penalty For Aiding And Abetting A Student's Unlawful Absence From School. Senator Tillman moved for a favorable report. The motion was carried by unanimous voice vote.

Senator Swindell recognized Representative Wright to explain HB 1076, An Act To Direct The State Board Of Education To Adopt Standards For Alternative Learning Programs, And To Require Local Boards OF Education To Develop Proposals That Are Submitted To The State Board Of Education Before Establishing Any Alternative Learning Program Or Alternative School. Amendment to HB 1076 was Senator Lucas moved for acceptance of amendment to HB 1076. The amendment was accepted by unanimous voice vote. Senator Dannelly moved for favorable report to the bill as amended, which rolled into a Proposed Committee Substitute. The favorable report was accepted by unanimous voice vote.

The meeting adjourned at 9:58 AM.

Senator A. B. Swindell IV, Presiding Chair

Bernadette David-Yerumo, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1076

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

H1076-ARQ-19 [v.1]

Date _____,2005

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

Senator _____

moves to amend the bill on page 4, between lines 37 and 38 by adding the following:
"**SECTION 6.** The State Board of Education after consulting with local school administrative units shall report to Joint Legislative Education Oversight Committee by April 15, 2006 on the implementation of this act. This report shall include any recommended legislative changes necessary to encourage the implementation of successful alternative learning programs and schools. The Joint Education Legislative Oversight Committee shall consider this report and make any recommended changes to the 2006 Regular Session of the 2005 General Assembly.";

and by renumbering the remaining sections.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Friday, August 12, 2005

Senator SWINDELL,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **779** Increase the Penalty for Truancy

Sequential Referral:	None
Recommended Referral:	None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **706** Facilitate Hiring of Teachers.

Draft Number:	PCS 80453
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1076** Study Success Centers/New Hanover Schools.

Draft Number:	PCS 70558
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 706

Committee Substitute Favorable 4/4/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H706-PCS80453-SF-37

Short Title: Facilitate Hiring of Teachers. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TEACHER CERTIFICATION LAW TO FACILITATE THE HIRING OF TEACHERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296 reads as rewritten:

"**§ 115C-296. ~~Board sets certification~~ Certification requirements.**

(a) State Board of Education Shall Certify Teachers. – The State Board of Education shall have ~~entire~~ control of certifying all applicants for teaching positions in all public elementary and high schools of North ~~Carolina; and it~~ Carolina, subject to laws enacted by the General Assembly. An applicant must meet the requirements for a highly qualified teacher under the No Child Left Behind Act of 2001, 20 U.S.C. § 6301, et seq., to be certified in North Carolina. The State Board shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate ~~which~~ that it authorizes.

~~The State Board of Education may require an applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. The~~

(a1) Certification of Beginning In-State and Out-of-State Teachers. – The certification requirements for an initial bachelors degree certificate or masters degree certificate for a beginning teacher who has completed an approved teacher education program and who is an in-State applicant or an applicant from another state shall include the following:

(1) An applicant for a certificate as an elementary education teacher or a special education teacher shall demonstrate academic and professional preparation by either (i) achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose or (ii)

otherwise meeting the requirements for a highly qualified teacher under the No Child Left Behind Act of 2001.

(2) An applicant for a certificate in all other areas of certification shall demonstrate academic and professional preparation by either (i) achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose, (ii) completing an appropriate academic major, graduate degree, or comparable coursework, or (iii) otherwise meeting the requirements for a highly qualified teacher under the No Child Left Behind Act of 2001.

(a2) Certification of Teachers from Other States with Less Than Three Years of Experience. – A teacher from another state who (i) has less than three years of experience as a full-time classroom teacher, (ii) is fully certified and highly qualified, as provided in the No Child Left Behind Act of 2001 in that other state, and (iii) is employed as a teacher by a local school administrative unit in North Carolina, is deemed to have satisfied the academic and professional preparation required to receive initial certification in North Carolina, except as otherwise provided in the No Child Left Behind Act of 2001. The initial certification shall be granted for the period of time necessary for the teacher to acquire three years of full-time teaching experience in North Carolina and the other state combined.

(a3) Certification of In-State and Out-of-State Teachers with at Least Three Years of Experience. – A teacher from North Carolina or another state who (i) has three or more years of experience as a full-time teacher, (ii) is fully certified and highly qualified as provided in the No Child Left Behind Act of 2001 in North Carolina or in that other state, and (iii) is employed as a teacher by a local school administrative unit in North Carolina is deemed to have satisfied the academic and professional preparation required to receive continuing certification in North Carolina, except as otherwise provided in the No Child Left Behind Act of 2001.

(a4) Certification of Visiting International Faculty. – The State Board of Education shall issue an international faculty certificate to an individual on a cultural exchange visa who (i) has a university degree and a teaching certificate in his or her home country, (ii) is qualified in his or her home country to teach the subjects he or she will teach, (iii) speaks English proficiently, and (iv) meets the definition of highly qualified under the No Child Left Behind Act of 2001. The certificate shall be granted for the period of time during which the teacher holds a cultural exchange visa, not to exceed three consecutive years.

An individual on a cultural exchange visa shall not be eligible to receive any other teacher certificate.

(a5) Testing Requirements. – An applicant for teacher certification shall not be required to take and pass a standard examination except as required by subsection (a1) of this section or the No Child Left Behind Act of 2001.

The State Board of Education shall permit an applicant to fulfill any ~~such~~ testing requirement before or during the applicant's second year of teaching provided the applicant took the examination at least once during the first year of teaching. The State Board of Education shall make any required standard initial certification exam

sufficiently rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has adequate academic and professional preparation to teach.

~~(a1)~~ The State Board shall adopt policies that establish the minimum scores for any required standard examinations and other measures necessary to assess the qualifications of professional personnel as required under subsection ~~(a)~~(a1) of this ~~section.~~section or the No Child Left Behind Act of 2001. For purposes of this subsection, the State Board shall not be subject to Article 2A of Chapter 150B of the General Statutes. At least 30 days prior to changing any policy adopted under this subsection, the State Board shall provide written notice to all North Carolina schools of education and to all local boards of education. The written notice shall include the proposed revised policy.

~~(a2)~~ (a6) Fees for Teacher Certification. – The State Board of Education shall impose the following schedule of fees for teacher certification and administrative changes:

(1) Application for demographic or administrative changes to a certificate, $30.00.

(2) Application for a duplicate certificate or for copies of documents in the certification files, $30.00.

(3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, $55.00.

(4) Initial application for New, In-State Approved Program Graduate, $55.00.

(5) Initial application for ~~Out-of-State certificate,~~ certificate for a teacher from another state, $85.00.

(6) All other applications, $85.00.

The applicant must pay the fee at the time the application is submitted.

(b) Standards for Teacher and School Administrator Education Programs, Entry into Teacher Education Programs, and Continuing Certification. – It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement.

~~The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board shall adopt new standards for the renewal of teacher certificates by May 15, 1998.~~

The standards for approval of institutions of teacher education shall require that teacher education programs for students who do not major in special education include demonstrated competencies in the identification and education of children with learning disabilities. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

(b1) Performance Reports for Teacher and School Administrator Education Programs. – The State Board of Education shall develop a plan to provide a focused review of teacher education programs and the current process of accrediting these programs in order to ensure that the programs produce graduates that are well prepared to teach. The plan shall include the development and implementation of a school of education performance report for each teacher education program in North Carolina. The performance report shall include at least the following elements: (i) quality of students entering the schools of education, including the average grade point average and average score on preprofessional skills tests that assess reading, writing, math and other competencies; (ii) graduation rates; (iii) time-to-graduation rates; (iv) average scores of graduates on professional and content area examination for the purpose of certification; (v) percentage of graduates receiving initial certification; (vi) percentage of graduates hired as teachers; (vii) percentage of graduates remaining in teaching for four years; (viii) graduate satisfaction based on a common survey; and (ix) employer satisfaction based on a common survey. The performance reports shall follow a common format. The performance reports shall be submitted annually. The State Board

of Education shall develop and implement a plan ~~to be implemented beginning in the 1998-99 school year~~ to reward and sanction approved teacher education programs and masters of education programs and to revoke approval of those programs based on the performance reports and other criteria established by the State Board of Education.

The State Board also shall develop and implement a plan for annual performance reports for all masters degree programs in education and school administration in North Carolina. To the extent it is appropriated, the performance report shall include similar indicators to those developed for the performance report for teacher education programs. The performance reports shall follow a common format.

Both plans for performance reports also shall include a method to provide the annual performance reports to the Board of Governors of The University of North Carolina, the State Board of Education, and the boards of trustees of the independent colleges. The State Board of Education shall review the schools of education performance reports and the performance reports for masters degree programs in education and school administration each year the performance reports are submitted. The State Board shall submit the performance report for the 1999-2000 school year to the Joint Legislative Education Oversight Committee by December 15, 2000. Subsequent performance reports shall be submitted to the Joint Legislative Education Oversight Committee on an annual basis by October 1.

(c) Lateral Entry. – It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. ~~Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation.~~ Skilled individuals who choose to enter the profession of teaching laterally may be granted ~~a provisional~~ an alternative teaching certificate for no more than ~~five~~ three years prior to completing the requirements for lateral entry and shall be required to obtain certification before contracting for a ~~sixth~~ fourth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

(d) Suspension and Revocation of Certificates. – The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. The State Board shall revoke the certificate of a teacher or school administrator if the State Board receives notification from a local board or the Secretary of Health and Human Services that a teacher or school administrator has received an unsatisfactory or below standard rating under G.S. 115C-333(d). In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

(1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37 or G.S. 143B-146.5; and

(2) The State Board shall automatically revoke the certificate of a teacher or school administrator without the right to a hearing upon receiving verification of the identity of the teacher or school administrator together with a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes: Murder in the first or second degree, G.S. 14-17; Conspiracy or solicitation to commit murder, G.S. 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes. Felonious assault with deadly weapon with intent to kill or inflicting serious injury, G.S. 14-32; Kidnapping, G.S. 14-39; Abduction of children, G.S. 14-41; Crime against nature, G.S. 14-177; Incest, G.S. 14-178 or G.S. 14-179; Employing or permitting minor to assist in offense against public morality and decency, G.S. 14-190.6; Dissemination to minors under the age of 16 years, G.S. 14-190.7; Dissemination to minors under the age of 13 years, G.S. 14-190.8; Displaying material harmful to minors, G.S. 14-190.14; Disseminating harmful material to minors, G.S. 14-190.15; First degree sexual exploitation of a minor, G.S. 14-190.16; Second degree sexual exploitation of a minor, G.S. 14-190.17; Third degree sexual exploitation of a minor, G.S. 14-190.17A; Promoting prostitution of a minor, G.S. 14-190.18; Participating in prostitution of a minor, G.S. 14-190.19; Taking indecent liberties with children, G.S. 14-202.1; Solicitation of child by computer to commit an unlawful sex act, G.S. 14-202.3; Taking indecent liberties with a student, G.S. 14-202.4; Prostitution, G.S. 14-204; and child abuse under G.S. 14-318.4. The Board shall mail notice of its intent to act pursuant to this subdivision by certified mail, return receipt requested, directed to the teacher or school administrator at their last known address. The notice shall inform the teacher or school administrator that it will revoke the person's certificate unless the teacher or school administrator notifies the Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same person as the teacher or school administrator. If the teacher or school administrator provides this written notice to the Board, the Board shall not revoke the certificate unless it can establish as a fact that the defendant and the teacher or school administrator are the same person.

(3) In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

a. The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37 or G.S. 143B-146.5; and

b. The assistance team assigned to that school makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates. In addition, the Board shall have the authority to contract with individuals who are qualified to conduct investigations in order to obtain all information needed to assist the Board in the proper disposition of allegations of misconduct by certificated persons.

(e) Mentor Program. – The State Board of Education shall develop a mentor program to provide ongoing support for teachers entering the profession. In developing the mentor program, the State Board shall conduct a comprehensive study of the needs of new teachers and how those needs can be met through an orientation and mentor support program. For the purpose of helping local boards to support new teachers, the State Board shall develop and distribute guidelines which address optimum teaching load, extracurricular duties, student assignment, and other working condition considerations. These guidelines shall provide that initially certified teachers not be assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties of these teachers be minimized. The State Board shall develop and coordinate a mentor teacher training program. The State Board shall develop criteria for selecting excellent, experienced, and qualified teachers to be participants in the mentor teacher training program.

(f) Masters/Advanced Competencies Certificate. – The State Board of Education, after consultation with the Board of Governors of The University of North Carolina, shall develop a new category of teacher certificate known as the "Masters/Advanced Competencies" certificate. To receive this certificate, an applicant shall successfully complete a masters degree program that includes rigorous academic preparation in the subject area which the applicant will teach and in the skills and knowledge expected of a master teacher or the applicant shall demonstrate to the satisfaction of the State Board that the candidate has acquired the skills and knowledge expected of a master teacher.

Persons who qualify for a "G" certificate prior to September 1, 2000, shall be awarded a "Masters/Advanced Competencies" certificate without meeting additional requirements. On and after September 1, 2000, no additional "G" certificates shall be awarded.

(g) Provisional Licenses, Temporary Permits, and Emergency Permits. – Notwithstanding any other provision of this section, the State Board of Education shall continue to issue provisional licenses, temporary permits, and emergency permits that are valid through June 30, 2006, on the same basis as they were issued prior to the date this act becomes law."

SECTION 2. This act is effective when it becomes law and applies to all persons initially employed as teachers by a local school administrative unit in North Carolina beginning with the 2005-2006 school year.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 706

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

H706-ASF-11 [v.2]

Date _____,2005

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

Senator _____

moves to amend the bill on page 2, line17, by rewriting the line to read:

"Carolina and the other state combined.".

SIGNED Jeanne H. Lucas
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 706:
Facilitate Hiring of Teachers

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	August 12, 2005
Introduced by:	Reps. Yongue, Carney, Preston, Johnson	**Summary by:**	Shirley Iorio, Ph D
Version:	Second Edition		Legislative Analyst

SUMMARY: ***This bill would amend G.S. 115C-296, the teacher certification law, by eliminating a standard examination (currently Praxis II) for any applicant for teacher certification except beginning teachers seeking an initial certificate, or as may be required by the federal No Child Left Behind Act of 2001 (NCLB). Several of the changes would make this statute more compatible with the highly qualified teacher requirements in NCLB.***

The bill would reduce from five years to three years the amount of time a lateral entry teacher has to complete the certification requirements.

House Bill 706 would clarify that the State Board may continue to issue provisional licenses, temporary and emergency permits that are valid through June 30, 2006.

The act would also reorganize the existing statute, make technical corrections, and add captions to various subsections.

This act would become effective when it becomes law and would apply to all persons initially employed as teachers in North Carolina beginning with the 2005-2006 school year.

CURRENT LAW: G.S. 115C-296 gives the State Board of Education (Board) the authority to certify all applicants for teaching positions in all North Carolina public schools, to prescribe the rules and regulations for the renewal and extension of all certificates, and to fix the salary for each grade and type of certificate that it authorizes.

The State Board may require an applicant for an initial certificate to achieve a prescribed minimum score on a standard examination appropriate and adequate for that purpose, and the exam must be sufficiently rigorous. The State Board must permit an applicant to fulfill any such testing requirement before or during the applicant's second year of teaching provided the applicant took the examination at least once during the first year of teaching.

The Board must adopt policies that establish the minimum scores for any required standard examinations. The Board is further required to raise the prescribed minimum score as necessary to ensure that each applicant has adequate academic and professional preparation to teach.

The certification program provides for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement remains in effect for five years after retirement.

BILL ANALYSIS

Section 1 (a) would require that an applicant meet the requirements for a highly qualified teacher under the No Child Left Behind Act of 2001 to be certified to teach in North Carolina.

Section 1 (a1) would apply to both in-state applicants and applicants from other states who have completed an approved teacher education program. This subsection would set out the certification requirements for beginning teachers seeking an initial certificate:

- An applicant for a certificate as an elementary education teacher or a special education teacher must either take and pass an appropriate standard examination (currently Praxis II) or otherwise meet the requirements for a highly qualified teacher under NCLB.

- An applicant for a certificate in all other areas of certification must either take and pass the appropriate Praxis II test, **or** complete an appropriate academic major, graduate degree, or comparable coursework, **or** otherwise meet the requirements for a highly qualified teacher under NCLB.

Section 1 (a2) would authorize the initial certification for a teacher from another state who meets all of the following criteria:

- Has less than three years of full-time classroom teaching experience.
- Is fully certified and highly qualified, as provided in No Child Left Behind, in that other state.
- Is employed as a teacher by a local school administrative unit in North Carolina.

Under this provision, initial certification would be for the period of time necessary for the teacher to acquire three years of full-time teaching experience in North Carolina and the other state combined, whichever is longer.

Section 1 (a3) would authorize continuing certification for a teacher from North Carolina or another state who meets all of the following criteria:

- Has three or more years of experience as a full-time teacher.
- Is fully certified and highly qualified, as provided in No Child Left Behind, in North Carolina or in that other state.
- Is employed as a teacher by a local school administrative unit in North Carolina.

Section 1 (a4) would authorize the State Board of Education (State Board) to issue an international faculty certificate to an individual on a cultural exchange visa who meets all of the following criteria:

- Has a university degree and a teaching certificate in his or her country.
- Is qualified in his or her home country to teach the subjects he or she will teach.
- Speaks English proficiently.
- Meets the definition of highly qualified under the No Child Left Behind Act of 2001.

The certificate would be granted for a period of time during which the teacher holds a cultural exchange visa, not to exceed three consecutive years. An individual on a cultural exchange visa would not be eligible to receive any other teacher certificate.

Section 1 (a5) would eliminate a testing requirement for applicants for teacher certification except for those teachers in subsection (a1) who are required to take Praxis, or as required by the No Child Left Behind Act.

Section 1 (a6) would make a technical correction in the section of the statute governing teacher certification fees.

Section 1 (b) and (b1) would remove obsolete language from the statute.

Section 1 (c) would reduce from five years to three years the amount of time a lateral entry teacher has to complete the certification requirements. Three years is the time frame required by the No Child Left Behind Act.

Section 1 (d), (e), and (f) would add a caption to each of these parts of the statute.

Section 1 (g) would authorize the State Board of Education to continue to issue provisional licenses, temporary permits, and emergency permits that are valid through June 30, 2006, on the same basis as they were issued prior to the date this act would become law. The No Child Left Behind Act prohibits the State Board from issuing these licenses after June 30, 2006.

Section 2 would give the effective date.

BACKGROUND: In 2004 legislation was passed that removed the statutory requirement for a standard examination for all applicants for a North Carolina teaching license. The State Board of Education **may** (rather than shall) require an applicant for a teaching license to take and achieve a prescribed minimum score on a standard examination appropriate and adequate for that purpose.

No Child Left Behind Act

The federal definition of a "Highly Qualified" teacher is one who is: fully certified and/or licensed by the state; holds at least a bachelor's degree from a four-year institution; and demonstrates competence in each core academic subject area in which the teacher teaches. The law applies to teachers in core subject areas which include: English, reading, language arts, mathematics, science, foreign languages, civics and government, social studies, economics, arts, history, geography, and kindergarten through Grade 6 (K-6). The federal regulations do not apply to non-core subject area teachers such as those in most vocational (workforce development/career-technical education) programs or physical education.

To demonstrate competence in a core academic subject area and be considered "Highly Qualified," an elementary teacher hired after the beginning of the 2002-03 school year must pass the required state tests (currently PRAXIS II). A middle or secondary school teacher hired after the beginning of the 2002-03 school year must:

- pass the required PRAXIS II test; or
- hold an undergraduate degree in the core subject area; or
- have coursework equivalent to an undergraduate major (24 semester hours) in the core subject area; or
- hold a graduate degree in the core subject area; or
- have master's level licensure or above in the core subject area; or
- hold National Board of Professional Teaching Standards (NBPTS) certification in the core subject area.

NCLB Concerns: While NCLB does set a definition for "highly qualified" teachers, each state has a certain amount of discretion to determine exactly how it will meet that definition. As a result, a highly qualified teacher may not "look" the same from one state to another. Furthermore, some states are pressuring the Secretary to use her power to grant a waiver from certain NCLB requirements, including this definition. Finally, it is possible that a State could opt out of participating in NCLB in which case that state would not have a NCLB requirement.

Constitutional Concerns: Section 5 of Article IX of the North Carolina Constitution states, " The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly." In 2003, the General Assembly enacted a bill (SB 931) that would have amended the same statute being amended in SB 706. That bill would have eliminated the portfolio as a requirement for continuing certification and would have prohibited the Board from adding any new requirements to the teacher certification process in the future "without explicit legislative authorization." Governor Easley vetoed SB 931 on the grounds that it would impair the State Board's ability to execute its constitutional duty. While he acknowledged the General Assembly had "certain powers," he concluded, "Removing the authority of the State Board of Education to ensure teacher standards is not only bad public policy, but it is also constitutionally questionable." By establishing NCLB as the State's certification standard, Senate Bill 706 may raise similar concerns because it, arguably, would shift the authority to set teacher certification standards to the federal government.

H0706e2-SMSF *Robin Johnson, Committee Counsel, substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 779*

Committee Substitute Favorable 5/12/05

Short Title: Increase the Penalty for Truancy. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR AIDING AND ABETTING A STUDENT'S UNLAWFUL ABSENCE FROM SCHOOL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-380 reads as rewritten:

"**§ 115C-380. Penalty for violation.**

~~Any~~ Except as otherwise provided in G.S. 115C-379, any parent, guardian or other person violating the provisions of this Part shall be guilty of a ~~Class 3~~ Class 1 misdemeanor."

SECTION 2. G.S. 116-235(b)(2) reads as rewritten:

"(2) School Attendance. – Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a ~~Class 3~~ Class 1 misdemeanor. The Director of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 779 (Second Edition)

SHORT TITLE: Increase the Penalty for Truancy.

SPONSOR(S): Representative Fisher

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
GENERAL FUND					
Correction	Exact amount cannot be determined. DOC would likely reimburse counties for some incarceration costs ($18/day per offender for any offender sentenced to over 30 days).				
Judicial	$20,103	$34,463	$36,186	$37,995	$39,895
LOCAL GOVERNMENTS	Exact amount cannot be determined. If, for example, offenders were housed, in sum, for an additional 1,890 jail days, costs to local jails would be an estimated $75,600. This total would be reduced for any offenders sentenced to over 30 days through payments incurred by DOC.				
ADDITIONAL PRISON BEDS*	It is likely that most offenders receiving active sentences under this bill would be housed in local jails. The exception would be Class 1 misdemeanants falling in Prior Record Level III, who are eligible for active sentences long enough to be served in state prison.				
POSITIONS: (cumulative)	Exact amount cannot be determined; no additional positions anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments

EFFECTIVE DATE: December 1, 2005

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: This bill would amend G.S. 115C-380 and 116-235(b)(2) to increase the penalty for aiding a student's unlawful absence from school from a Class 3 to a Class 1 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:

General

Elevating the penalty from a Class 3 to Class 1 misdemeanor for school attendance law violations would be expected to lead to increases in the active sentence rate and average active sentence length for the offense. Offenders sentenced to active time for this offense would principally impact local jail populations and costs but would also increase payments by the Department of Correction to local jails for housing some offenders. Additionally, costs to the Courts to process charges for these offenses would be expected to increase due to more vigorous defense and prosecution as a result of the more severe penalty.

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Of the 365 Class 3 misdemeanor convictions in FY 2003-04 for violations of the compulsory attendance requirements (failure to ensure a child's lawful attendance in school), 21 resulted in active sentences (6%), with an average active sentence length of 14 days. On average, 23 percent of Class 3 misdemeanor convictions in FY 2003-04 resulted in active sentences with an average estimated active sentence length of 8 days. During FY 2003-04, 19 percent of Class 1 misdemeanors resulted in active sentences, with an average estimated time served of 31 days. Therefore, increases in active sentence rate and sentence length would be expected as a result of reclassifying these Class 3 offenses as Class 1 misdemeanors.

Most Class 1 misdemeanants serving active time as a result of this bill would be housed in local jails (offenders with active sentences of less than ninety days are housed in local jails). As such, this legislation is not expected to significantly impact prison population. If offenders under this bill were sentenced according to the average active sentence rate and length for Class 1 misdemeanor offenses in 2003-04, the Sentencing Commission projects that, in sum, an additional 1,890 jail days would result from this legislation.

Local jails incur an estimated cost of $40 per day per offender but are reimbursed by DOC at a rate of $18 per day per offender for sentences exceeding thirty days. Because we cannot estimate the number of offenders with active sentences that would receive a sentence over thirty days the exact cost to local jails and DOC for additional jail days cannot be determined. If, for example, DOC

reimbursed local jails for all 1,890 additional jail days, costs to DOC would be $34,020 and costs to local jails would be $41,580 (i.e. $75,600 less payments received by DOC).

The remaining 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

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.

AOC data shows that 1,346 defendants were charged with Class 3 misdemeanors for school attendance law violations during calendar year 2004. If these charges were reclassified as Class 1 misdemeanors, AOC expects that costs to the Courts to process these charges would increase due to more vigorous defense and prosecution as a result of the more severe penalty.

The estimated increase in cost to process 1,346 charges as Class 1 rather than Class 3 misdemeanors would be $34,463 in the first full year. This figure includes $29,327 for court and attorney costs and $5,136 for indigent defense and reflects anticipated increases in trial length, attorney preparation time, and time to handle pleas. The figures in the box on the first page reflect the total cost of processing these charges, inflated at a rate of five percent annually, and adjusted in FY 2005-06 to reflect only the seven months for which the bill would be effective.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Aaron Paul and Jim Mills

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: May 18, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1076

Committee Substitute Favorable 5/11/05
Third Edition Engrossed 5/19/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1076-PCS70558-RQ-63

Short Title: Alt. Learning Prog/Sch Proposals. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE STATE BOARD OF EDUCATION TO ADOPT STANDARDS FOR ALTERNATIVE LEARNING PROGRAMS, AND TO REQUIRE LOCAL BOARDS OF EDUCATION TO DEVELOP PROPOSALS THAT ARE SUBMITTED TO THE STATE BOARD OF EDUCATION BEFORE ESTABLISHING ANY ALTERNATIVE LEARNING PROGRAM OR ALTERNATIVE SCHOOL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12(24) reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(24) Duty to Develop ~~Policies and Guidelines~~ Standards for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. – The State Board of Education shall adopt ~~guidelines~~ standards for assigning students to alternative learning programs. These ~~guidelines~~ standards shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision. The State Board also

shall adopt policies that define what constitutes an alternative school and an alternative learning program.

The State Board of Education shall also adopt ~~guidelines~~ standards to require that local school administrative units shall use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans and proposals for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under G.S. 115C-105.35, measure the educational performance and growth of students placed in alternative schools and alternative programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools. Also as part of its evaluation, the State Board shall evaluate its standards adopted under this subdivision and make any necessary changes to those standards based on strategies that have been proven successful in improving student achievement.

...."

SECTION 2. Article 8C of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-105.47A. Proposals to establish alternative learning programs or alternative schools.**

(a) Before establishing any alternative learning program or alternative school, the local board of education shall develop a proposal to implement the program or school that includes all of the following:

(1) The educational and behavioral goals for students assigned to the program or school.

(2) The policies and procedures for the operation of the program or school based on the State Board's standards adopted under G.S. 115C-12(24). The policies and procedures shall address the assignment of students to the program or school.

(3) Identified strategies that will be used to improve student achievement and behavior.

(4) Documentation that similar programs and schools in or out of the State, or both, have demonstrated success in improving the academic achievement and behavior of students assigned to them.

(5) The estimated actual cost of operating the program or school. To the extent practicable, this shall include the cost of:

a. Staffing the program or school with teachers who have at least four years' teaching experience and who have received an overall rating of at least above standard on a formal evaluation and are certified in the areas and grade levels being taught;

b. Providing optimum learning environments, resources and materials, and high quality, ongoing professional development that will ensure students who are placed in the program or school are provided enhanced educational opportunities in order to achieve their full potential;

c. Providing support personnel, including school counselors, psychiatrists, clinical psychologists, social workers, nurses, and other professionals to help students and their families work out complex issues and problems;

d. Maintaining safe and orderly learning environments; and

e. Providing transitional supports for students exiting the program or school and reentering the referring school.

(6) Documented support of school personnel and the community for the implementation of the program or school.

(b) After the local board completes the proposal under subsection (a) of this section, the board shall submit the proposal to the State Board of Education for its review. The State Board shall review the proposal expeditiously and, if appropriate, may offer recommendations to modify the proposal. The local board shall consider any recommendations made by the State Board before implementing the alternative learning program or alternative school."

SECTION 3. G.S. 115C-47(32a) reads as rewritten:

"**§ 115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

...

(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. – Each local board of education shall establish at least one alternative learning program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long term suspension or expulsion. In developing these guidelines, local boards

shall consider the State Board's ~~policies and guidelines~~ standards developed under G.S. 115C-12(24). Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard.

Notwithstanding this subdivision, each local board shall adopt policies based on the State Board's standards developed under G.S. 115C-12(24). These policies shall apply to any new alternative learning program or alternative school that is implemented beginning with the 2006-2007 school year. Local boards of education are encouraged to apply these standards to alternative learning programs and alternative schools implemented before the 2006-2007 school year.

Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs comply with the State Board's standards developed under G.S. 115C-12(24) and whether they incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction.

...."

SECTION 4. Before implementing success centers or any other alternative learning program or alternative school in New Hanover County, the New Hanover Board of Education shall comply with G.S. 115C-105.47A established in Section 2 of this act. The State Board of Education shall submit to the Joint Legislative Education Oversight Committee a copy of the proposal submitted by the New Hanover Board of Education and a copy of any recommendations made by the State Board.

SECTION 5. Nothing in this act requires the North Carolina General Assembly to appropriate funds for the implementation of alternative learning programs or alternative schools.

SECTION 6. The State Board of Education, after consulting with local school administrative units, shall report to the Joint Legislative Education Oversight Committee by April 15, 2006, on the implementation of this act. This report shall include any recommended legislative changes necessary to encourage the implementation of successful alternative learning programs and schools. The Joint Education Legislative Oversight Committee shall consider this report and make any recommended changes to the 2006 Regular Session of the 2005 General Assembly.

SECTION 7. This act is effective when it becomes law. Except as provided in Section 4 of this act, this act applies to any new alternative learning program or alternative school to be implemented beginning with the 2006-2007 school year.

HOUSE BILL 1076:
Alt. Learning Prog/Sch Proposals.

BILL ANALYSIS

Committee:	House Education	**Date:**	May 10, 2005
Introduced by:	Rep. Wright	**Summary by:**	Robin Johnson
Version:	Second Edition		Committee Counsel
	H1075e2-SMRH-1		

SUMMARY: House Bill 1076 would require the State Board of Education to adopt standards for alternative learning programs established beginning with the 2006-2007 school year. The bill also would require a local board of education to develop a proposal before establishing any alternative learning program or alternative school. The proposal would be submitted to the State Board of Education for its review and comments.

CURRENT LAW: An alternative learning program (ALP) is defined as a program established in affiliation with a traditionally accredited school. It may be housed within a school, on the same site, or at a different location within the school system. An ALP may be an alternative school (school). An alternative school has a separate, independent, official school number (used for accounting purposes).[1]

There are a number of statutes governing ALPs and alternative schools. *(See attached)* Among other requirements, these laws direct (i) the State Board of Education to develop policies and guidelines and provide technical assistance, (ii) local boards to establish at least one ALP, to adopt guidelines for assigning students to an ALP or school, and to adopt a safe school plan, (iii) individual schools to include in their school improvement plan a plan to address school safety, and (iv) a school that is referring a student to an ALP or school to provide certain information and document procedures used to identify the student for referral. The State Board is not required to review or approve any ALP or school before it can be established.

The New Hanover Board of Education recently adopted a plan to establish a "success center," which appears to be intended as an alternative school for children in kindergarten through high school where "behaviorally challenged students will be sent."[2]

BILL ANALYSIS: House Bill 1076 would direct the State Board to adopt standards, instead of policies and guidelines, for ALPs and schools. Local boards would be required to comply with these standards beginning with any new ALP or school implemented beginning with the 2006-2007 school year. Local boards would be encouraged to apply the standards to ALPs and schools implemented before that time.

House Bill 1076 would require a local board of education, before it can establish any ALP or school, to develop a proposal to be submitted to the State Board of Education for its review. The proposal must include: (i) the educational and behavioral goals for students assigned to the ALP or school, (ii) policies based on the State Board's new standards, including policies for assigning students, (iii) strategies to improve student achievement and behavior, (iv) consideration of similar successful programs and schools, (v) the estimated cost of the ALP or school, and (vi) documentation of community and school support for the ALP or school. The State Board must review the proposal expeditiously and may offer recommended modifications that the local board must consider before it establishes the ALP or school.

The bill would direct the State Board to submit to the Joint Legislative Education Oversight Committee a copy of the proposal for a success center, or other ALP or school, from the New Hanover school board and any recommendations from the State Board.

The bill would specify that nothing in the bill requires the General Assembly to appropriate funds for ALPs or schools.

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[1] *Definitions are from Policies and Procedures for Alternative Learning Programs and Schools K-12, Department of Public Instruction (Sept. 2003)*

[2] *The Wilmington Journal, March 13, 2005.*

EFFECTIVE DATE: This act would be effective when it becomes law, and would apply immediately to the New Hanover Board of Education before it can implement a success center, or any other ALP or alternative school. The act would apply to other school boards for any ALP or school to be established beginning with the 2006-2007 school year.

H1076e2-SMRH-SMRH-1

MISCELLANEOUS RELATED STATUTES

§ 115C-105.27. Development and approval of school improvement plans.

In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. [...] The strategies for improving student performance: [...] Shall include a plan to address school safety and discipline concerns in accordance with the safe school plan developed under Article 8C of this Chapter; [...]

Article 8C.
Local Plans For Alternative Schools/Alternative Learning Programs and Maintaining Safe and Orderly Schools.

§ 115C-105.45. Legislative findings.

The General Assembly finds that all schools should be safe, secure, and orderly. If students are to aim for academic excellence, it is imperative that there is a climate of respect in every school and that every school is free of disruption, drugs, violence, and weapons. All schools must have plans, policies, and procedures for dealing with disorderly and disruptive behavior.

All schools and school units must have effective measures for assisting students who are at risk of academic failure or of engaging in disruptive and disorderly behavior.

§ 115C-105.46. State Board of Education responsibilities.

In order to implement this Article, the State Board of Education:

(1) Shall adopt guidelines for developing local plans under G.S. 115C-105.47.

(2) Shall provide, in cooperation with the Board of Governors of The University of North Carolina, ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under G.S. 115C-105.47.

(3) May require a local board of education to withhold the salary of any administrator or other employee of a local school administrative unit who delays or refuses to prepare and implement local safe school plans in accordance with G.S. 115C-105.47.

(4) May revoke the certificate of the superintendent, pursuant to G.S. 115C-274(c), for failure to fulfill the superintendent's duties under a local safe school plan.

(5) Shall adopt policies that define who is an at-risk student.

§ 115C-105.47. Local safe school plans.

(a) Each local board of education shall develop a local school administrative unit safe school plan designed to provide that every school in the local school administrative unit is safe, secure, and orderly, that there is a climate of respect in every school, and that appropriate personal conduct is a priority for all students and all public school personnel. The board shall include parents, the school community, representatives of the community, and others in the development or review of this plan. The plan may be developed by or in conjunction with other committees.

(b) Each plan shall include each of the following components:

(1) Clear statements of the standard of behavior expected of students at different grade levels and of school personnel and clear statements of the consequences that will result from one or more violations of those standards. There shall be a statement of consequences for students under the age of 13 who

physically assault and seriously injure a teacher or other individual on school property or at a school-sponsored or school-related activity. The consequences may include placement in an alternative setting.

(2) A clear statement of the responsibility of the superintendent for coordinating the adoption and the implementation of the plan, evaluating principals' performance regarding school safety, monitoring and evaluating the implementation of safety plans at the school level, and coordinating with local law enforcement and court officials appropriate aspects of implementation of the plan. The statement of responsibility shall provide appropriate disciplinary consequences that may occur if the superintendent fails to carry out these responsibilities. These consequences may include a reprimand in the superintendent's personnel file or withholding of the superintendent's salary, or both.

(3) A clear statement of the responsibility of the school principal for restoring, if necessary, and maintaining a safe, secure, and orderly school environment and of the consequences that may occur if the principal fails to meet that responsibility. The principal's duties shall include exhibiting appropriate leadership for school personnel and students, providing for alternative placements for students who are seriously disruptive, reporting all criminal acts under G.S. 115C-288(g), and providing appropriate disciplinary consequences for disruptive students. The consequences to the principal that may occur shall include a reprimand in the principal's personnel file and disciplinary proceedings under G.S. 115C-325.

(4) Clear statements of the roles of other administrators, teachers, and other school personnel in restoring, if necessary, and maintaining a safe, secure, and orderly school environment.

(5) Procedures for identifying and serving the needs of students who are at risk of academic failure or of engaging in disruptive or disorderly behavior.

(6) Mechanisms for assessing the needs of disruptive and disorderly students and students who are at risk of academic failure, and providing them with services to assist them in achieving academically and in modifying their behavior, and removing them from the classroom when necessary.

(7) Measurable objectives for improving school safety and order.

(8) Measures of the effectiveness of efforts to assist students at risk of academic failure or of engaging in disorderly or disruptive behavior. The measures shall include an analysis of the effectiveness of procedures adopted under G.S. 115C-105.48 for students referred to alternative schools and alternative learning programs.

(9) Professional development clearly matched to the goals and objectives of the plan.

(10) A plan to work effectively with local law enforcement officials and court officials to ensure that schools are safe and laws are enforced.

(11) A plan to provide access to information to the school community, parents, and representatives of the local community on the ongoing implementation of the local plan, monitoring of the local plan, and the integration of educational and other services for students into the total school program.

(12) The name and role description of the person responsible for implementation of the plan.

(13) Direction to school improvement teams within the local school administrative unit to consider the special conditions at their schools and to incorporate into their school improvement plans the appropriate components of the local plan for:

a. maintaining safe and orderly schools; and

b. addressing the needs of students who are at risk of academic failure or who are disruptive or both.

(13a) A clear statement of the services that will be provided to students who are assigned to an alternative school or an alternative learning program.

(14) A clear and detailed statement of the planned use of federal, State, and local funds allocated for at-risk students and alternative schools and alternative learning programs.

(15) Any other information the local board considers necessary or appropriate to implement this Article.

A local board may develop its plan under this section by conducting a comprehensive review of its existing policies, plans, statements, and procedures to determine whether they: (i) are effective; (ii) have been updated to address recent changes in the law; (iii) meet the current needs of each school in the local school administrative unit; and (iv) address the components required to be included in the local plan. The board then may consolidate and supplement any previously developed policies, plans, statements, and procedures that the board determines are effective and updated, meet the current needs of each school, and meet the requirements of this subsection.

Once developed, the board shall submit the local plan to the State Board of Education and shall ensure the plan is available and accessible to parents and the school community. The board shall provide annually to the State Board

information that demonstrates how the At-Risk Student Services/Alternative Schools Funding allotment has been used to (i) prevent academic failure and (ii) promote school safety.

(c) A local board may amend the plan as often as it considers necessary or appropriate.

§ 115C-105.48. Placement of students in alternative schools/alternative learning programs.

(a) Prior to referring a student to an alternative school or an alternative learning program, the referring school shall:

(1) Document the procedures that were used to identify the student as being at risk of academic failure or as being disruptive or disorderly.

(2) Provide the reasons for referring the student to an alternative school or an alternative learning program.

(3) Provide to the alternative school or alternative learning program all relevant student records, including anecdotal information.

(b) When a student is placed in an alternative school or an alternative learning program, the appropriate staff of the alternative school or alternative learning program shall meet to review the records forwarded by the referring school and to determine what support services and intervention strategies are recommended for the student. The parents shall be encouraged to provide input regarding the students' needs.

Senate Education/Higher Education Committee
Friday, August 12, 2005, 9:00 AM
1124 LB
AGENDA

Senator Jeanne H. Lucas, Presiding Chair

Welcome and Opening Remarks

Introduction of Pages

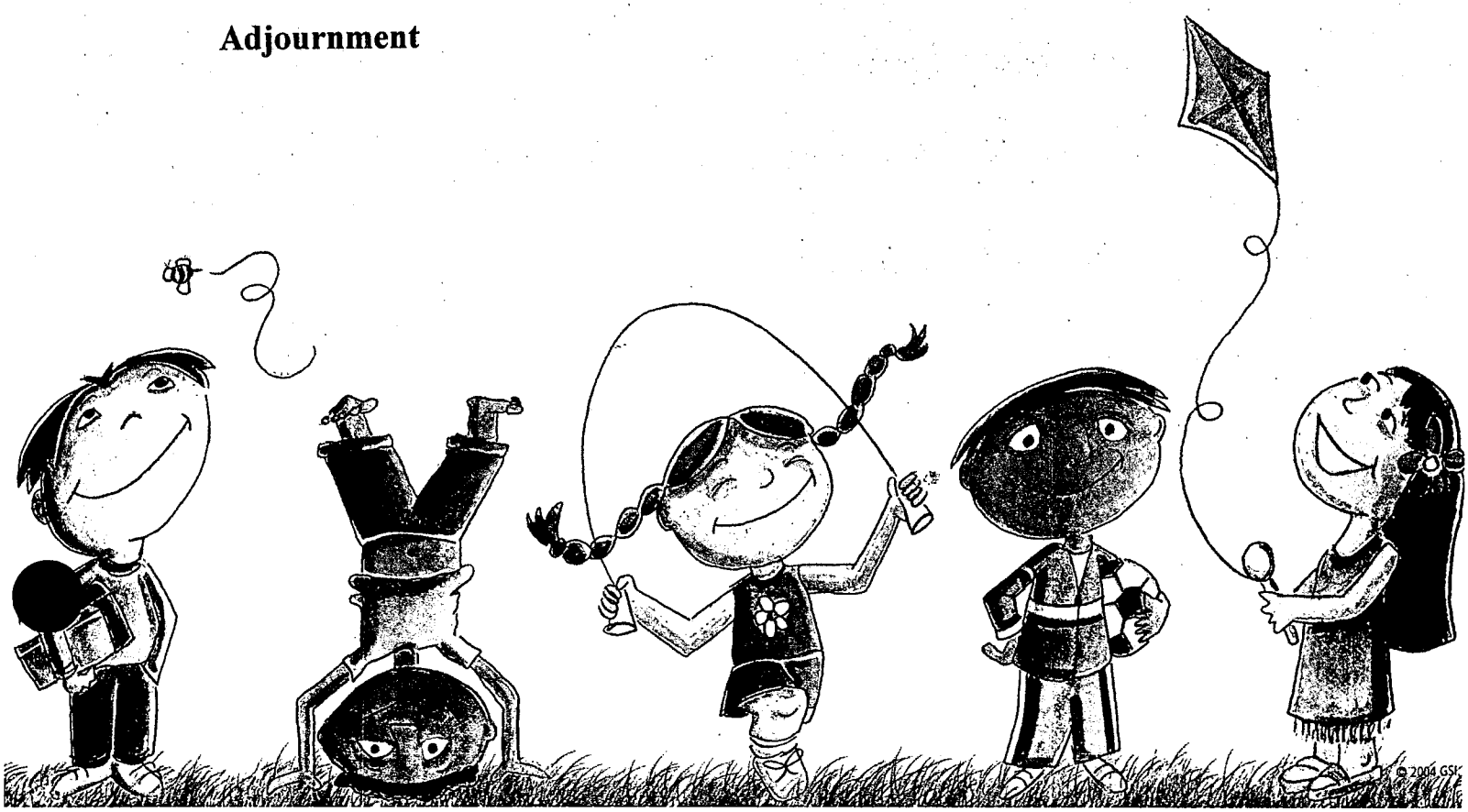
Bills

HB 779	Increase the Penalty for Truancy	Representative Fisher
HB 833	Add'l. Standards for Comm. Coll. Admission.	Representative England, M.D. Representative Tolson Representative Sauls
HB 706	Facilitate Hiring teachers	Representative Douglas Yongue

Presentations

Other Business

Adjournment



VISITOR REGISTRATION SHEET

12

Education/Higher Education — August ~~12~~, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCICU
	NCPSS
ANGIE Whitener	Speaker Black's office
Kathleen Edwards	UNC-CH Institute of Gov't
	OSBM
	Gov's Office
Karl Rove	
Roz Savitt	NC CCC
	Allen Assoc
Scott Ellman	PRESS

VISITOR REGISTRATION SHEET

12

Education/Higher Education — August ~~12~~, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ann McArthur	Governor's Office
Algina Mitchell	NCDPI - Licensure Section
Linda Suggs	NCDPI
[illegible]	PSF of NC
Katherine Joyce	NCASA
Margaret Peebles	NCDPI
Marvin R. Pittman	NCDPI
Leanne Winner	NCSBA
Hal Miller	NCAECT
David Sullivan	NCCCS
Ellen Greaves	PCNC
Gene Causby	NCSFSA

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
Monday, August 22, 2005 at 7:00 PM
Room 1027, Legislative Building

MINUTES

The Senate Education/Higher Education Committee met at 7:04 PM on August 22, 2005, in Room 1027 of the Legislative Building. Thirteen members of the committee were present. Senator John Garwood presided.

Senator Garwood recognized Senator Rand, who explained Senate Joint Resolution 1181, A Joint Resolution Providing For The Appointments Of Howard N. Lee, Melissa Bartlett, and Shirley East Harris to Membership On the State Board Of Education. He asked for support from the committee. Senator Dorsett moved for favorable report. The motion passed by unanimous voice vote.

Senator Garwood presented the nominees for the State Board of Community Colleges. Senator Lucas requested that staff, (Shirley Iorio) explain the procedure on how to vote on nominees to present on the Senate floor. The Senate has one seat to fill. The nominees are: Nancy Marguiles Brenner and John Q. Shaw. The committee can vote to present both names, but must vote aye or no for them individually. Senator Garwood asked for a vote for John Q. Shaw, sponsored by Senator Rand the vote was unanimous by the raising of hands. Senator Garwood asked for vote for Nancy Margulies Brenner, sponsored by Senator Rand, the vote was unanimous by raising of hands.

Senator Dannelly moved to send both names to the Senate floor. It was passed by unanimous voice vote.

The meeting adjourned at 7:13 PM.

John Garwood, Presiding Chair

Tonia Butler-Perez, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Monday, August 22, 2005

Senator GARWOOD,
submits the following with recommendations as to passage:

FAVORABLE

S.JR. **1181** Confirm St. Bd. of Ed. Members.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE JOINT RESOLUTION 1181

Sponsors: Senator Rand.

Referred to: Education/Higher Education.

August 10, 2005

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS OF HOWARD N. LEE, MELISSA BARTLETT, AND SHIRLEY EAST HARRIS TO MEMBERSHIP ON THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the Constitution of North Carolina and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has transmitted to the presiding officers of the Senate and the House of Representatives the names of his appointees to fill the terms of membership on the State Board of Education which expire March 31, 2013; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The appointments of Howard N. Lee, Melissa Bartlett, and Shirley East Harris to membership on the State Board of Education for terms to expire March 31, 2013, are confirmed.

SECTION 2. This resolution is effective upon ratification.

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE
2005-2006

Senator Jeanne Lucas, Co-Chair
Room 311, LOB
Raleigh, NC
(919) 733-4599

Senator A. B. Swindell, IV, Co-Chair
Room 629, LOB
Raleigh, NC 27601-2808
(919) 715-3030

Senator John Garwood, Co-Chair
Room 1118, LB
Raleigh, NC 27601-2808
(919) 733-5742

August 22, 2005

MEMORANDUM

TO: Members of the Senate

FROM: Senator Jeanne Lucas, Co-Chair
Senator A. B. Swindell, IV, Co-Chair
Senator John Garwood, Co-Chair
Education/Higher Education Committee

RE: The State Board of Community Colleges Election

The Senate Committee on Education/Higher Education Committee nominates the following individuals for election by the Senate for membership to a six-year term, beginning July 1, 2005, on the State Board of Community Colleges:

John Q. Shaw, Jr.
Nancy Margulies Brenner

No additional nominees shall be received from the floor.

Jeanne H. Lucas, Co-chair
Education/Higher Education Committee

A. B. Swindell, Co-Chair
Education/Higher Education Committee

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
Legislative Services Office
16 W. Jones Street Room 2129
Raleigh, NC 27601-1030 Tel. (919) 733-7044

Terry C. Goldman, Director
Administrative Division
16 W. Jones Street Room 9
Raleigh, NC 27601-1030
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
300 N. Salisbury St. Rm 401
Raleigh, NC 27603-5925
(919) 733-6660

James D. Johnson, Director
Fiscal Research Division
300 N. Salisbury St. Rm 619
Raleigh, NC 27603-5925
(919) 733-4910

Dennis W. McCarty, Director
Information Systems Division
300 N. Salisbury St. Rm 400
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
300 N. Salisbury St. Rm 545
Raleigh, NC 27603-5925
(919) 733-2578

To: Senators Lucas, Garwood, and Swindell, Cochairs; Senate Education/Higher Education
From: Shirley Iorio, Legislative Analyst
Date: August 22, 2005
Re: Legal Qualifications of Candidates for Nomination to State Board of Community Colleges

The following is a list of the Senate nominees for the State Board of Community Colleges. I have reviewed the applications that were submitted and indicated whether each nominee has any statutory disabilities. My opinion as to any nominee's statutory disability is based solely upon the information provided in the nominee's application. Each nominee has certified that the information provided in the application is accurate. The nominees are listed in alphabetical order by their last name.

Nominee	Sponsor	Statutory Disability
Nancy Margulies Brenner	Senator Hagan	No
John Q. Shaw, Jr.	Senator Rand	*Yes; Trustee, Central Carolina Community College

*If elected, the nominee would have to resign from this position

STATE BOARD OF COMMUNITY COLLEGES
NOMINEES

- **List all candidates.**
- **Separately vote "aye" or "no" on each candidate to determine if that person shall be listed as a nominee.**
- **Verbal vote of a majority of those present and voting shall constitute one nominee of the committee.**
- **Nominate at least 2 people for each seat if there are sufficient candidates. Otherwise, nominate at least one person for each seat.**

MEMBERSHIP ON THE STATE BOARD OF COMMUNITY COLLEGES

- **6 year term**
- **term expires June 30**
- **may not serve more than 2 consecutive 6 year terms**

WHO MAY NOT SERVE

- **A member of the General Assembly**
- **An officer or employee of the State**
- **An officer or employee of any institution under the jurisdiction of the State Board**
- **A spouse of any of the above**
- **Any person who within the prior 5 years has been an employee of the Community College System Office**

Nancy Margulies Brenner
1700 Granville Road
Greensboro, NC 27408
(336) 273-9673 (Home)
(336) 420-2128 (Cell)
(336) 273-7256 (Fax)
nmbpirates@aol.com

Education

University of North Carolina at Chapel Hill
BA Political Science 1975

Professional Experience

1975-1980 Adult Probation Parole Office- Guilford County, NC

1980-1991 President Med Industries- Mail Order Co.

1991-Present Community Volunteer

Civic and Charitable Activities

Greensboro Day School

- Board of Trustees, 1997-2003
- Chair of Parent's Council's largest fundraiser- Dinner Auction, 2000
- Diversity Committee, 1997-2003
- Development Committee, 2001-2003
- Parent's Council Board, 1997-2001

Family and Children's Services

- Board Member, 1995-1997

National Conference for Community and Justice

- Chair of largest fundraiser-Community Dinner, 2004
- Board Of Directors, 2003-present

North Carolina Hillel

- Board of Directors, 2003-present
- Development Committee, 2003-present

- Executive Committee, 2005-present

Greensboro Jewish Federation

- President of the Board of Trustees, 2002-2004
- President of Women's Cabinet, 2000-2002
- Co-Chair of Fundraising Campaign (raised $1.4 million), 1995
- Chair of Local and National Study Missions to Israel, 1999, 2000, 2002, 2003
- Member of the Board of Trustees, 1994-present
- Volunteer of the Year Award, 2003

Greensboro Jewish Federation/National Conference for Community and Justice

- Chair of Greensboro City Interfaith Mission to Israel, 2005

Brenner Children's Hospital

- Friends of Brenner Children's Hospital, 1995-present

University of North Carolina at Chapel Hill

- Parent's Council, 2005

Personal

Married to Frank Brenner
Children: Matthew (21), Molly (18)

CONFIDENTIAL PROFILE

PERSONAL:

JOHN Q. SHAW, JR.
119 Glenfield Dr
Dunn, N. C. 28334
910-892-9340 (Home)
910-892-7080 (Office)

Age: 64(08/13/41)
5'11" 200 lbs
Graduate: N.C. State
Children: Four

EXPERIENCE

NEW CENTURY BANK
10/99 to Present

President & CEO: Startup of a New Community Bank in Dunn. Opened for business May 24, 2000. Grown to $380 Million.

BRANCH BANKING AND TRUST:
08/97 to 10/99

Senior Vice-President; Commercial City Executive (08/97 to 10/99) Supervise 3 offices. Responsibilities include marketing, business development, profit planning, budgetary controls, twenty-three employees and three officers. BB&T purchased UCB in 1997. The reorganization moved Lee County into another region. Retired 10/99.

UNITED CAROLINA BANK:
11/72 to 08/97

Senior Vice-President; Regional Executive Harnett/Lee Counties (12/94 to 08/97)
Supervise six offices. Responsibilities include marketing, business development profit planning, budgetary controls, forty-seven employees, with eleven officers.

Senior Vice-President; County Executive Harnett County (12/90 to 12/94)
Supervise four offices with thirty-nine employees and eight officers.

Vice-President; Area Executive Harnett/Sampson Counties (4/88 to 12/90)
Supervised seven offices and sixty-one employees. UCB reorganized and moved away from the area concept.

Vice-President; City Executive, Elizabethtown, N. C. (11/73 to 04/88)
Opened office and grew to $22.7 million in deposits and $12.5 million in loans.

Assistant Vice-President; City Executive, Clarkton N. C. (11/72 to 11/73)
Supervised small office with $6 million in deposits and $3 million in loans.

USDA FARMERS HOME ADMINISTRATION:
05/67 to 11/72

County Supervisor Bladen County; Elizabethtown, N. C. (05/71 to 11/72)
Supervised office operations, three assistants and three clerks. Administration of the third largest loan program in N. C.

Assistant County Supervisor Vance County, Henderson, N. C. (05/67 to 05/71)
Worked with all loan programs, public relations, work scheduling and planning.

N. C. AGRICULTRUE EXTENSION SERVICE:
06/64 to 05/67

Assistant County Agent; Lenoir and Hendersonville, N. C. (06/64 to 05/67)
Provided assistance to farmers, public relations, scheduling and planning.

EDUCATION

FORMAL AND BUSINESS:
1964 Bachelor of Science in Agriculture: NC State University
1976 Certificate: School of Banking, University of North Carolina
1980 Certificate: School of Banking of the South, Louisiana State University
Computer Skills: MS-DOS, Windows, Windows 95, Word, Excel and WordPerfect

ACHIEVEMENTS AND COMMUNITY INVOLVEMENT

Active in Rural and Economic Development in Harnett County, Bladen County and Eastern N. C.

Harnett County: Chairman; Economic Development Commission 1988 to 1995 Secretary; Dunn Committee of 100 (which operates the Triangle South Enterprise Center {Small Business Incubator} and manages a FmHA $2.8 million intermediary re-lending program), Former Board member Heritage Bible College, Harnett County Airport Committee. Past President; Dunn Rotary Club (1999-2000), Dunn Area Chamber of Commerce (2003).

Bladen County: Chairman; Economic Development 1978 to 1982, Chairman and Member; Social Services Board 1982 to 1988. County Commissioner 1984 to 1988, Volunteer of The Year, 1986 N. C. Industrial Developers Association.

Eastern North Carolina: Chairman; Mid-Carolina SBA Certified Development Company for six counties 1990 to 1998. Member; Central Carolina Community College Foundation, 1992 to present. Vice Chairman; Board of Trustees; Central Carolina Community College.

NOTICE OF APPOINTMENT

Pursuant to G.S. 143-47.7

Notice is given that ***Ms. Melissa Bartlett***

is hereby appointed to the following public office:
North Carolina State Board of Education

Citation to Law or Other Authority Authorizing the Appointment:
General Statute §115C-10

Specific Statutory Qualification for the Public Office (if applicable):
At-large

Address of Appointee:
430 W. Front Street Statesville, NC 28677

County of Residence of the Appointee: ***Iredell***

Date Term of Appointment Begins: ***5/11/2005***

Date Term of Appointment Ends: ***3/31/2013***

Name of Person the Appointee replaces, if applicable:

Date of Appointment:
5/11/2005

Signature:
s/ Michael F. Easley

Office of Appointing Authority:
Office of the Governor, Boards and Commissions

Distribution:

Governor
Secretary of State
Senate President Pro Tempore
Speaker of the House
Historical Publications
Board of Ethics
Board Contact

Melissa E. Bartlett
430 W. Front Street
Statesville, NC 28677
704-450-5615
mbartlett@iss.k12.nc.us

Experience

2003-Present, taught 8th grade language arts inclusion, regular ed. and AIG classes, served as team leader, continued to serve on various state commissions.

2002-2003, NC Teacher of the Year, earned a one-year educational sabbatical to study educational policy and serve as an ambassador of education throughout the state; served as teacher advisor to the State Board of Education; received a fellowship to the Education Policy Fellowship Program (EPFP).

1999-2002,Statesville High School, Statesville, North Carolina, taught English II, Creative Writing (10-12), and Beginning English as a Second Language, sponsored the literary magazine club, created and delivered writing workshops to entire staff and workshops for National Board Certification.

1998-1999, North Iredell Middle School, Olin, North Carolina, taught language arts 7 & 8, provided remedial instruction to 7th graders, earned National Board Certification.

1996-1998, Chewning Middle School, Durham County, Durham, North Carolina, taught 6-7 grade language arts and 7 grade social studies, served as team leader and SAP team leader.

1994-1996, North Middle School, Roxboro, North Carolina, coordinated a grant-based self-contained program for at-risk students in grades 6-8 not identified for other services, involved teaching with an acceleration model and transition counseling for students exiting program.

1992-1994, Durham Technical Community College, Durham, North Carolina, served as Program Director for the English as a Second Language Program which provided services to adult ESL learners in Durham and Orange counties.

1990-1992, English Language Institute at the American University in Cairo, Cairo, Egypt, taught English as a Second Language to college freshmen.

1988-1990, English Language Institute at the American University in Cairo, Cairo, Egypt, awarded fellowship to teach English as a Second Language to college freshmen while earning masters degree in Teaching English as a Foreign Language.

1987-1988, Legacy International Youth Program, Alexandria, VA, served as office manager for international NGO, included grant writing and logistics coordination for international youth conferences.

Experience, continued

1983-1986, Lamu Girls Secondary, Lamu, Kenya (U.S. Peace Corps), taught "O" level English, science, East African history, and math as a Peace Corps Volunteer.

1981-1982, Charlotte Amalie High School, Charlotte Amalie, U.S.V.I., taught Title I reading to mixed classes of 9-12 graders.

Education

The American University in Cairo, Cairo, Egypt, MA/Teaching English as a Foreign Language (TEFL)
Old Dominion University, Norfolk, VA, BA/English

Memberships

Phi Delta Kappa
Alpha Delta Kappa
North Carolina Association of Educators
National Education Association

Recognitions/Awards

Teaching Excellence Award, American Council of International Education, 2004 (Armenia teacher exchange program, October, 2004)
District Director Cluster 2 NCAE 2004-2007
President, Iredell-Statesville Association of Educators, 2003-2005
Finalist for National Teacher of the Year, 2003
Education Policy Fellowship Program, 2002-2003
Carolyn Hunt Endowment Recipient, 2003
North Carolina Teacher of the Year, 2002-2003
First Union Ben Craig Outstanding Teacher Award, 2001-2002
Northwest Region Teacher of the Year, 2002-2003
Iredell-Statesville Teacher of the Year 2001-2002
Statesville High School Teacher of the Year, 2001-2002
Vice President of Programs, Iredell-Statesville Association of Educators, 2001-2002
National Board Certified Teacher, 1997/98

Recent Committess/Commissions

Teacher Academy Board of Trustees Commission (2004-2007)
Southeast Region Vision for Education (SERVE), 2002-2005
Governor's Teacher Advisory Commission (2002-2005)
North Carolina State Board of Education (2002-2004)
North Carolina Professional Teaching Standards Commission (2002-2004)
Public School Forum (2002-2003)

Languages

English, Spanish, Swahili, Arabic

References Available Upon Request

NOTICE OF APPOINTMENT

Pursuant to G.S. 143-47.7

Notice is given that ***Ms. Shirley East Harris***

is hereby appointed to the following public office:
North Carolina State Board of Education

Citation to Law or Other Authority Authorizing the Appointment:
General Statute §115C-10

Specific Statutory Qualification for the Public Office (if applicable):
4th Education District Representative

Address of Appointee:
229 Fox Den Road Troy, NC 27371

County of Residence of the Appointee: ***Montgomery***

Date Term of Appointment Begins: ***5/10/2005***

Date Term of Appointment Ends: ***3/31/2013***

Name of Person the Appointee replaces, if applicable:

Date of Appointment:
5/10/2005

Signature:
s/ Michael F. Easley

Office of Appointing Authority:
Office of the Governor, Boards and Commissions

Distribution:

Governor
Secretary of State
Senate President Pro Tempore
Speaker of the House
Historical Publications
Board of Ethics
Board Contact

Shirley E. Harris
229 Fox Den Road
Troy, North Carolina 27371
Home Phone 910-576-3151
Email seharris108@earthlink.net

WORK HISTORY

1973-2003 *Classroom Teacher*
Richmond County Schools (1973-75):
Teacher of grades 4-6 West Rockingham School

Montgomery County Schools (1975-2003):
Teacher of grades 4-5 Troy Elementary School
Teacher of grade 6 Biscoe Middle School
Teacher of grade 6 Troy Middle School
Teacher of grades 6-8 West Montgomery Middle School
Teacher of English I & English II West Montgomery High School

EDUCATION

1973 *Bachelor of Science Appalachian State University*
1987 Master of Education UNC-C
1998 *National Board Certification English/Language Arts*

LICENSES & CERTIFICATES

- Mentor Certification DPI 1985; NCTA 1998
- North Caroline Teacher Academy Trainer/Facilitator 1994-2003
- National Board for Professional Teaching Standards Facilitator I Certification 1999
- A Framework for Understanding Poverty 2002
- Adolescent Literacy 2001

AWARDS RECEIVED

- Outstanding Elementary Mathematics Teacher 1987
- Jaycees Outstanding Young Educator Biscoe Middle School 1986
- West Montgomery Middle School Teacher of the Year 1990
- Montgomery County Teacher of the Year 1991

CIVIC & PROFESSIONAL ORGANIZATIONS

- Troy Woman's Club
- North Carolina Association of Educators
- National Education Association
- Delta Kappa Gamma

COMMISSIONS & COMMITTEES

- Public School Administrator Task Force 1995
- Joint Legislative Commission on Improving the Academic Achievement of Minority and At-Risk Students 2000
- Task Force on Preparation and Professional Development Programs for Teachers 1997-1998
- NCAE GR Legislative Contact Representative 1997
- NCAE Government Relations Committee 2001-2004
- NCAE Government Relations Legislative Interview Committee Co-Chair 2002

Kharley E. Harris

- Governor Easley's Teacher Advisory Committee 2001-2005
- **I retired June 1, 2002, and contracted with Montgomery County Schools for the school year 2002-2003. I will tutor at West Montgomery High School from August, 2003, through November 30, 2003. Effective December 1, 2003, I will resume my regular position as a classroom teacher.

NOTICE OF REAPPOINTMENT

Pursuant to G.S. 143-47.7

Notice is given that ***The Honorable Howard N. Lee***

is hereby appointed to the following public office:
North Carolina State Board of Education

Citation to Law or Other Authority Authorizing the Appointment:
General Statute §115C-10

Specific Statutory Qualification for the Public Office (if applicable):
5th Education District Representative

Address of Appointee:
109 Glenview Place Chapel Hill, NC 27514

County of Residence of the Appointee: ***Orange***

Date Term of Appointment Begins: ***5/10/2005***

Date Term of Appointment Ends: ***3/31/2013***

Name of Person the Appointee replaces, if applicable:

Date of Appointment:
5/10/2005

Signature:
s/ Michael F. Easley

Office of Appointing Authority:
Office of the Governor, Boards and Commissions

Distribution:

Governor
Secretary of State
Senate President Pro Tempore
Speaker of the House
Historical Publications
Board of Ethics
Board Contact

Biographical Profile
For

Howard N. Lee

Chairman, NC State Board of Education
109 Glenview Place
Chapel Hill, NC 27524
919-942-9528

Born July 28, 1934, Howard Nathaniel Lee grew up on a sharecropper's farm in Lithonia, Georgia. He attended school there and graduated in 1953. He then attended Fort Valley State College in Georgia where he received a BA degree in Sociology in 1959. He served in the United State Army, including more than one year in Korea from 1959 until 1961. After his service in the Army, he worked as a Juvenile Probation Officer in Savannah, Georgia, until 1964, at which time Lee enrolled in the graduate School of Social Work at the University of North Carolina at Chapel Hill. In 1966 he received his Master's Degree in Social Work.

Lee immediately became politically active upon arrival at the University of North Carolina in Chapel Hill, being elected each of his two years of graduate school as president of the Student Association of Social Work. After graduate school he made history by becoming the youngest and most recent graduate to be elected President of the NC Chapter of The Professional Association of Social Work. In 1969, Lee made history again by being elected Mayor of Chapel Hill and holding the office until 1975. In 1976, he was a candidate for Lt. Governor of North Carolina, but lost in a second primary, which was a bitter and contentious fight. After the loss, Governor Jim Hunt appointed him Secretary of the Department of Natural Resources and Community Development, a cabinet-level post he held until 1981.

Lee has a strong academic background, having served as a member of the faculty staff and an administrator at Duke University; a faculty member of North Carolina Central University; and a faculty member of the School of Social Work, University of North Carolina at Chapel Hill. He has also been a visiting faculty member and lecturer at numerous major universities. Lee has contributed chapters to several books and has published articles in many professional publications through the years.

In 1990, Lee was elected to the North Carolina Senate where he served for 13 years. During his tenure he held several powerful committee chairmanships, including the powerful Appropriations Committee. During his time in the NC Senate, Lee built his legacy as a fighter for education reform and increased funding. He not only fought for higher teacher salaries and more funding for public education, but he also fought to raise teacher and student standards. In addition, he sponsored or co-sponsored several major pieces of educational legislation which included Smart Start, More at Four (a Pre-kindergarten program), the Excellent Schools Act for school reform, and the Safe Schools Act designed to keep violence out of North Carolina Classrooms.

Lee is a highly successful business owner, having founded five successful companies. His favorite hobbies include golf, tennis, singing, and creative writing. He is currently writing his memoir entitled *Barrier Breaker and Bridge Builder* and a motivational book entitled *Silent Dreams and Secret Thoughts*. Howard and his wife Lillian, a retired public school teacher, live in Chapel Hill and are the proud parents of three grown children (Angela, Ricky and Karin) and have two granddaughters, one a 2004 Emory University Honor Graduate and one in high school.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

Article 2.

State Board of Education.

§ 115C-10. Appointment of Board.

The State Board of Education shall consist of the Lieutenant Governor, the State Treasurer, and 11 members appointed by the Governor, subject to confirmation by the General Assembly in joint session. Not more than one public school employee paid from State or local funds may serve as an appointive member of the State Board of Education. No spouse of any public school employee paid from State or local funds and no employee of the Department of Public Instruction or his spouse, may serve as an appointive member of the State Board of Education. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts and three shall be appointed as members at large. Appointments shall be for terms of eight years and shall be made in four classes. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, on or before the sixtieth legislative day of the General Assembly, the names of the persons appointed by him and submitted to the General Assembly for confirmation; thereafter, pursuant to joint resolution, the Senate and the House of Representatives shall meet in joint session for consideration of an action upon such appointments. (1955, c. 1372, art. 1, s. 2; 1971, c. 704, s. 2; 1981, c. 423, s. 1; 1985, c. 479, s. 36; 1989, c. 46.)

Sec. 4. State Board of Education.

(1) Board. The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Senate Education/Higher Education Committee

Monday, August 22, 2005

7:00 PM

LB 1027

AGENDA

Senator John Garwood, Presiding Chair

Welcome and Opening Remarks

Bills

State Board of Community Colleges Nominees

SJR 1181	A Joint Resolution Providing for Confirmation of the Appointments to the State Board of Education	Senator Rand

Presentations

Other Business

Adjournment

VISITOR REGISTRATION SHEET

Education/Higher Education — August 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	SBE/DPI
	NCAE
	NCCCS

Dates	March 9, 2005 8:30am	March 9,2005 2:00pm	March 17,2005 8:30am	March 29,2005 8:30am	March 29,2005 2:00pm	April 6, 2005 8:30am	April 6, 2005 2:00pm
Members							
Rep. Maggie Jeffus, Co-Chair	X	X					
Rep.Joe Tolson, Co-Chair	X	X					
Rep. Doug Yongue, Co-Chair	X	X					
Rep. Linda Johnson, Vice-Chair		X					
Rep. Jean Preston, Vice-Chair							
Rep. Ray Rapp, Vice-Chair	X						
Rep. Larry Bell							
Rep. George Cleveland	X	X					
Rep. Susan Fisher	X						
Rep. Mark Hilton							
Rep. Carolyn Justice		X					
Rep. Mickey Michaux, Jr.	X						
Rep. Earline Parmon	X						
Rep. Louis Pate, Jr.							
Rep. John Sauls	X	X					
Sen. Jeanne Lucas, Co-Chair	X	X					
Sen. A. B. Swindell, Co-Chair	X	X					
Sen. Martin Nesbitt Jr.		X					
Sen. John Garwood, RMM	X	X					
Sen. Bob Atwater	X	X					
Sen. Fletcher Hartsell, Jr.		X					
Sen. Richard Stevens		X					
Kristine, Adam S, Adam L, Richard	X	X					
Robin, Dee, Drupti, Shirley, Sara	X	X					

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0011	LaRoque	CLARIFY SCH. ADMIN. CERTIFICATION STANDARDS.	*SR	Ch. SL 2005-179	03-21-05	06-29-05
H0016	Miller	SCH. CURRICULUM SHALL INCLUDE FINANCIAL LIT.	*S	Ref To Com On Education/Higher Education	05-11-05	
H0182	Ray	CHARTER SCHOOL RETIREMENT ELECTION.	SR	Ch. SL 2005-317	05-09-05	08-10-05
H0371	Sutton	UNC-PEMBROKE/ HISTORICALLY AMERICAN INDIAN U.	SR	Ch. SL 2005-153	04-21-05	06-22-05
H0387	Barnhart	SOCIAL SECURITY # CAN'T BE STUDENT ID #.	*S	Ref To Com On Education/Higher Education	04-27-05	
H0403	Glazier	AMEND LAW ON PURCHASE OF PSAT FOR SCHOOLS.	SR	Ch. SL 2005-154	03-24-05	06-22-05
H0404	Glazier	REPEAL DUPLICATIVE SCHOOL ACCREDITATION REQ.	SR	Ch. SL 2005-155	04-05-05	06-22-05
H0413	Tolson	THE STUDIES ACT OF 2005	*S	Re-ref Com On Rules, Calendar, and Operations of the House	05-11-05	08-24-05
H0415	Frye	MAKE UP INSTRUCTIONAL DAYS/HURRICANES.	*SR	Ch. SL 2005-48	04-20-05	05-12-05
H0448	Glazier	COMMUNITY COLLEGES EXEMPT FROM SMOKING LAWS.	*SR	Ch. SL 2006-133	06-01-05	06-30-06
H0485	Fisher	CHARTER SCHOOL RETIREMENT ELECTION.	*SR	Ch. SL 2005-315	05-09-05	08-10-05
H0535=	Jeffus	TEACHERS CONVERT PERSONAL LEAVE TO SICK LEAVE.	*S	Ref To Com On Education/Higher Education	08-23-05	
H0550	Tolson	SBE/COMM. COLLEGE/ RULEMAKING.	*S	Ref To Com On Education/Higher Education	06-02-05	
H0563	Tolson	COMM. COLL. MAY TRAIN LATERAL ENTRY TEACHERS.	*SR	Ch. SL 2005-198	05-24-05	06-29-05
H0577	Yongue	REPEAL ERRONEOUSLY ENACTED LAW	*S	Re-ref Com On Rules, Calendar, and Operations of the House	06-02-05	07-06-05
H0583	Sauls	COMM. COLL./LEAD AGENCY FOR JOB TRAINING.	*SR	Ch. SL 2005-77	04-05-05	05-18-05
H0637	Nye	SALARY SUPPLEMENT/ CERTAIN EDUCATION PROGRAMS.	*S	Ref to Education/ Higher Education. If fav, re-ref to Appropriations/ Base Budget	04-14-05	
H0677	Tolson	TREASURER'S DESIGNEE ON COMM. COLL. BD.	*SR	Ch. SL 2006-31	05-12-05	06-22-05
H0677	Tolson	TREASURER'S DESIGNEE ON COMM. COLL. BD.	*SR	Ch. SL 2006-31	06-23-05	06-14-06
H0683	Haire	INSTRUCTION/INFO. TO	*S	Ref To Com On	05-17-05	

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North Carolina General Assembly
Pending Senate Committee on
Education/Higher Education

Date: 08/14/2006
Time: 10:37

Leg. Day: H-174/S-176

2005-2006 Biennium

Bill	Introducer	Short Title		Date	Latest Action
H 16	Miller	SCH. CURRICULUM SHALL INCLUDE FINANCIAL LIT.	*S	05-11-2005	Ref To Com On Education/Higher Education
H 387	Barnhart	SOCIAL SECURITY # CAN'T BE STUDENT ID #.	*S	04-27-2005	Ref To Com On Education/Higher Education
H 535=	Jeffus	TEACHERS CONVERT PERSONAL LEAVE TO SICK LEAVE.	*S	08-23-2005	Ref To Com On Education/Higher Education
H 550	Tolson	SBE/COMM. COLLEGE/RULEMAKING.	*S	06-02-2005	Ref To Com On Education/Higher Education
H 637	Nye	SALARY SUPPLEMENT/CERTAIN EDUCATION PROGRAMS.	*S	04-14-2005	Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget
H 683	Haire	INSTRUCTION/INFO. TO PROTECT NEWBORN	*S	05-17-2005	Ref To Com On Education/Higher Education
H 833	Tolson	ADD'L. STANDARDS FOR COMM. COLL. ADMISSION.	S	05-17-2005	Ref To Com On Education/Higher Education
H1230	Faison	LOCAL GOVERNMENT OBSOLETE PROPERTY DONATIONS.	*S	06-08-2005	Re-ref Com On Education/Higher Education
H1264	Yongue	BOARD CERT. TEACHERS SERVE AS SCH. LEADERS.	*S	05-24-2005	Ref To Com On Education/Higher Education
H1342	Sherrill	SPECIAL DIPLOMAS FOR WAR VETERANS.	S	05-12-2005	Ref To Com On Education/Higher Education
S 181	Tillman	RECIPROCITY FOR TEACHERS FROM OTHER STATES.	S	02-23-2005	Ref To Com On Education/Higher Education
S 212	Goodall	COUNTIES MAY PROVIDE FUNDS TO CHARTER SCHOOLS.	S	02-24-2005	Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget
S 213=	Goodall	REMOVE CAP ON NUMBER OF CHARTER SCHOOLS.	S	02-24-2005	Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget
S 345=	Lucas	TEACHER CREDIT FOR EXCESS PERSONAL LEAVE.	S	03-03-2005	Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget
S 409	Bingham	RAISE STANDARDS FOR NURSING STUDENTS.	S	03-07-2005	Ref To Com On Education/Higher Education
S 439	Garwood	RAISE COMPULSORY SCHOOL ATTENDANCE AGE.	S	03-09-2005	Ref To Com On Education/Higher Education
S 484=	Swindell IV	COMM. COLL. MAY TRAIN LATERAL ENTRY TEACHERS.	S	03-10-2005	Ref To Com On Education/Higher Education
S 487	Hunt	FLAG/PLEDGE OF ALLEGIANCE IN SCHOOLS.	S	03-15-2005	Ref To Com On Education/Higher Education
S 490	Shaw	CHARTER SCHOOLS MANAGED GROWTH ACT.	S	03-15-2005	Ref To Com On Education/Higher Education

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2005-2006 Biennium

Bill	Introducer	Short Title		Date	Latest Action
S 556=	Lucas	PLANNING TIME & DUTY-FREE LUNCH FOR TEACHERS.	S	03-15-2005	Ref To Com On Education/Higher Education
S 557=	Lucas	DECREASE TEACHERS' COST FOR PERSONAL LEAVE.	S	03-15-2005	Ref To Com On Education/Higher Education
S 642	Shaw	MANDATORY EDUCATION FOR INMATES.	S	03-17-2005	Ref To Com On Education/Higher Education
S 653	Brock	MIDDLE SCHOOL STUDENTS GET HIGH SCHOOL CREDIT.	S	03-17-2005	Ref To Com On Education/Higher Education
S 702=	Nesbitt, Jr.	RAISE COMPULSORY SCHOOL ATTENDANCE AGE.	S	03-21-2005	Ref To Com On Education/Higher Education
S 728	Berger	SALARY OF SCHOOL NURSE W/DEV. DISABILITY CERT.	S	03-22-2005	Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget
S 749=	Rand	UNC PROFESSORS ENDOWMENT FUND.	S	03-22-2005	Ref To Com On Education/Higher Education
S 789=	Stevens	NO PREAPPROVAL/UNC CONSULTANT CONTRACTS.-AB	S	03-23-2005	Ref To Com On Education/Higher Education
S 799	Hartsell	TRADE JOBS FOR SUCCESS REPORTING.	S	03-23-2005	Ref To Com On Education/Higher Education
$ S 854	**Clodfelter**	**TEACHER RECRUITMENT & RETENTION INCENTIVES.**	**S**	**03-23-2005**	**Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget**
S 872	Purcell	NEED-BASED NURSING SCHOLARSHIPS.	S	03-23-2005	Ref To Com On Education/Higher Education
S 886	Hartsell	CLASSROOM EXPERIENCE FOR SCHOOL PERSONNEL.	S	03-23-2005	Ref To Com On Education/Higher Education
S 906=	Dorsett	PLACING STUDENTS IN SECLUSION.	S	03-24-2005	Ref To Com On Education/Higher Education
S 941	Thomas	FLAG, PLEDGE, AND SYMBOLS TAUGHT IN SCHOOLS.	S	03-24-2005	Ref To Com On Education/Higher Education
S 956=	Lucas	REDUCED TUITION/UNC EMPLOYEES.	S	03-24-2005	Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget
S 957=	Lucas	EST. PRIVATE, NONPROFIT CORPS.	S	03-24-2005	Ref To Com On Education/Higher Education
S 987	Apodaca	K-8 TESTING REFORM ACT OF 2005.	S	03-24-2005	Ref To Com On Education/Higher Education
S 995	Pittenger	ASSESS ADMINISTRATIVE NEEDS/EDUCATION SYSTEM.	S	03-24-2005	Ref To Com On Education/Higher Education
S1005	Lucas	EDUCATION STANDARDS/VOC REHAB. PROFESSIONALS.	S	03-24-2005	Ref To Com On Education/Higher Education
$ S1051=	**Garrou**	**ADDITIONAL TEACHER SCHOLARSHIP**	**S**	**03-24-2005**	**Ref to Education/Higher**

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2005-2006 Biennium

Bill	Introducer	Short Title		Date	Latest Action
		LOANS.			Education. If fav, re-ref to Appropriations/Base Budget
S1060	Goodall	STUDENT EDUCATION ELECTIONS.	S	03-24-2005	Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget
S1076	Rand	SCHOLAR STUDENT/NC RESIDENT.	S	03-24-2005	Ref To Com On Education/Higher Education
S1136	Brock	TEXTBOOKS SELECTED AT THE LOCAL LEVEL.	S	03-24-2005	Ref To Com On Education/Higher Education
S1139	Brock	ACADEMIC BILL OF RIGHTS.	S	03-24-2005	Ref To Com On Education/Higher Education
S1341	Swindell IV	ADD WESLEYAN COLLEGE TO UNC SYSTEM/STUDY.	S	05-15-2006	Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget
$ S1477	**Swindell IV**	**SCI/MATH TEACHER PREP. PROGRAMS.**	**S**	**05-17-2006**	**Ref to Education/Higher Education. If fav, re-ref to Appropriations/Base Budget**
S1608	Forrester	NO IN-STATE TUITION IF UNLAWFULLY IN US.	S	05-18-2006	Ref To Com On Education/Higher Education

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MEMBERSHIP

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Co-Chairman	Senator A.B. Swindell Room 629 Legislative Office Building (919)715-3030
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Senator Clark Jenkins
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Senator Martin Nesbitt, Jr.
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Senator William R. Purcell
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Senator Tony Rand
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Legislative Office Building
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Senator Fred Smith
Room 520
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Senator John Snow
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(919) 733-5875

Senator Jerry W. Tillman
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SENATE EDUCATION/HIGHER EDUCATION COMMITTEE

Wednesday, June 14, 2006
10:00 A.M.
Room 643, Legislative Office Building

MINUTES

The Senate Education/Higher Education Committee met on Wednesday, June 14, 2006 in Room 643 of the Legislative Office Building at 10:00 A.M. Senator A.B. Swindell presided. There were twenty-five Senators present.

Representatives Leo Daughtry, Dr. Martin Lancaster, President of the North Carolina Community Colleges, Ms. Linda Gunter, Ms. Heather Green, a teacher at Holly Springs Elementary School in Wake County, Mr. Tom Thomas, a teacher at Henderson Elementary School in Transylvania County. Mr. Eddie Davis, President of the North Carolina Association of Educators (NCAE), Mr. Lloyd Thrower, Executive Director of the North Carolina Association of School Principals, and other interested parties were also present.

Senator Jeanne Lucas called the meeting to order. After introduction of the pages, Alison Johnson of Coats, Amanda Eason of Benson, Don Johns of Wake Forest, Hatu Kanui of Raleigh, Taylor Warren of Raleigh, Julian Pasaga of Apex, and Nick Sikes of Greensboro. Sergeant-At-Arms present were as follows, Jon Fitchett, Stan Johnson, Wade Anders, and Terry Isaacs.

House Bill 677–Short Titled: Treasurer's Designee on Community College Board. Representatives Joe Tolson, Bob England and John Sauls, are sponsors of the Bill.

Action: Senator Swindell moved that the Committee consider the Proposed Committee Substitute to House Bill 677. The motion carried.

Senator Swindell explained the Proposed Committee Substitute to the Bill. Senator Swindell stated that the Proposed Committee Substitute for House Bill 677 would allow the Treasurer to designate a person to represent the Treasurer as an ex officio member on the State Board of Community Colleges. The designee would be allowed to vote. The Bill would become effective when it becomes law. ***Please see attached information for a detailed description of the Proposed Committee Substitute.***

Action: Senator Swindell moved for a favorable report to the Proposed Committee Substitute, and an unfavorable report to the original Committee Substitute Bill. The motion carried.

House Bill 836–Short Titled: Duties of School Counselors. Representative Larry Bell Sponsor.

Action: Senator Swindell moved for a favorable report to the Proposed Committee Substitute, and an unfavorable report to the original Bill, and that the Proposed Committee Substitute be re-referred to Appropriations. The motion carried.

House Bill 836 – Short Titled: Duties of School Counselors. Representative Larry Bell, Sponsor. Senator Lucas stated that since the Proposed Committee Substitute to the Bill was not presented to the Committee yesterday, as the Senate Rules require a majority of the committee members present and voting must vote to take up the bill at this time.

Action: Senator Doug Berger moved that the Committee hear the Proposed Senate Committee Substitute to the Original Committee Substitute. The motion carried.

Senator John Snow stated that the Proposed Senate Committee Substitute replaces the Second Edition with ""An Act Directing the State Board of Education to Develop Programs For Use In Schools on The Meaning and Importance of Memorial Day". ***It adds new GS 115C-12(33) to provide as title indicates.***

Action: Senator Apodaca moved for a favorable report to the proposed committee substitute, and an unfavorable report to the original Bill. The motion carried.

House Bill 1151 – Planning Time and Duty-Free Lunch for Teachers. Representative Magaret Jeffus, sponsor. Senator Jeanne Lucas explained House Bill 1151. This Bill would require school improvement plans to include a plan to provide (a) a duty-free lunch period for every teacher on a daily basis or as otherwise approved by the school improvement team. And, (b) duty-free instructional planning time for every teacher, with the goal of providing an average of at least five hours of planning time per week. ***This proposed committee substitute also makes conforming changes to G.S. 115C-301-1. Please see attached information provided by the Fiscal Research staff for details.***

Mr. Eddie Davis, president of the North Carolina Association of Educator, Ms. Heather Green, a teacher at Holly Springs Elementary School, Mr. Lloyd Thrower, Executive Director of the North Carolina Association of School Principals, and Mr. Tom Thomas, a teacher at Henderson Elementary School in Transylvania County each expressed their support for the proposed committee substitute.

Action: Senator Swindell moved for a favorable report to the Proposed Committee Substitute, and that it be re-referred to the Appropriations Committee. Senator Swindell also moved for an unfavorable report to the original Committee Substitute. The motion carried.

There being no further business, the meeting was adjourned at 11:15 a.m.

Respectively Submitted,

Senator Jeanne H. Lucas, Presiding

Daladier C. Miller, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

CORRECTED REPORT

Wednesday, June 21, 2006

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **771** UNC/Dual Office Holding.-AB

Draft Number:	PCS 10631
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1074** Clarify School Admissions Procedures.

Draft Number:	PCS 70781
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1908** Rewrite Special Ed Laws.

Draft Number:	PCS80663
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Senate Education/Higher Education Committee
Wednesday, June 14, 2006, 10:00 AM
643 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 677	Treasurer's Designee on Comm. Coll. Bd.	Representative England, M.D. Representative Tolson Representative Sauls
HB 1074	Clarify School Admissions Procedures.	Representative Daughtry
HB 1151	Planning Time & Duty-Free Lunch for Teachers	Representative Jeffus
HB 836	Duties of School Counselors	Representative Bell

Presentations

Other Business

Adjournment

HOUSE BILL 677:
Treasurer's Designee on Comm. Coll. Bd

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 13, 2006
Introduced by:	Reps. Tolson, Sauls, England	**Summary by:**	Sara Kamprath
Version:	PCS to First Edition H677-CSRJ-35[v.2]		Legislative Analyst

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 677 would allow the Treasurer to designate a person to represent the Treasurer on the State Board of Community Colleges.***

Differences between the First Edition and the PCS

The Proposed Committee Substitute would make Section 1 of House Bill 677 technically correct and in conformance with the bill drafting conventions. The Proposed Committee Substitute would also amend the current language allowing the Lieutenant Governor to designate a person to represent the Lieutenant Governor on the State Board of Community Colleges so that language is also technically correct and in conformance with the bill drafting conventions.

CURRENT LAW: The State Board of Community Colleges consists of 21 members:

- The Lieutenant Governor (or a person designated by the Lieutenant Governor)
- The Treasurer
- 10 members appointed by the Governor (4 from the State at large and 1 member from each of the 6 Trustee Association Regions)
- 8 members elected by the General Assembly
- The President of the North Carolina Comprehensive Community College Student Government Association (does not have a vote)

No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction under the jurisdiction of the State Board are eligible to serve on the State Board and no spouse of any of these persons are eligible to serve on the State Board. Moreover, no person who within the prior five years has been an employee of the Community Colleges System Office is eligible to serve on the Board.

The Lieutenant Governor and the Treasurer are ex officio members of the Board. They are voting members. The Lieutenant Governor's designee represents the Lieutenant Governor as an ex officio member and is allowed to vote.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 677 would authorize the Treasurer to designate a person to represent him as an ex officio member on the State Board of Community Colleges. The designee would be allowed to vote.

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

Drupti Chauhan, co-counsel to this committee, substantially contributed to this summary.

H0677e1-SMRJ-CSRJ-35[v.2]

PROPOSED SENATE COMMITTEE SUBSTITUTE H677-CSRJ-35 [v.1]

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TREASURER TO DESIGNATE A PERSON TO REPRESENT THE TREASURER ON THE STATE BOARD OF COMMUNITY COLLEGES AND TO MAKE A TECHNICAL CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-2.1(b) reads as rewritten:

"(b) The State Board of Community Colleges shall consist of 21 members, as follows:

(1) The Lieutenant ~~Governor (or a person designated by the Lieutenant Governor)~~Governor or the Lieutenant Governor's designee shall be a member ex officio.

(2) The Treasurer of North ~~Carolina~~ Carolina or the Treasurer's designee shall be a member ex officio.

..."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **1**

HOUSE BILL 677

Short Title:	Treasurer's Designee on Comm. Coll. Bd.	(Public)
Sponsors:	Representatives Tolson, Sauls, and England (Primary Sponsors).	
Referred to:	Education Subcommittee on Community Colleges.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TREASURER TO DESIGNATE A PERSON TO REPRESENT THE TREASURER ON THE STATE BOARD OF COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-2.1(b)(2) reads as rewritten:

"(2) The Treasurer of North Carolina (or a person designated by the Treasurer) shall be a member ex officio."

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

HOUSE BILL 1074:
Clarify School Admissions Procedures

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 20, 2006
Introduced by:	Rep. Daughtry	**Summary by:**	Drupti Chauhan Committee Counsel
Version:	PCS to Fourth Edition H1074-CSRQ-71[v.3]		

SUMMARY: House Bill 1074 would clarify the admissions procedures for children attend schools free of tuition in a local school administrative unit in which they are not domiciled.

The PCS would require that the State Board of Education and local boards of education are in compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and add conforming definitions from the Act; change the term "custodial adult" to "caregiver adult"; clarify the definition of "homeless"; and make several technical changes.

CURRENT LAW: Generally, a student must be domiciled in a local school administrative unit (LEA) in order to attend its public schools, free of tuition. A domicile is the place the person intends to be his or her true, permanent, and established home. A child's domicile is the same as his or her parent's or legal guardian's domicile.

There are, however, a number of exceptions that allow certain children who are not domiciled in an LEA to be admitted, free of tuition, to a public school where they reside:

1.1. Students who do not live with their parents and are not domiciles of the LEA, but who live in and are cared for and supported by an institution located in the LEA. These institutions include foster homes and group homes. [G.S. 115C-366(a1)]

1.2. Homeless students if they meet the criteria in G.S. 115C-366(a2).

1.3. A student whose parent or guardian serves in the General Assembly, and whose place of residence in the LEA is incident to the General Assembly service of the parent or guardian. This is subject to the payment of any applicable out-of-county fees that may be in effect. [G.S. 115C-366(c)]

1.4. A student who resides with his or her parent, guardian, or legal custodian[1] who is a (i) student, employee, or faculty member of a college or university or (i) visiting scholar at the National Humanities Center. [G.S. 115C-366.2]

1.5. The child who is placed in or assigned to a group home, foster home, or similar facility or institution. [G.S. 115C-366.2]

1.6. The child who lives with a legal custodian who is not the child's parent of guardian. [G.S. 115C-366.2]

1.7. The child who resides in a pre-adoptive home following placement by a county department of social services or licensed child-placing agency. [G.S. 115C-366.2]

1.8. The child who resides with a custodial adult, who is a domicile of that LEA, as a result of one of the following: [G.S. 115C-366(a3)]

[1] "Legal custodian" means the person or agency has been awarded legal custody of the child by a court.

- The death, serious illness, or incarceration of the child's parent or legal guardian.
- The abandonment of the parent or guardian.
- Abuse or neglect by the parent or guardian.
- The parent's or guardian's physical or mental condition is such that he or she cannot provide adequate care and supervision of the child.
- The loss of the child's home due to a natural disaster.

BILL ANALYSIS: House Bill 1074 would make the following changes to the law governing the admission of children to the public schools when those children are residents of, but not domiciled in, an LEA:

- G.S. 115C-366.2 would be repealed and its provisions moved to new subsections (a7) and (a8) in G.S. 115C-366.
- The provisions referring to children in foster homes and group homes would be deleted from the provisions dealing with children who are placed in child caring institutions.
- The provisions referring to homeless children would be amended to included the terminology used in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and ensure compliance with the Act at the State and local level.
- G.S. 115C-366(a3) would be amended to include children whose parents or guardians relinquish physical custody and control of the child upon the recommendation of the department of social services or the Division of Mental Health. An affidavit would be required for these children that assigns the responsibility and authority to the person with whom the child resides to make educational decisions. The parent or guardian would retain legal liability for the child's acts.
- A new subsection would be added (G.S. 115C-366(a6)) to make it clear that a child who is placed in or assigned to a licensed group home, family foster home[2], or therapeutic foster home[3], would be eligible for admission to the public schools where the facility is located subject to the following:
  - If the child's parent or legal guardian retains legal custody of the child, then an affidavit that meets the requirements of G.S. 115C-366(a3) is required. In this case, the person with whom the child lives, the child's caretaker or foster parent, or other clearly identifiable adult who resides in the county where the licensed group home or foster home is located, would have the same legal authority and responsibility as the child's

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[2] *(8) "Family Foster Home" means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.*

[3] *(14) "Therapeutic Foster Home" means a family foster home where, in addition to the provision of foster care, foster parents who receive appropriate training provide a child with behavioral health treatment services under the supervision of a county department of social services, an area mental health program, or a licensed private agency and in compliance with licensing rules adopted by the Commission.*

parent or guardian would have even if the parent or guardian does not sign this affidavit. The child's parent or legal guardian would retain legal liability for the child's acts.

- If the person or agency that placed the child has legal custody of the child, then that person or agency must provide in writing to the school the name, address and phone number of the individual who has authority to make educational decisions concerning the child.
- The Social Services Commission or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services must have licensed the group home or foster home.

- The term "educational decisions" would be expanded to mean decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. The decisions and actions would include enrolling the student and responding to disciplinary notices.

The bill also would make a number of technical and clarifying changes.

EFFECTIVE DATE: The bill would take effect July 1, 2006, and would apply beginning with the 2006-2007 school year.

H1074e4-SMRQ-CSRQ-71v3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1074

Committee Substitute Favorable 5/10/05
Committee Substitute #2 Favorable 6/1/05
Fourth Edition Engrossed 6/1/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1074-CSRQ-71 [v.1]

6/13/2006 4:50:42 PM

Short Title: Clarify School Admissions Procedures. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 reads as rewritten:

"**§ 115C-366. Assignment of student to a particular school.**

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education.~~education on the same basis as all children who are domiciled in this State. The local board of education~~

~~having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be denied enrollment because of uncertainty regarding his the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents.~~ The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. ~~The~~ A local board of education shall not charge ~~the~~ a homeless ~~child, as defined in this subsection,~~ child tuition for enrollment. ~~The~~ A homeless child's parent, guardian, or ~~person standing in loco parentis to the child,~~legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the child, and this determination shall be binding on the local board of education, subject to judicial review. ~~As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if:~~if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of:~~of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or

f. The loss or uninhabitability of the student's home as the result of a natural ~~disaster;~~disaster.

(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit; and~~unit.

(3) The caregiver adult ~~with whom the student resides~~ and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,

b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and

c. Attest that the caregiver adult ~~with whom the student is residing~~ has been given and accepts responsibility for educational decisions for the ~~child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.~~student.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the caregiver adult ~~with whom the student is living~~ shall attest to that fact in the affidavit. If the student is a minor, the caregiver adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

Upon receipt of both affidavits or an affidavit from the caregiver adult ~~with whom the student is living~~ that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school

administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~ the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~ the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~ the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~ under this Article as long as the address is kept confidential from the public under ~~the provisions of~~ Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition also shall apply to this section.

(2) Caregiver adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a caregiver adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. – Individuals who lack a fixed, regular, and adequate nighttime residence or are included in the definition of homeless children and youths in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) McKinney-Vento Homeless Education Assistance Improvements Act of 2001. – 20 U.S.C. § 11431, et seq., as amended, and federal regulations adopted under this act.

(9) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes."

SECTION 2. G.S. 115C-366.2 is repealed.

SECTION 3. This act becomes effective July 1, 2006, and applies beginning with the 2006-2007 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1074

Committee Substitute Favorable 5/10/05
Committee Substitute #2 Favorable 6/1/05
Fourth Edition Engrossed 6/1/05

Short Title: Clarify School Admissions Procedures. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 reads as rewritten:

"**§ 115C-366. Assignment of student to a particular school.**

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education on the same basis as all children who are domiciled in this State. The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be

denied enrollment because of uncertainty regarding ~~his~~ the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents. The local board shall not charge the homeless ~~child, as defined in this subsection,~~ child tuition for enrollment. The child's parent, guardian, or person standing in loco parentis to the child, may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the child, and this determination shall be binding on the local board of education, subject to judicial review. ~~As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if:~~ if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of:~~ of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or

f. The loss or uninhabitability of the student's home as the result of a natural ~~disaster;~~ disaster.

(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit; and~~ unit.

(3) The custodial adult ~~with whom the student resides~~ and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,

b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and

c. Attest that the custodial adult ~~with whom the student is residing~~ has been given and accepts responsibility for educational decisions for the ~~child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.~~student.

(4) If the student is a minor, the custodial adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit under subdivision (3) of this subsection. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the custodial adult ~~with whom the student is living~~ shall attest to that fact in the affidavit.

Upon receipt of both affidavits or an affidavit from the custodial adult ~~with whom the student is living~~ that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~ the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~ the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~ the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~ under this Article as long as the address is kept confidential from the public under ~~the provisions of~~ Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition also shall apply to this section.

(2) Custodial adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a custodial adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or

actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. – An individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes."

SECTION 2. G.S. 115C-366.2 is repealed.

SECTION 3. This act becomes effective July 1, 2005, and applies beginning with the 2005-2006 school year.

HOUSE BILL 1074:
Clarify School Admissions Procedures

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 20, 2006
Introduced by:	Rep. Daughtry	**Summary by:**	Drupti Chauhan Committee Counsel
Version:	PCS to Fourth Edition H1074-CSRQ-71[v.3]		

SUMMARY: House Bill 1074 would clarify the admissions procedures for children attend schools free of tuition in a local school administrative unit in which they are not domiciled.

The PCS would require that the State Board of Education and local boards of education are in compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and add conforming definitions from the Act; change the term "custodial adult" to "caregiver adult"; clarify the definition of "homeless"; and make several technical changes.

CURRENT LAW: Generally, a student must be domiciled in a local school administrative unit (LEA) in order to attend its public schools, free of tuition. A domicile is the place the person intends to be his or her true, permanent, and established home. A child's domicile is the same as his or her parent's or legal guardian's domicile.

There are, however, a number of exceptions that allow certain children who are not domiciled in an LEA to be admitted, free of tuition, to a public school where they reside:

1.1. Students who do not live with their parents and are not domiciles of the LEA, but who live in and are cared for and supported by an institution located in the LEA. These institutions include foster homes and group homes. [G.S. 115C-366(a1)]

1.2. Homeless students if they meet the criteria in G.S. 115C-366(a2).

1.3. A student whose parent or guardian serves in the General Assembly, and whose place of residence in the LEA is incident to the General Assembly service of the parent or guardian. This is subject to the payment of any applicable out-of-county fees that may be in effect. [G.S. 115C-366(c)]

1.4. A student who resides with his or her parent, guardian, or legal custodian[1] who is a (i) student, employee, or faculty member of a college or university or (i) visiting scholar at the National Humanities Center. [G.S. 115C-366.2]

1.5. The child who is placed in or assigned to a group home, foster home, or similar facility or institution. [G.S. 115C-366.2]

1.6. The child who lives with a legal custodian who is not the child's parent of guardian. [G.S. 115C-366.2]

1.7. The child who resides in a pre-adoptive home following placement by a county department of social services or licensed child-placing agency. [G.S. 115C-366.2]

1.8. The child who resides with a custodial adult, who is a domicile of that LEA, as a result of one of the following: [G.S. 115C-366(a3)]

[1] "Legal custodian" means the person or agency has been awarded legal custody of the child by a court.

- The death, serious illness, or incarceration of the child's parent or legal guardian.
- The abandonment of the parent or guardian.
- Abuse or neglect by the parent or guardian.
- The parent's or guardian's physical or mental condition is such that he or she cannot provide adequate care and supervision of the child.
- The loss of the child's home due to a natural disaster.

BILL ANALYSIS: House Bill 1074 would make the following changes to the law governing the admission of children to the public schools when those children are residents of, but not domiciled in, an LEA:

- G.S. 115C-366.2 would be repealed and its provisions moved to new subsections (a7) and (a8) in G.S. 115C-366.
- The provisions referring to children in foster homes and group homes would be deleted from the provisions dealing with children who are placed in child caring institutions.
- The provisions referring to homeless children would be amended to included the terminology used in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and ensure compliance with the Act at the State and local level.
- G.S. 115C-366(a3) would be amended to include children whose parents or guardians relinquish physical custody and control of the child upon the recommendation of the department of social services or the Division of Mental Health. An affidavit would be required for these children that assigns the responsibility and authority to the person with whom the child resides to make educational decisions. The parent or guardian would retain legal liability for the child's acts.
- A new subsection would be added (G.S. 115C-366(a6)) to make it clear that a child who is placed in or assigned to a licensed group home, family foster home[2], or therapeutic foster home[3], would be eligible for admission to the public schools where the facility is located subject to the following:
  - If the child's parent or legal guardian retains legal custody of the child, then an affidavit that meets the requirements of G.S. 115C-366(a3) is required. In this case, the person with whom the child lives, the child's caretaker or foster parent, or other clearly identifiable adult who resides in the county where the licensed group home or foster home is located, would have the same legal authority and responsibility as the child's

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[2] *(8) "Family Foster Home" means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.*

[3] *(14) "Therapeutic Foster Home" means a family foster home where, in addition to the provision of foster care, foster parents who receive appropriate training provide a child with behavioral health treatment services under the supervision of a county department of social services, an area mental health program, or a licensed private agency and in compliance with licensing rules adopted by the Commission.*

parent or guardian would have even if the parent or guardian does not sign this affidavit. The child's parent or legal guardian would retain legal liability for the child's acts.

- If the person or agency that placed the child has legal custody of the child, then that person or agency must provide in writing to the school the name, address and phone number of the individual who has authority to make educational decisions concerning the child.
- The Social Services Commission or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services must have licensed the group home or foster home.

➢ The term "educational decisions" would be expanded to mean decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. The decisions and actions would include enrolling the student and responding to disciplinary notices.

The bill also would make a number of technical and clarifying changes.

EFFECTIVE DATE: The bill would take effect July 1, 2006, and would apply beginning with the 2006-2007 school year.

H1074e4-SMRQ-CSRQ-71v3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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HOUSE BILL 1074

Committee Substitute Favorable 5/10/05
Committee Substitute #2 Favorable 6/1/05
Fourth Edition Engrossed 6/1/05

Short Title: Clarify School Admissions Procedures. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 reads as rewritten:

"**§ 115C-366. Assignment of student to a particular school.**

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education on the same basis as all children who are domiciled in this State. The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be

denied enrollment because of uncertainty regarding ~~his~~ the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents. The local board shall not charge the homeless ~~child, as defined in this subsection,~~ child tuition for enrollment. The child's parent, guardian, or person standing in loco parentis to the child, may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the child, and this determination shall be binding on the local board of education, subject to judicial review. ~~As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if:~~ if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of:~~ of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or

f. The loss or uninhabitability of the student's home as the result of a natural ~~disaster;~~ disaster.

(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit; and~~ unit.

(3) The custodial adult ~~with whom the student resides~~ and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,

b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and

c. Attest that the custodial adult ~~with whom the student is residing~~ has been given and accepts responsibility for educational decisions for the ~~child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.~~student.

(4) If the student is a minor, the custodial adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit under subdivision (3) of this subsection. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the custodial adult ~~with whom the student is living~~ shall attest to that fact in the affidavit.

Upon receipt of both affidavits or an affidavit from the custodial adult ~~with whom the student is living~~ that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~ the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~ the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~ the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~ under this Article as long as the address is kept confidential from the public under ~~the provisions of~~ Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition also shall apply to this section.

(2) Custodial adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a custodial adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or

actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. – An individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes."

SECTION 2. G.S. 115C-366.2 is repealed.

SECTION 3. This act becomes effective July 1, 2005, and applies beginning with the 2005-2006 school year.

PROPOSED SENATE COMMITTEE SUBSTITUTE H677-CSRJ-35 [v.1]

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TREASURER TO DESIGNATE A PERSON TO REPRESENT THE TREASURER ON THE STATE BOARD OF COMMUNITY COLLEGES AND TO MAKE A TECHNICAL CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-2.1(b) reads as rewritten:

"(b) The State Board of Community Colleges shall consist of 21 members, as follows:

(1) The Lieutenant ~~Governor (or a person designated by the Lieutenant Governor)~~Governor or the Lieutenant Governor's designee shall be a member ex officio.

(2) The Treasurer of North ~~Carolina~~ Carolina or the Treasurer's designee shall be a member ex officio.

..."

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

HOUSE BILL 677:
Treasurer's Designee on Comm. Coll. Bd

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 13, 2006
Introduced by:	Reps. Tolson, Sauls, England	**Summary by:**	Sara Kamprath Legislative Analyst
Version:	PCS to First Edition H677-CSRJ-35[v.2]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 677 would allow the Treasurer to designate a person to represent the Treasurer on the State Board of Community Colleges.***

Differences between the First Edition and the PCS

The Proposed Committee Substitute would make Section 1 of House Bill 677 technically correct and in conformance with the bill drafting conventions. The Proposed Committee Substitute would also amend the current language allowing the Lieutenant Governor to designate a person to represent the Lieutenant Governor on the State Board of Community Colleges so that language is also technically correct and in conformance with the bill drafting conventions.

CURRENT LAW: The State Board of Community Colleges consists of 21 members:

- The Lieutenant Governor (or a person designated by the Lieutenant Governor)
- The Treasurer
- 10 members appointed by the Governor (4 from the State at large and 1 member from each of the 6 Trustee Association Regions)
- 8 members elected by the General Assembly
- The President of the North Carolina Comprehensive Community College Student Government Association (does not have a vote)

No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board are eligible to serve on the State Board and no spouse of any of these persons are eligible to serve on the State Board. Moreover, no person who within the prior five years has been an employee of the Community Colleges System Office is eligible to serve on the Board.

The Lieutenant Governor and the Treasurer are ex officio members of the Board. They are voting members. The Lieutenant Governor's designee represents the Lieutenant Governor as an ex officio member and is allowed to vote.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 677 would authorize the Treasurer to designate a person to represent him as an ex officio member on the State Board of Community Colleges. The designee would be allowed to vote.

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

Drupti Chauhan, co-counsel to this committee, substantially contributed to this summary.

H0677e1-SMRJ-CSRJ-35[v.2]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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HOUSE BILL 677
PROPOSED SENATE COMMITTEE SUBSTITUTE H677-CSRJ-35 [v.2]

6/13/2006 3:07:57 PM

Short Title: Treasurer's Designee on Comm. Coll. Bd. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TREASURER TO DESIGNATE A PERSON TO REPRESENT THE TREASURER ON THE STATE BOARD OF COMMUNITY COLLEGES AND TO MAKE A TECHNICAL CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-2.1(b) reads as rewritten:

"(b) The State Board of Community Colleges shall consist of 21 members, as follows:

(1) The Lieutenant ~~Governor (or a person designated by the Lieutenant Governor)~~Governor or the Lieutenant Governor's designee shall be a member ex officio.

(2) The Treasurer of North ~~Carolina~~ Carolina or the Treasurer's designee shall be a member ex officio.

..."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 677

Short Title:	Treasurer's Designee on Comm. Coll. Bd.	(Public)
Sponsors:	Representatives Tolson, Sauls, and England (Primary Sponsors).	
Referred to:	Education Subcommittee on Community Colleges.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TREASURER TO DESIGNATE A PERSON TO REPRESENT THE TREASURER ON THE STATE BOARD OF COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-2.1(b)(2) reads as rewritten:

"(2) The Treasurer of North Carolina <u>(or a person designated by the Treasurer)</u> shall be a member ex officio."

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

HOUSE BILL 1074:
Clarify School Admissions Procedures

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 20, 2006
Introduced by:	Rep. Daughtry	**Summary by:**	Drupti Chauhan Committee Counsel
Version:	PCS to Fourth Edition H1074-CSRQ-71[v.3]		

SUMMARY: House Bill 1074 would clarify the admissions procedures for children attend schools free of tuition in a local school administrative unit in which they are not domiciled.

The PCS would require that the State Board of Education and local boards of education are in compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and add conforming definitions from the Act; change the term "custodial adult" to "caregiver adult"; clarify the definition of "homeless"; and make several technical changes.

CURRENT LAW: Generally, a student must be domiciled in a local school administrative unit (LEA) in order to attend its public schools, free of tuition. A domicile is the place the person intends to be his or her true, permanent, and established home. A child's domicile is the same as his or her parent's or legal guardian's domicile.

There are, however, a number of exceptions that allow certain children who are not domiciled in an LEA to be admitted, free of tuition, to a public school where they reside:

1.1. Students who do not live with their parents and are not domiciles of the LEA, but who live in and are cared for and supported by an institution located in the LEA. These institutions include foster homes and group homes. [G.S. 115C-366(a1)]

1.2. Homeless students if they meet the criteria in G.S. 115C-366(a2).

1.3. A student whose parent or guardian serves in the General Assembly, and whose place of residence in the LEA is incident to the General Assembly service of the parent or guardian. This is subject to the payment of any applicable out-of-county fees that may be in effect. [G.S. 115C-366(c)]

1.4. A student who resides with his or her parent, guardian, or legal custodian[1] who is a (i) student, employee, or faculty member of a college or university or (i) visiting scholar at the National Humanities Center. [G.S. 115C-366.2]

1.5. The child who is placed in or assigned to a group home, foster home, or similar facility or institution. [G.S. 115C-366.2]

1.6. The child who lives with a legal custodian who is not the child's parent of guardian. [G.S. 115C-366.2]

1.7. The child who resides in a pre-adoptive home following placement by a county department of social services or licensed child-placing agency. [G.S. 115C-366.2]

1.8. The child who resides with a custodial adult, who is a domicile of that LEA, as a result of one of the following: [G.S. 115C-366(a3)]

[1] "Legal custodian" means the person or agency has been awarded legal custody of the child by a court.

- The death, serious illness, or incarceration of the child's parent or legal guardian.
- The abandonment of the parent or guardian.
- Abuse or neglect by the parent or guardian.
- The parent's or guardian's physical or mental condition is such that he or she cannot provide adequate care and supervision of the child.
- The loss of the child's home due to a natural disaster.

BILL ANALYSIS: House Bill 1074 would make the following changes to the law governing the admission of children to the public schools when those children are residents of, but not domiciled in, an LEA:

- G.S. 115C-366.2 would be repealed and its provisions moved to new subsections (a7) and (a8) in G.S. 115C-366.
- The provisions referring to children in foster homes and group homes would be deleted from the provisions dealing with children who are placed in child caring institutions.
- The provisions referring to homeless children would be amended to included the terminology used in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and ensure compliance with the Act at the State and local level.
- G.S. 115C-366(a3) would be amended to include children whose parents or guardians relinquish physical custody and control of the child upon the recommendation of the department of social services or the Division of Mental Health. An affidavit would be required for these children that assigns the responsibility and authority to the person with whom the child resides to make educational decisions. The parent or guardian would retain legal liability for the child's acts.
- A new subsection would be added (G.S. 115C-366(a6)) to make it clear that a child who is placed in or assigned to a licensed group home, family foster home[2], or therapeutic foster home[3], would be eligible for admission to the public schools where the facility is located subject to the following:
  - If the child's parent or legal guardian retains legal custody of the child, then an affidavit that meets the requirements of G.S. 115C-366(a3) is required. In this case, the person with whom the child lives, the child's caretaker or foster parent, or other clearly identifiable adult who resides in the county where the licensed group home or foster home is located, would have the same legal authority and responsibility as the child's

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[2] *(8) "Family Foster Home" means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.*

[3] *(14) "Therapeutic Foster Home" means a family foster home where, in addition to the provision of foster care, foster parents who receive appropriate training provide a child with behavioral health treatment services under the supervision of a county department of social services, an area mental health program, or a licensed private agency and in compliance with licensing rules adopted by the Commission.*

parent or guardian would have even if the parent or guardian does not sign this affidavit. The child's parent or legal guardian would retain legal liability for the child's acts.

- If the person or agency that placed the child has legal custody of the child, then that person or agency must provide in writing to the school the name, address and phone number of the individual who has authority to make educational decisions concerning the child.
- The Social Services Commission or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services must have licensed the group home or foster home.

- The term "educational decisions" would be expanded to mean decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. The decisions and actions would include enrolling the student and responding to disciplinary notices.

The bill also would make a number of technical and clarifying changes.

EFFECTIVE DATE: The bill would take effect July 1, 2006, and would apply beginning with the 2006-2007 school year.

H1074e4-SMRQ-CSRQ-71v3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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HOUSE BILL 1074

Committee Substitute Favorable 5/10/05
Committee Substitute #2 Favorable 6/1/05
Fourth Edition Engrossed 6/1/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1074-CSRQ-71 [v.1]

6/13/2006 4:50:42 PM

Short Title: Clarify School Admissions Procedures. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 reads as rewritten:

"**§ 115C-366. Assignment of student to a particular school.**

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education.~~education on the same basis as all children who are domiciled in this State. The local board of education~~

~~having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be denied enrollment because of uncertainty regarding his the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents.~~ The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. ~~The~~ A local board of education shall not charge ~~the~~ a homeless ~~child, as defined in this subsection,~~ child tuition for enrollment. ~~The~~ A homeless child's parent, guardian, or ~~person standing in loco parentis to the child,~~legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the child, and this determination shall be binding on the local board of education, subject to judicial review. ~~As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if:~~if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of:~~of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or

f. The loss or uninhabitability of the student's home as the result of a natural ~~disaster;~~disaster.

(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit; and~~unit.

(3) The caregiver adult ~~with whom the student resides~~ and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,

b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and

c. Attest that the caregiver adult ~~with whom the student is residing~~ has been given and accepts responsibility for educational decisions for the ~~child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.~~student.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the caregiver adult ~~with whom the student is living~~ shall attest to that fact in the affidavit. If the student is a minor, the caregiver adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

Upon receipt of both affidavits or an affidavit from the caregiver adult ~~with whom the student is living~~ that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school

administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~ the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~ the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~ the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~ under this Article as long as the address is kept confidential from the public under ~~the provisions of~~ Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition also shall apply to this section.

(2) Caregiver adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a caregiver adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. – Individuals who lack a fixed, regular, and adequate nighttime residence or are included in the definition of homeless children and youths in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) McKinney-Vento Homeless Education Assistance Improvements Act of 2001. – 20 U.S.C. § 11431, et seq., as amended, and federal regulations adopted under this act.

(9) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes."

SECTION 2. G.S. 115C-366.2 is repealed.

SECTION 3. This act becomes effective July 1, 2006, and applies beginning with the 2006-2007 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1074

Committee Substitute Favorable 5/10/05
Committee Substitute #2 Favorable 6/1/05
Fourth Edition Engrossed 6/1/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1074-CSRQ-71 [v.3]

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Short Title: Clarify School Admissions Procedures. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 reads as rewritten:

"**§ 115C-366. Assignment of student to a particular school.**

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child and youth ~~have~~ has access to a free, appropriate public education.~~education on the same basis as all children who are domiciled in this State.~~

~~The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be denied enrollment because of uncertainty regarding his the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents.~~ The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. ~~The~~ A local board of education shall not charge ~~the~~ a homeless ~~child, as defined in this subsection,~~ child or youth tuition for enrollment. ~~The~~ An unaccompanied youth or a homeless child's or youth's parent, guardian, or ~~person standing in loco parentis to the child,~~legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the homeless child or youth, and this determination shall be binding on the local board of education, subject to judicial review. ~~As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if:~~if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of:~~of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or

f. The loss or uninhabitability of the student's home as the result of a natural ~~disaster;~~disaster.

(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit; and~~unit.

(3) The caregiver adult ~~with whom the student resides~~ and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,

b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and

c. Attest that the caregiver adult ~~with whom the student is residing~~ has been given and accepts responsibility for educational decisions for the ~~child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.~~student.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the caregiver adult ~~with whom the student is living~~ shall attest to that fact in the affidavit. If the student is a minor, the caregiver adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

Upon receipt of both affidavits or an affidavit from the caregiver adult ~~with whom the student is living~~ that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school

administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~ the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~ the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~ the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~ under this Article as long as the address is kept confidential from the public under ~~the provisions of~~ Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition also shall apply to this section.

(2) Caregiver adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a caregiver adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. – Individuals who lack a fixed, regular, and adequate nighttime residence or are included in the definition of homeless children and youths in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) McKinney-Vento Homeless Education Assistance Improvements Act of 2001. – 20 U.S.C. § 11431, et seq., as amended, and federal regulations adopted under this act.

(9) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes.

(10) Unaccompanied youth. – Youths who are not in the physical custody of a parent or guardian as defined in the McKinney-Vento-Vento Homeless Education Assistance Improvements Act of 2001."

SECTION 2. G.S. 115C-366.2 is repealed.

SECTION 3. This act becomes effective July 1, 2006, and applies beginning with the 2006-2007 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

HOUSE BILL 1074
Committee Substitute Favorable 5/10/05
Committee Substitute #2 Favorable 6/1/05
Fourth Edition Engrossed 6/1/05

Short Title: Clarify School Admissions Procedures. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 reads as rewritten:

"**§ 115C-366. Assignment of student to a particular school.**

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education on the same basis as all children who are domiciled in this State. The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be

denied enrollment because of uncertainty regarding ~~his~~ the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents. The local board shall not charge the homeless ~~child, as defined in this subsection,~~ child tuition for enrollment. The child's parent, guardian, or person standing in loco parentis to the child, may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the child, and this determination shall be binding on the local board of education, subject to judicial review. ~~As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if:~~if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of:~~of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or

f. The loss or uninhabitability of the student's home as the result of a natural ~~disaster;~~disaster.

(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit; and~~unit.

(3) The custodial adult ~~with whom the student resides~~ and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,

b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and

c. Attest that the custodial adult ~~with whom the student is residing~~ has been given and accepts responsibility for educational decisions for the ~~child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.~~student.

(4) If the student is a minor, the custodial adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit under subdivision (3) of this subsection. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the custodial adult ~~with whom the student is living~~ shall attest to that fact in the affidavit.

Upon receipt of both affidavits or an affidavit from the custodial adult ~~with whom the student is living~~ that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~ the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~ the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~ the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~ under this Article as long as the address is kept confidential from the public under ~~the provisions of~~ Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition also shall apply to this section.

(2) Custodial adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a custodial adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or

actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. – An individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes."

SECTION 2. G.S. 115C-366.2 is repealed.

SECTION 3. This act becomes effective July 1, 2005, and applies beginning with the 2005-2006 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1151 (Third Edition)

SHORT TITLE: Planning Time & Duty-Free Lunch for Teachers.

SPONSOR(S):

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: State Board of Education, Public Schools

EFFECTIVE DATE: The bill would become effective July 1, 2006, and would apply to school improvement plans beginning with the 2007-2008 school year.

BILL SUMMARY:

Amends G.S. 115C-105.27 to require school improvement plans to include a plan to provide (a) a duty-free lunch period for every teacher on a daily basis or as otherwise approved by the school improvement team, and (b) duty-free instructional planning time for every teacher, with the goal of providing an average of at least five hours of planning time per week. HB 1151 removes the State Board of Education's authority to grant waivers of State laws pertaining to duty-free periods for classroom teachers when the waivers are requested as part of a school improvement plan. This bill also makes conforming changes to G.S. 115C-301.1.

ASSUMPTIONS AND METHODOLOGY:

Under this act, the school improvement team is required to develop, as part of their school improvement plan, a plan that sets out how their school would provide both a duty-free lunch period and instructional planning time for all teachers. Since there is an existing process for developing a school improvement plan, no additional resources are required to modify the plan to meet the requirements of this act.

While the bill sets out goals for the provision of duty-free lunch and instructional planning periods, it does not require schools to provide a specified amount of duty-free time. The bill also does not prescribe how schools shall provide these duty-free periods. Consequently, the bill does not require schools to develop a plan that necessarily would expend additional resources for this purpose. Schools have the flexibility to develop a plan that would provide both types of duty-free periods within existing resources.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jennifer Haygood

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: July 7, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-153
HOUSE BILL 1151

AN ACT TO PROVIDE FOR INSTRUCTIONAL PLANNING TIME AND A DUTY-FREE LUNCH PERIOD FOR TEACHERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-105.27 reads as rewritten:

"**§ 115C-105.27. Development and approval of school improvement plans.**

(a) In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants shall be elected by their respective groups by secret ballot. Unless the local board of education has adopted an election policy, parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation.

(b) The strategies for improving student performance:

(1) Shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while mentors and teachers mentored are meeting;

(1a) Shall, if the school serves students in kindergarten or first grade, include a plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when their child is not reading at grade level and is at risk of not reading at grade level by the time the child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read, strategies for teachers and parents to implement that will help students improve and expand their reading, and provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade ~~level.~~ level;

(2) Shall include a plan to address school safety and discipline concerns in accordance with the safe school plan developed under Article 8C of this Chapter;
(3) May include a decision to use State funds in accordance with G.S. 115C-105.25;
(4) Shall include a plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school;
(5) May include requests for waivers of State laws, rules, or policies for that school. A request for a waiver shall meet the requirements of G.S. ~~115C-105.26.~~ 115C-105.26;
(6) Shall include a plan to provide a duty-free lunch period for every teacher on a daily basis or as otherwise approved by the school improvement team; and
(7) Shall include a plan to provide duty-free instructional planning time for every teacher under G.S. 115C-301.1, with the goal of providing an average of at least five hours of planning time per week.

(c) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the local board of education only if the proposed school improvement plan has the approval of a majority of the staff who voted on the plan.

(d) The local board of education shall accept or reject the school improvement plan. The local board shall not make any substantive changes in any school improvement plan that it accepts. If the local board rejects a school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board to accept or reject. If no school improvement plan is accepted for a school within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school. The General Assembly urges the local board to utilize the school's proposed school improvement plan to the maximum extent possible when developing such a plan.

(e) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans."

SECTION 2. G.S. 115C-105.26(b) reads as rewritten:

"(b) When requested as part of a school improvement plan, the State Board of Education may grant waivers of:

(1) State laws pertaining to class ~~size, teacher certification, and the duty-free period for classroom teachers under G.S. 115C-301.1;~~ size and teacher certification; and

(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and G.S. 115C-325, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System."

SECTION 3. G.S. 115C-301.1 reads as rewritten:

"**§ 115C-301.1. Duty-free instructional planning time. ~~period.~~**

All full-time assigned classroom teachers shall be provided ~~a daily~~ duty-free instructional planning time ~~period~~ during regular student contact hours. The duty-free instructional planning time ~~period~~ shall be provided to the maximum extent that (i) the safety and proper supervision of children may allow during regular student contact hours and (ii) insofar as funds are provided for this purpose by the General Assembly. If the safety and supervision of children does not allow ~~a daily~~ duty-free instructional planning time ~~period~~ during regular student contact hours for a given teacher, the funds provided by the General Assembly for the duty-free instructional planning time ~~period~~ for that teacher shall revert to the general fund. Principals shall not unfairly burden a given teacher by making that teacher give up his or her duty-free instructional planning time ~~period~~ on an ongoing, regular basis without the consent of the teacher."

SECTION 4. This act becomes effective July 1, 2006, and applies to school improvement plans beginning with the 2007-2008 school year.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:45 p.m. this 23rd day of July, 2006

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1151*
Committee Substitute Favorable 6/1/05

Short Title: Planning Time & Duty-Free Lunch for Teachers. (Public)

Sponsors:

Referred to:

April 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR INSTRUCTIONAL PLANNING TIME AND A DUTY-FREE LUNCH PERIOD FOR TEACHERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-105.27 reads as rewritten:

"**§ 115C-105.27. Development and approval of school improvement plans.**

(a) In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants shall be elected by their respective groups by secret ballot. Unless the local board of education has adopted an election policy, parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation.

(b) The strategies for improving student performance:

(1) Shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the school improvement plan. The plan may provide that a

portion of these funds is used for mentor training and for release time and substitute teachers while mentors and teachers mentored are meeting;

(1a) Shall, if the school serves students in kindergarten or first grade, include a plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when their child is not reading at grade level and is at risk of not reading at grade level by the time the child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read, strategies for teachers and parents to implement that will help students improve and expand their reading, and provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade ~~level.~~ level;

(2) Shall include a plan to address school safety and discipline concerns in accordance with the safe school plan developed under Article 8C of this Chapter;

(3) May include a decision to use State funds in accordance with G.S. 115C-105.25;

(4) Shall include a plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school;

(5) May include requests for waivers of State laws, rules, or policies for that school. A request for a waiver shall meet the requirements of G.S. ~~115C-105.26.~~ 115C-105.26;

(6) Shall include a plan to provide a duty-free lunch period for every teacher on a daily basis or as otherwise approved by the school improvement team; and

(7) Shall include a plan to provide unencumbered instructional planning time for every teacher, with the goal of providing an average of at least five hours of planning time per week.

(c) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the local board of education only if the proposed school improvement plan has the approval of a majority of the staff who voted on the plan.

(d) The local board of education shall accept or reject the school improvement plan. The local board shall not make any substantive changes in any school improvement plan that it accepts. If the local board rejects a school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school

improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board to accept or reject. If no school improvement plan is accepted for a school within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school. The General Assembly urges the local board to utilize the school's proposed school improvement plan to the maximum extent possible when developing such a plan.

(e) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans."

SECTION 2. G.S. 115C-105.26(b) reads as rewritten:

"(b) When requested as part of a school improvement plan, the State Board of Education may grant waivers of:

(1) State laws pertaining to class ~~size, teacher certification, and the duty-free period for classroom teachers under G.S. 115C-301.1;~~ size and teacher certification; and

(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and G.S. 115C-325, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System."

SECTION 3. This act becomes effective July 1, 2005, and applies to school improvement plans beginning with the 2006-2007 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 836

Committee Substitute Favorable 4/20/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H836-CSLE-24 [v.3]

6/13/2006 6:11:59 PM

Short Title: Memorial Day Program in the Schools. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO DEVELOP PROGRAMS FOR USE IN SCHOOLS ON THE MEANING AND IMPORTANCE OF MEMORIAL DAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12 is amended by adding a new subdivision to read:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

. . .

(33) Duty to develop recommended programs for use in schools on Memorial Day. – The State Board of Education shall develop recommended instructional programs that enable students to gain a better understanding of the meaning and importance of Memorial Day. All schools, especially schools that hold school on Memorial Day, shall recognize the significance of Memorial Day."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 836

Committee Substitute Favorable 4/20/05

Short Title: Duties of School Counselors. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT SCHOOL COUNSELORS SPEND THEIR TIME PROVIDING DIRECT SERVICES TO STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-316.1. Duties of school counselors.**

(a) School counselors shall implement a comprehensive developmental school counseling program in their schools. Counselors shall spend at least eighty percent (80%) of their work time providing direct services to students. Direct services do not include the coordination of standardized testing. Direct services shall consist of:

(1) Delivering the school guidance curriculum through large-group guidance, interdisciplinary curriculum development, group activities, and parent workshops;

(2) Guiding individual student planning through individual or small-group assistance and individual or small-group advisement;

(3) Providing responsive services through consultation with students, families, and staff; individual and small-group counseling; crisis counseling; referrals; and peer facilitation; and

(4) Performing other student services listed in the Department of Public Instruction school counselor job description that has been approved by the State Board of Education.

(b) During the remainder of their work time, counselors shall spend adequate time on school counseling program support activities that consist of professional development; consultation, collaboration, and training; and program management and operations. School counseling program support activities do not include the coordination of standardized testing. However, school counselors may assist other staff with the coordination of standardized testing."

SECTION 2. Prior to the 2006-2007 school year, each local board of education shall develop a transition plan for implementing Section 1 of this act, within existing resources, by reassigning duties within its schools.

The State Board of Education shall distribute guidelines to all local school administrative units on the implementation of this act.

SECTION 3. The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the implementation of this act.

SECTION 4. This act is effective when it becomes law. Section 1 of this act applies to school years beginning with the 2006-2007 school year.

VISITOR REGISTRATION SHEET

14

Senate Education/Higher Education Committee — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Wilson	SBE
Rita Joyner	SBE
JOYCE POPE	civitas institute
Carolyn McKinney	NCAE
Thomas Thomas	NCDPI Div. of Prin. + Adm.
JoAnn Lamm	DHHS/DSS
Stana McHenry	NC DST
Diann Irwin	DPI - EC Divisia
Karen Darlington	
Wesley McHenry	NCDPI
Adam Keith	NCGA Staff

VISITOR REGISTRATION SHEET

Senate Education/Higher Education Committee — June 7, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Q Bryd	NCCCS
Rita L. Joyner	SBE
Ellen Greaves	PENC
Molly Ryan	NCSBA
Adam Pridemore	NCASA
Katherine Joyce	NCASA
Susan Harrison	WCPSS
Cole Taylor	Governor's Office
Jim Stegall	U.C.P.S.
Leanne Winner	NCSBA
Cully Meyers	Governors office

VISITOR REGISTRATION SHEET

Senate Education/Higher Education Committee — June 14, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Wolfe	Daily Bulletin
Lanny Simmons	NC DPI
Jami Fitzgerald	NCFPC
Vicki H. Kipling	Parent
Brian Lewis	Covenant
[illegible]	GAO
Emily MacKay	[illegible]
[illegible]	E-NC
Sheryl Moore	School Counselor
Kelly Tayne	School Counselor
Martha Joseph	School Counselor

Senate Education/Higher Education Committee

Wednesday, June 21, 2006
10:00 A.M.
Room 643, Legislative Office Building

The Senate Education/Higher Education Committee met on Wednesday, June 21, 2006 in Room 643 of the Legislative Office Building at 10:00 A.M. Senator A.B. Swindell presided. There were ten Senators present. Representatives Leo Daughtry, Rick Glazier, Laura Wiley, Ms. Vicke Hooper-Kepling, Mr. Jim Lawrence of the North Carolina Association of School Board Attorneys and other interested parties were also in attendance.

Senator Swindell called the meeting to order. After introduction of the pages, Daladier Miller of Cary, Shamika Hodge of Knightdale, Chris Morgan of Thomasville, Rebekah Jewell of Clayton, Ashleigh Stephens of Lumberton, Brooke Blackman of Angier and Aaron Squires of Chapel Hill, Senator Swindell recognized staff, the Sergeant-At-Arms staff and welcomed everyone to the meeting.

House Bill 1908 – Short Titled: Rewrite Special Ed Laws. Representative Rick Glazier, Sponsor of the Bill explained the Bill. Representative Glazier stated that this Bill is an agreed upon consensus from the House Select Committee on the Education of Students with Disabilities ("Committee"). It would make numerous changes to the laws governing the special education of children with disabilities. Some of these are required to comply with federal law; other changes reorganize the law to make it clear, up-to-date, and consistent with federal law. Representative Glazier stated that the Bill Analysis is incredibly correct. ***See attachment.***

Action: Senator Lucas offered an amendment to amend the bill on page 8, line 16 by deleting the word "shall" and substituting the word "may". The motion carried.

Action: Senator Lucas moved for an unfavorable report to the Committee Substitute Bill Number One, but a favorable report to the Senate Committee Substitute Bill. The motion carried.

Senator Swindell recognized Ms. Vickie Hooper Kepling, representing the North Carolina Parents of Children with Disabilities stated that, she is in full support of House Bill 1908. ***Please see attached information provided by Ms. Hooper-Kepling for detailed comments.***

House Bill 1074 – Short Titled: Clarify School Admissions Procedures. Representative Leo Daughtry, sponsor of the Bill gave a brief summary of the Bill. Senator Swindell stated that since the General Assembly is in the midst of very fast moving budget meetings, and he would like to discuss and vote on amendments taken during the meeting

meetings, and he would like to discuss and vote on amendments taken during the meeting quickly. All items can be discussed and questions can be clarified at anytime during the presentations.

Representative Daughtry stated that this legislation has the support of the North Carolina Council of School Board Attorneys, The North Carolina School Board Association, The Mental Health Association, The Association of School Board Administrators, The Department of Social Services, the North Carolina Association of School Superintendents, the North Carolina Association of Educators, and Trial Advocacy groups. This legislation has been worked on for about two years, and all parties have agreed on the Proposed Committee Substitute. The Proposed Committee Substitute would require that the State Board of Education and local school boards are in compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and add conforming definitions from the Act; change the term "custodial adult" to "caregiver adult"; clarify the definition of "homeless"; and make several technical changes.

Senator Lucas moved for a favorable report to the proposed committee substitute and an unfavorable report to the original Bill. The motion carried.

House Bill 771 – Short Titled: UNC/Dual Office Holding. Representative Margaret Dickson, Sponsor.

House Bill 771 would remove the current prohibition against spouses of officers or employees of the State from being members of the UNC Board of Governors, trustees of UNC constituent institutions or the State Board of Community Colleges. Please see attachment for a detailed description of the Bill.

Action: Senator Jeanne Lucas moved to amend the Bill on page 2, line 13 to by deleting "June 30, 2005" and substituting "When it becomes law".

There being no further business, the meeting was adjourned at 11:00 a.m.

Senator A.B. Swindell, Presiding Chair

Daladier C. Miller, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT

Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

CORRECTED REPORT

Wednesday, June 21, 2006

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **771** UNC/Dual Office Holding.-AB

Draft Number:	PCS 10631
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1074** Clarify School Admissions Procedures.

Draft Number:	PCS 70781
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1908** Rewrite Special Ed Laws.

Draft Number:	PCS80663
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Senate Education/Higher Education Committee
Wednesday, June 21, 2006, 10:00 AM
Room 643 LOB
Senator A.B. Swindell, Co-Chair, Presiding

AGENDA

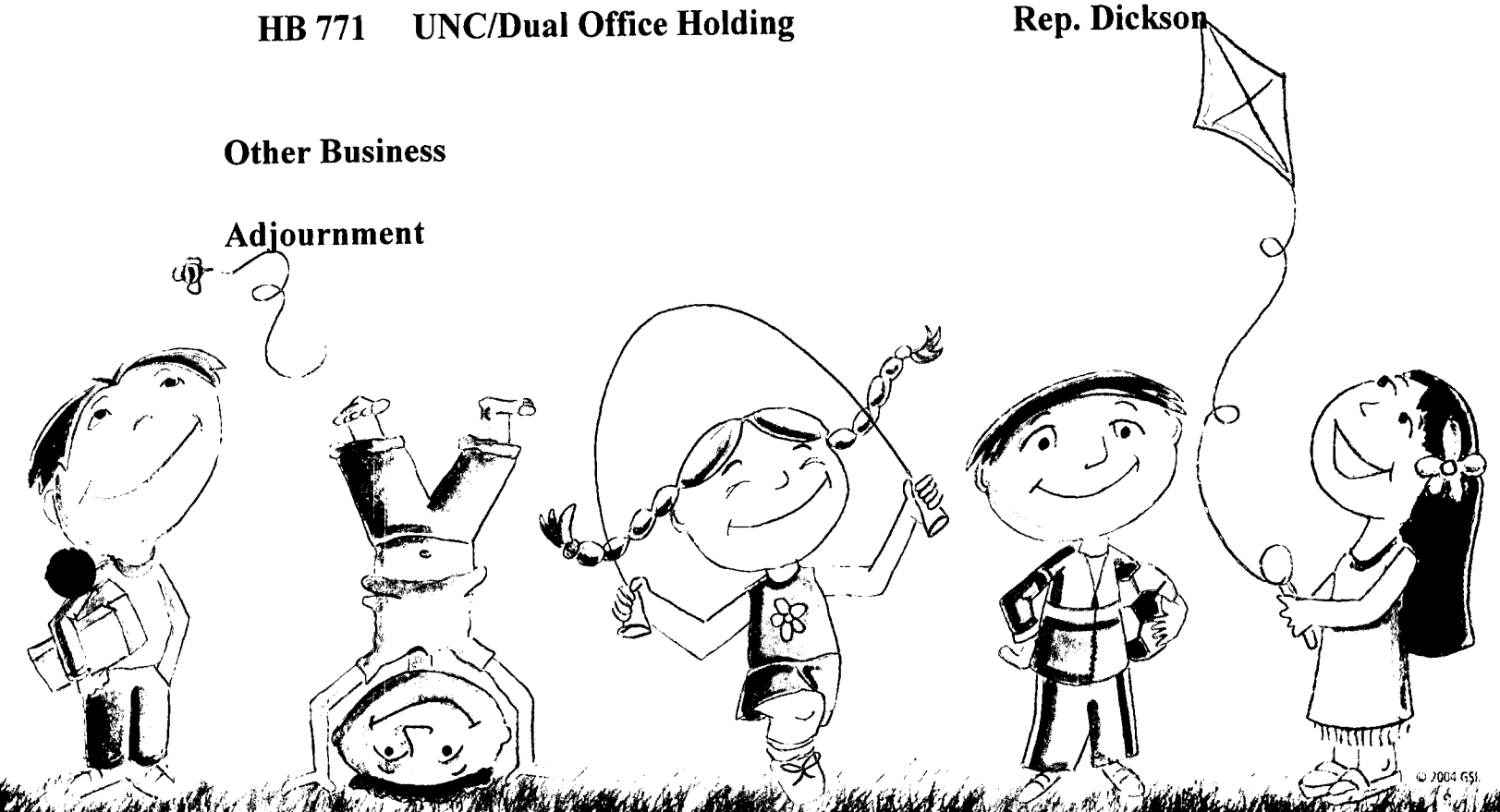
Welcome and Opening Remarks	**Senator A.B. Swindell, Co-Chair**
Introduction of Pages	**Senator A.B. Swindell, Co-Chair**

Bills

HB 1074	**Clarify School Admissions Procedures**	**Rep. Daughtry**
HB 1908	**Rewrite Special Ed Laws**	**Reps. Glazier, Farmer-Buitterfield, Preston, Wiley**
HB 771	**UNC/Dual Office Holding**	**Rep. Dickson**

Other Business

Adjournment



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1908

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

H1908-ARQ-26 [v.1]

Date 6/21/06 ,2006

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

Representative Glazier

moves to amend the bill on page 8, line 16 by deleting the word "shall" and substituting the word "may".

SIGNED Senator Jeanne H. Lucas
Amendment Sponsor

SIGNED Jeanne H. Lucas
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

HOUSE BILL 1074:
Clarify School Admissions Procedures

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 20, 2006
Introduced by:	Rep. Daughtry	**Summary by:**	Drupti Chauhan Committee Counsel
Version:	PCS to Fourth Edition H1074-CSRQ-71[v.3]		

SUMMARY: ***House Bill 1074 would clarify the admissions procedures for children attend schools free of tuition in a local school administrative unit in which they are not domiciled.***

The PCS would require that the State Board of Education and local boards of education are in compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and add conforming definitions from the Act; change the term "custodial adult" to "caregiver adult"; clarify the definition of "homeless"; and make several technical changes.

CURRENT LAW: Generally, a student must be domiciled in a local school administrative unit (LEA) in order to attend its public schools, free of tuition. A domicile is the place the person intends to be his or her true, permanent, and established home. A child's domicile is the same as his or her parent's or legal guardian's domicile.

There are, however, a number of exceptions that allow certain children who are not domiciled in an LEA to be admitted, free of tuition, to a public school where they reside:

1.1. Students who do not live with their parents and are not domiciles of the LEA, but who live in and are cared for and supported by an institution located in the LEA. These institutions include foster homes and group homes. [G.S. 115C-366(a1)]

1.2. Homeless students if they meet the criteria in G.S. 115C-366(a2).

1.3. A student whose parent or guardian serves in the General Assembly, and whose place of residence in the LEA is incident to the General Assembly service of the parent or guardian. This is subject to the payment of any applicable out-of-county fees that may be in effect. [G.S. 115C-366(c)]

1.4. A student who resides with his or her parent, guardian, or legal custodian[1] who is a (i) student, employee, or faculty member of a college or university or (i) visiting scholar at the National Humanities Center. [G.S. 115C-366.2]

1.5. The child who is placed in or assigned to a group home, foster home, or similar facility or institution. [G.S. 115C-366.2]

1.6. The child who lives with a legal custodian who is not the child's parent of guardian. [G.S. 115C-366.2]

1.7. The child who resides in a pre-adoptive home following placement by a county department of social services or licensed child-placing agency. [G.S. 115C-366.2]

1.8. The child who resides with a custodial adult, who is a domicile of that LEA, as a result of one of the following: [G.S. 115C-366(a3)]

[1] "Legal custodian" means the person or agency has been awarded legal custody of the child by a court.

- The death, serious illness, or incarceration of the child's parent or legal guardian.
- The abandonment of the parent or guardian.
- Abuse or neglect by the parent or guardian.
- The parent's or guardian's physical or mental condition is such that he or she cannot provide adequate care and supervision of the child.
- The loss of the child's home due to a natural disaster.

BILL ANALYSIS: House Bill 1074 would make the following changes to the law governing the admission of children to the public schools when those children are residents of, but not domiciled in, an LEA:

- G.S. 115C-366.2 would be repealed and its provisions moved to new subsections (a7) and (a8) in G.S. 115C-366.
- The provisions referring to children in foster homes and group homes would be deleted from the provisions dealing with children who are placed in child caring institutions.
- The provisions referring to homeless children would be amended to included the terminology used in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and ensure compliance with the Act at the State and local level.
- G.S. 115C-366(a3) would be amended to include children whose parents or guardians relinquish physical custody and control of the child upon the recommendation of the department of social services or the Division of Mental Health. An affidavit would be required for these children that assigns the responsibility and authority to the person with whom the child resides to make educational decisions. The parent or guardian would retain legal liability for the child's acts.
- A new subsection would be added (G.S. 115C-366(a6)) to make it clear that a child who is placed in or assigned to a licensed group home, family foster home[2], or therapeutic foster home[3], would be eligible for admission to the public schools where the facility is located subject to the following:
  - If the child's parent or legal guardian retains legal custody of the child, then an affidavit that meets the requirements of G.S. 115C-366(a3) is required. In this case, the person with whom the child lives, the child's caretaker or foster parent, or other clearly identifiable adult who resides in the county where the licensed group home or foster home is located, would have the same legal authority and responsibility as the child's

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[2] *(8) "Family Foster Home" means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.*

[3] *(14) "Therapeutic Foster Home" means a family foster home where, in addition to the provision of foster care, foster parents who receive appropriate training provide a child with behavioral health treatment services under the supervision of a county department of social services, an area mental health program, or a licensed private agency and in compliance with licensing rules adopted by the Commission.*

parent or guardian would have even if the parent or guardian does not sign this affidavit. The child's parent or legal guardian would retain legal liability for the child's acts.

- If the person or agency that placed the child has legal custody of the child, then that person or agency must provide in writing to the school the name, address and phone number of the individual who has authority to make educational decisions concerning the child.
- The Social Services Commission or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services must have licensed the group home or foster home.

- The term "educational decisions" would be expanded to mean decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. The decisions and actions would include enrolling the student and responding to disciplinary notices.

The bill also would make a number of technical and clarifying changes.

EFFECTIVE DATE: The bill would take effect July 1, 2006, and would apply beginning with the 2006-2007 school year.

H1074e4-SMRQ-CSRQ-71v3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1074

Committee Substitute Favorable 5/10/05
Committee Substitute #2 Favorable 6/1/05
Fourth Edition Engrossed 6/1/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1074-CSRQ-71 [v.3]

6/20/2006 4:31:33 PM

Short Title: Clarify School Admissions Procedures. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 reads as rewritten:

"**§ 115C-366. Assignment of student to a particular school.**

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child and youth ~~have~~ has access to a free, appropriate public education.~~education on the same basis as all children who are domiciled in this State.~~

~~The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be denied enrollment because of uncertainty regarding his the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents.~~ The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. ~~The~~ A local board of education shall not charge ~~the~~ a homeless ~~child, as defined in this subsection,~~ child or youth tuition for enrollment. ~~The~~ An unaccompanied youth or a homeless child's or youth's parent, guardian, or ~~person standing in loco parentis to the child,~~legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the homeless child or youth, and this determination shall be binding on the local board of education, subject to judicial review. ~~As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if:~~if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of:~~of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or

f. The loss or uninhabitability of the student's home as the result of a natural ~~disaster;~~disaster.

(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit; and~~unit.

(3) The caregiver adult ~~with whom the student resides~~ and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,

b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and

c. Attest that the caregiver adult ~~with whom the student is residing~~ has been given and accepts responsibility for educational decisions for the ~~child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.~~student.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the caregiver adult ~~with whom the student is living~~ shall attest to that fact in the affidavit. If the student is a minor, the caregiver adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

Upon receipt of both affidavits or an affidavit from the caregiver adult ~~with whom the student is living~~ that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school

administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~ the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~ the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~ the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~ under this Article as long as the address is kept confidential from the public under ~~the provisions of~~ Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition also shall apply to this section.

(2) Caregiver adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a caregiver adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. – Individuals who lack a fixed, regular, and adequate nighttime residence or are included in the definition of homeless children and youths in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) McKinney-Vento Homeless Education Assistance Improvements Act of 2001. – 20 U.S.C. § 11431, et seq., as amended, and federal regulations adopted under this act.

(9) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes.

(10) Unaccompanied youth. – Youths who are not in the physical custody of a parent or guardian as defined in the McKinney-Vento-Vento Homeless Education Assistance Improvements Act of 2001."

SECTION 2. G.S. 115C-366.2 is repealed.

SECTION 3. This act becomes effective July 1, 2006, and applies beginning with the 2006-2007 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

HOUSE BILL 1074
Committee Substitute Favorable 5/10/05
Committee Substitute #2 Favorable 6/1/05
Fourth Edition Engrossed 6/1/05

Short Title: Clarify School Admissions Procedures. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 reads as rewritten:

"**§ 115C-366. Assignment of student to a particular school.**

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education on the same basis as all children who are domiciled in this State. The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be

denied enrollment because of uncertainty regarding ~~his~~ the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents. The local board shall not charge the homeless ~~child, as defined in this subsection,~~ child tuition for enrollment. The child's parent, guardian, or person standing in loco parentis to the child, may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the child, and this determination shall be binding on the local board of education, subject to judicial review. ~~As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if:~~ if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of:~~ of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or

f. The loss or uninhabitability of the student's home as the result of a natural ~~disaster;~~ disaster.

(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit; and~~ unit.

(3) The custodial adult ~~with whom the student resides~~ and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,

b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and

c. Attest that the custodial adult ~~with whom the student is residing~~ has been given and accepts responsibility for educational decisions for the ~~child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.~~student.

(4) If the student is a minor, the custodial adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit under subdivision (3) of this subsection. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the custodial adult ~~with whom the student is living~~ shall attest to that fact in the affidavit.

Upon receipt of both affidavits or an affidavit from the custodial adult ~~with whom the student is living~~ that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~ the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~ the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~ the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~ under this Article as long as the address is kept confidential from the public under ~~the provisions of~~ Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition also shall apply to this section.

(2) Custodial adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a custodial adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or

actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. – An individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes."

SECTION 2. G.S. 115C-366.2 is repealed.

SECTION 3. This act becomes effective July 1, 2005, and applies beginning with the 2005-2006 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1908
Committee Substitute Favorable 5/31/06

Short Title: Rewrite Special Ed Laws. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS GOVERNING THE EDUCATION OF CHILDREN WITH SPECIAL NEEDS.

The General Assembly of North Carolina enacts:

SECTION 1. Parts 1-3, 5-6, and 10-14 of Article 9 of Chapter 115C of the General Statutes are repealed.

SECTION 2. Article 9 of Chapter 115C of the General Statutes, as amended by Section 1 of this act, reads as rewritten:

"Article 9.

"~~Special Education.~~Education of Children With Disabilities.

"Part 1A. General Provisions.

"**§ 115C-106.1. State goal.**

The goal of the State is to provide full educational opportunity to all children with disabilities who reside in the State.

"**§ 115C-106.2. Purposes.**

(a) The purposes of this Article are to (i) ensure that all children with disabilities ages three through 21 have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepares them for further education, employment, and independent living; (ii) ensure that the rights of these children and their parents are protected; and (iii) enable the State Board of Education and local educational agencies to provide for the education of all children with disabilities.

(b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Article is to enable the State Board of Education and local educational agencies to implement IDEA in this State. If this Article is silent or conflicts with IDEA, and if IDEA has specific language that is mandatory, then IDEA controls.

(c) Notwithstanding any other section of this Article, the State Board of Education may set standards for the education of children with disabilities that are higher than those required by IDEA.

"§ 115C-106.3. Definitions.

The following definitions apply in this Article:

(1) "Child with a disability" means a child with at least one disability who because of that disability requires special education and related services.

(2) "Disability" includes mental retardation; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; serious emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments, specific learning disability, or other disability as may be required to be included under IDEA. For a child ages three through seven, this term also includes developmental delay.

(3) "Dispute" means a disagreement between the parties.

(4) "Free appropriate public education" means special education and related services that:

a. Are provided at public expense, under public supervision and direction, and without charge;

b. Meet the standards of the State Board;

c. Include an appropriate preschool, elementary school, or secondary school education in the State; and

d. Are provided in conformity with an individualized education program.

(5) "Hearing officers" include administrative law judges as defined in G.S. 150B-2(1) and hearing review officers.

(6) "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and federal regulations adopted under this act.

(7) "IEP Team" is as defined in IDEA.

(8) "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, implemented, and revised consistent with IDEA and State law.

(9) "Infant or toddler with a disability" is as defined in IDEA.

(10) "Least restrictive environment" means to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(11) "Local educational agency" includes any of the following that provides special education and related services to children with disabilities:

a. A local school administrative unit.

b. A charter school.

c. The Department of Health and Human Services.

d. The Department of Correction.
e. The Department of Juvenile Justice and Delinquency Prevention.
f. Any other State agency or unit of local government.

(12) "Mediation" means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(13) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a dispute.

(14) "Parent" means:
a. A natural, adoptive, or foster parent;
b. A guardian, but not the State if the child is a ward of the State;
c. An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, and with whom the child lives;
d. An individual who is legally responsible for the child's welfare; or
e. A surrogate if one is appointed under G.S. 115C-109.2.

(15) "Party" or "Parties" means the local educational agency or the parents, or both.

(16) "Petition" means a request for a due process hearing as provided for under IDEA.

(17) "Preschool child with a disability" means a child with one or more disabilities who meets all of the following criteria:
a. Has reached his or her third birthday and whose parents have requested services from the public schools.
b. Is not eligible to enroll in public kindergarten.
c. Because of the disability, needs special education and related services in order to prepare the child to benefit from the educational programs provided by the public schools, beginning with kindergarten.

(18) "Related services" is as defined in IDEA.

(19) "Rules" includes rules, policies, and procedures. Rules as defined in G.S. 150B-2(8a) shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes.

(20) "Special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. The term includes instruction in physical education and instruction conducted in a classroom, the home, a hospital or institution, and other settings.

"Part 1B. Provision of Free Appropriate Public Education.

"**§ 115C-107.1. Free appropriate public education; ages.**

(a) A free appropriate public education shall be made available to the following:
(1) All children with disabilities who reside in the State, who are the ages of three through 21, who have not graduated from high school, and who require special education and related services.

(2) Any child with a disability who is receiving special education and related services and who has not graduated from high school until the end of the school year in which that child reaches the age of 22.

(3) Children with disabilities who require special education and related services and who are suspended or expelled from school and entitled to continuing education services as provided in IDEA.

(b) A free appropriate public education is not required to be provided to infants and toddlers with disabilities. However, early intervention services shall be made available to these children under G.S. 143B-139.6A.

(c) If funds are made available, the State Board and the Secretary of Health and Human Services may adopt an agreement to allow the continuation of early intervention services for children with a disability who are at least three years old but before they enter kindergarten or are eligible to enter kindergarten. If an agreement is adopted under this subsection, then a free appropriate public education is not required to be provided to any child with a disability who continues to receive early intervention services in accordance with that agreement.

(d) Nothing in this Article requires a free appropriate public education to be made available to any individual aged 18 through 21 who, in the educational placement immediately before that individual's incarceration in an adult correctional facility, was not actually identified as being a child with a disability and did not have an IEP.

"**§ 115C-107.2. Duties of State Board of Education.**

(a) The State Board of Education shall adopt rules to ensure that:

(1) The requirements of this Article and IDEA are met.

(2) All educational programs under the supervision of any local educational agency for children with disabilities meet all of the following requirements:

a. The programs are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities.

b. The programs meet the State Board's educational standards.

c. With respect to homeless children, the programs meet the requirements of 20 U.S.C. § 1431, McKinney-Vento Homeless Assistance Act.

(b) The rules adopted under subsection (a) of this section shall include rules that:

(1) Establish standards for the programs of special education to be administered by local educational agencies and by the State Board.

(2) Ensure that children with disabilities are educated in the least restrictive environment.

(3) Ensure that local school administrative units make available special education and related services to all preschool children with disabilities whose parents request these services.

(4) Provide for public hearings, adequate notice of these hearings, and an opportunity for comment from the general public before the adoption of the rules required by this Article.

(5) Are required in order to receive federal funding under IDEA.

(6) Provide that, where a local educational agency finds that appropriate services are available from other public agencies or private organizations, the local educational agency may contract for those services rather than provide them directly.

(7) Enable local educational agencies to identify, evaluate, place, and make other educational decisions for children with disabilities.

(8) Provide procedural safeguards for children with disabilities and their parents.

(9) Designate a person in the Department of Public Instruction who is charged with receiving and responding to notices or other legal documents under Part 1D of this Article.

(10) Support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(c) Rules adopted under this section shall be consistent with IDEA and shall comply with G.S. 115C-12(19). Local educational agencies, parents, and other individuals concerned with the education of children with disabilities shall be consulted in the development of rules adopted under this Article.

(d) The State Board shall develop forms for local educational agencies to use in order to comply with this Article. The forms must comply with G.S. 115C-12(19) and may be in an electronic format.

(e) The State Board shall provide technical assistance to local educational agencies at their request.

(f) The State Board shall develop any plans that meet the criteria of IDEA and are required to be submitted to the United States Department of Education.

(g) The State Board shall make available to hearing officers training related to IDEA and its legal interpretations in order to facilitate hearings and reviews under G.S. 115C-109.6.

"**§ 115C-107.3. Child find.**

(a) The Board shall require an annual census of children with disabilities, subdivided for "identified" and "suspected" children with disabilities, to be taken in each school year. Suspected children are those in the formal process of being evaluated or identified as children with disabilities. The census shall be conducted annually and shall be completed by October 15, submitted to the Governor and General Assembly and made available to the public by January 15 annually.

(b) In taking the census, the Board requires the cooperation, participation, and assistance of all local educational agencies. Therefore, each local educational agency shall cooperate and participate with and assist the Board in conducting the census.

(c) The census shall include the number of children identified and suspected with disabilities, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what local educational agency, the identity of each local educational agency having children with disabilities in its care, custody,

management, jurisdiction, control, or programs, the number of children with disabilities being served by each local educational agency, and any other information or data that the Board requires. The census shall be of children with disabilities between the ages three through 21 but is not required to include children with disabilities that have graduated from high school.

"**§ 115C-107.4. Monitoring and enforcement.**

(a) The State Board shall monitor all local educational agencies to determine compliance with this Article and IDEA. The State Board also shall monitor the effectiveness of IEPs in meeting the educational needs of children with disabilities.

(b) The State Board shall implement an effective and efficient system of incentives and sanctions for local educational agencies in order to improve results for children with disabilities and meet the requirements of this Article and IDEA. The system, which must be based on a continuum of recognition and sanctions, shall:

(1) Identify and recognize local educational agencies that achieve or exceed targets and indicators as determined by the State Board, demonstrate significant improvement over time, and show growth on targets and indicators as determined by each local educational agency.

(2) Provide consequences for local educational agencies that are substantially noncompliant with statutory and regulatory requirements under this Article and IDEA.

(c) The system of incentives developed under subsection (b) of this section may include commendations, public recognition, allocation of grant funds if available, and any other incentives as considered appropriate by the State Board.

(d) The system of sanctions developed under subsection (b) of this section shall include the following:

(1) Level One – Needs Assistance: When the State Board determines (i) a local school educational agency has been in noncompliance for two years and (ii) that agency needs assistance in implementing the requirements of this Article and IDEA, the State Board shall take one or more of the following actions:

a. The Board may direct the local educational agency to allocate additional time and resources for technical assistance and guidance related to areas of noncompliance.

b. The Board may impose special conditions on that agency's application for IDEA funds and receipt of State funds.

c. The Board may direct how that local educational agency utilizes IDEA and State funds to address the remaining findings of noncompliance. The local educational agency must track the use of these funds to show how the funds are targeted to address areas of noncompliance.

(2) Level Two – Needs Intervention: If the State Board determines (i) that the local educational agency has been in noncompliance for three years and (ii) that agency needs assistance in implementing this Article and IDEA, the following apply:

a. The Board may take any of the actions described in subdivision (1) of this subsection.
b. The Board shall withhold, in whole or in part, any further payments of IDEA and State funds to the agency.
c. The Board shall require the agency to enter into a compliance agreement.

(3) Level Three – Needs Substantial Intervention: In addition to the sanctions described in subdivisions (1) and (2) of this subsection, if at any time the State Board determines a local educational agency (i) needs substantial intervention in implementing the requirements of this Article and IDEA, or (ii) has established a substantial failure to comply with this Article and IDEA, the Board shall take one or more of the following actions:
a. The Board shall direct the agency to implement a compliance agreement, billed to that agency.
b. The Board shall recover IDEA and State funds.
c. The Board shall refer the agency for appropriate enforcement under State or federal law.

(e) In addition to the consequences required under subsections (b) and (d) of this section, the State Board shall develop sanctions for local educational agencies that fail to implement a corrective action or hearing decision.

"**§ 115C-107.5. Annual reports.**

The State Board shall report annually to the Joint Legislative Education Oversight Committee on the implementation of this Article and the educational performance of children with disabilities. Each annual report shall include a copy of the following documents that were submitted, received, or made public during the year: (i) the most recent State performance plan and any amendments to that plan submitted to the Secretary of Education, (ii) compliance and monitoring reports submitted to the Secretary of Education, (iii) the annual report submitted to the Secretary of Education on the performance of the State under its performance plan, and (iv) any other information required under IDEA to be made available to the public. In addition, the annual report shall include an analysis of the educational performance of children with disabilities in the State and a summary of disputes under Part 1D of this Chapter. The report shall be filed no later than October 15 each year and may be filed electronically.

"**§ 115C-107.6. Duties of local educational agencies.**

(a) Each local educational agency, in providing for the education of children with disabilities within its jurisdiction, must comply with IDEA and the rules adopted by the State Board under this Article. In addition, each local educational agency shall have in effect policies, procedures, and programs that are consistent with this Article, IDEA, and rules adopted by the State Board.

(b) No child with disabilities shall be prevented from attending the public schools of the local educational agency in which the child's parents or legal guardian resides or from which the child receives services or from attending any other public program of free appropriate public education based solely on the fact that the child has a disability.

If it appears the child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention, the local school administrative unit shall confer with the appropriate Department of Health and Human Services or Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in that program and development of the child's individualized education program.

(c) No matriculation or tuition fees or other fees or charges shall be required or asked of children with disabilities or their parents except those fees or charges that are required uniformly of all public school pupils. The provision of a free appropriate public education within the facilities of the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention shall not prevent that Department from charging for other services or treatment.

(d) Each child with a disability shall be educated in accordance with that child's IEP and in the least restrictive environment for that child.

(e) Each local educational agency shall use the forms developed under G.S. 115C-107.2(d).

"**§ 115C-107.7. Discipline.**

The policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations.

"Part 1C. Interagency Coordination.

"**§ 115C-108.1. State Board lead agency.**

(a) The Board shall cause all local educational agencies to provide special education and related services to children with disabilities in their care, custody, management, jurisdiction, control, or programs.

(b) The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with disabilities extends to and over the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

(c) All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction, and their divisions and agencies; all duties, responsibilities, rights, and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction, and their divisions and agencies. However, with respect to children with disabilities who are residents or patients of any State-operated or State-supported residential treatment facility, including a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the Department of Juvenile Justice and Delinquency Prevention, the Department of Correction, or any of their divisions and agencies, the Board may contract with the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special

education and related services and the power to review, revise, and approve any plans for special education and related services to those residents.

(d) The Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with disabilities in their care, custody, or control. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on that department and when other procedural due process requirements, substantially equivalent to those required under this Article and IDEA, are assured in programs of special education and related services furnished to children with disabilities served by that department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

(e) The Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local school administrative units and the programs and agencies of the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention.

"**§ 115C-108.2. Interlocal cooperation.**

The Board, any two or more local educational agencies, and any other agency and any State department, agency, or division having responsibility for the education, treatment, or habilitation of children with disabilities may enter into interlocal cooperative undertakings under Part 1 of Article 20 of Chapter 160A of the General Statutes or into undertakings with a State agency such as the Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment, or habilitation of these children within the jurisdiction of the agency or unit, and shall do so when it is unable to provide the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are educationally appropriate to the children with disabilities for whose benefit the undertaking is made and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children.

"Part 1D. Procedural Safeguards.

"**§ 115C-109.1. Handbook for parents.**

The State Board of Education shall make available to parents a handbook of procedural safeguards. This handbook for parents shall be made available at least once each school year, except that a copy also shall be given to the parent (i) upon the initial referral or parental request for an evaluation; (ii) upon the first occurrence of the filing of a petition under G.S. 115C-109.6 and IDEA; (iii) upon the parent's request; and (iv) upon any revision to the content of the handbook. This handbook for parents shall

include a full explanation of the procedural safeguards under this Article and IDEA, be written in the native language of the parent unless it clearly is not feasible to do so, be written in an easily understood manner, and include information required under IDEA to be included.

The State Board shall place a current copy of the handbook for parents on its Internet Web site.

"**§ 115C-109.2. Adult children with disabilities; surrogate parents.**

(a) When a child with a disability reaches the age of 18, all of the following apply:

(1) Notices required under this Article shall be provided to both the child and the child's parent.

(2) All other rights accorded to parents under this Article and IDEA transfer to the child.

(3) The local educational agency shall notify the child and the child's parent of these transfer rights.

(b) Notwithstanding subsection (a) of this section, for a child with a disability who has reached the age of majority under State law and who has not been determined to be incompetent but is determined to not have the ability to provide informed consent with respect to his or her education program, the State Board shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility under this section.

(c) A reasonable effort must be made to appoint a surrogate for a child with a disability within 30 days of a determination that one of the following conditions exists and that the child needs a surrogate:

(1) The parents of that child are not known;

(2) The parents, after reasonable efforts, cannot be located; or

(3) The child is a ward of the State.

(d) A person must be eligible under IDEA to be appointed as a child's surrogate.

"**§ 115C-109.3. Access to records; opportunity for parents to participate in meetings.**

(a) Each local educational agency shall provide an opportunity for the parents of a child with a disability to examine all records relating to that child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to that child.

(b) Local educational agencies may release the records of a child with a disability only as permitted under State or federal law. The parents of a child with a disability may have access to the child's records and may read, inspect, and copy all and any records, data, and information maintained by a local educational agency with respect to that child. Parents, upon their request, are entitled to have those records, data, and information fully explained, interpreted, and analyzed for them by the staff of the agency, unless specifically prohibited by court order. If a request is made under this subsection, the local educational agency shall honor the request within not more than 45

days after it is made or in time for the individual who made the request to prepare for a meeting under subsection (a) of this section, whichever is sooner.

(c) The student and the student's parents may add written explanations or clarifications to the records, data, and information and may request the expunction of incorrect, outdated, misleading, or irrelevant entries. If a local educational agency refuses to expunge incorrect, outdated, misleading, or irrelevant entries after having been asked to do so by the parent, the parent may appeal that decision under G.S. 115C-45(c)(2).

"**§ 115C-109.4. Mediation.**

(a) It is the policy of this State to encourage local educational agencies and parents to seek mediation involving any dispute under this Article, including matters arising before or after filing a petition under G.S. 115C-109.6.

(b) Mediation under this section must meet the following requirements:

(1) The mediation must be voluntary on the part of both parties.

(2) Mediation shall not be used to deny or delay a parent's right to an impartial hearing under G.S. 115C-109.6, or to deny any other rights afforded under this Article or IDEA.

(3) The mediation shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The State Board may establish procedures to offer to parties that do not choose to use the mediation process an opportunity to meet with a disinterested party, as provided under IDEA, who can encourage the use and explain the benefits of the mediation process to the parties. This meeting must be at a time and location convenient to the parents.

(d) The State Board shall maintain a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services. When mediation is requested, the Exceptional Children Division of the Department of Public Instruction shall assign a mediator from this list of mediators.

(e) The State shall bear the cost of the mediation process, including the costs of meetings described under subsection (c) of this section, unless the parties opt to select a mediator other than the mediator assigned under subsection (d) of this section or if the parties opt to use an alternative method of dispute resolution.

(f) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(g) Evidence of statements made and conduct occurring in a mediation are confidential, are not subject to discovery, and are inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. Mediators shall not be compelled in any civil proceeding to testify or produce evidence concerning statements made and conduct occurring in a mediation.

(h) When resolution is reached to resolve the dispute through the mediation process, the parties shall execute a legally binding agreement that:

(1) Sets forth the agreement.

(2) States that all discussions that occurred during the mediation process are confidential and may not be used as evidence in any subsequent impartial hearing under G.S. 115C-109.6 or in any civil proceeding.

(3) Is signed by both the parent and a representative of the local educational agency who has the authority to bind that agency.

(4) Is enforceable in any State administrative forum provided for in IDEA, any State court of competent jurisdiction, or in a district court of the United States.

(i) In addition to mediation as provided by this section, the parties may participate in a mediated settlement conference as provided by G.S. 150B-23.1. In addition, the parties may agree to use other dispute resolution methods or to use mediation in other circumstances, including after a request for formal administrative review is filed, to the extent permitted under State and federal law.

"**§ 115C-109.5. Prior written notice.**

(a) The local educational agency shall provide prompt written notice to parents whenever that agency proposes to initiate or change, or refuses to initiate or change (i) the identification, evaluation, or educational placement of a child, or (ii) the provision of a free appropriate public education to a child with a disability. The local educational agency shall document that all required notices have been sent to and received by parents.

(b) This prior written notice shall be in the native language of the parents, unless it clearly is not feasible to translate it, and shall contain all of the following information:

(1) A description of the action proposed or refused by the local educational agency.

(2) An explanation of why the local educational agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report that agency used as a basis for the proposed or refused action.

(3) A statement that the parent of a child with a disability has protection under the procedural safeguards of this Article and IDEA and, if this notice is not the initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained.

(4) Sources for parents to contact to obtain assistance in understanding this Article and IDEA.

(5) A description of other options considered by the IEP Team and the reason why those options were rejected.

(6) A description of the factors that are relevant to the local educational agency's proposal or refusal.

(7) Any other information required to be included under IDEA.

"**§ 115C-109.6. Impartial due process hearings.**

(a) Any party may file with the Office of Administrative Hearings a petition to request an impartial hearing with respect to any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education of a child, or a manifestation determination. The party filing the

petition must notify the other party and the person designated under G.S. 115C-107.2(b)(9) by simultaneously serving them with a copy of the petition.

(b) Notwithstanding any other law, the party shall file a petition under subsection (a) of this section that includes the information required under IDEA and that sets forth an alleged violation that occurred not more than one year before the party knew or reasonably should have known about the alleged action that forms the basis of the petition. The issues for review under this section are limited to those set forth in subsection (a) of this section. The party requesting the hearing may not raise issues that were not raised in the petition unless the other party agrees otherwise.

(c) The one-year restriction in subsection (b) of this section shall not apply to a parent if the parent was prevented from requesting the hearing due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the petition, or (ii) the local educational agency's withholding of information from the parent that was required under State or federal law to be provided to the parent.

(d) The hearing shall be conducted in the county where the child attends school or is entitled to enroll under G.S. 115C-366, unless the parties mutually agree to a different venue.

(e) The hearing shall be closed to the public unless the parent requests in writing that the hearing be open to the public.

(f) Subject to G.S. 115C-109.7, the decision of the administrative law judge shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. Following the hearing, the administrative law judge shall issue a written decision regarding the issues set forth in subsection (a) of this section. The decision shall contain findings of fact and conclusions of law. Notwithstanding Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and is not subject to further review unless appealed to the Review Officer under G.S. 115C-109.9.

(g) A copy of the administrative law judge's decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitation period for appeal as set forth in G.S. 115C-109.9.

(h) In addition to the petition, the parties shall simultaneously serve a copy of all pleadings, agreements, and motions under this Part with the person designated by the State Board under G.S. 115C-107.2(b)(9). The Office of Administrative Hearings shall simultaneously serve a copy of all orders and decisions under this Part with the person designated by the State Board under G.S. 115C-107.2(b)(9).

(i) Nothing in this section shall be construed to preclude a parent from filing a separate due process petition on an issue separate from a petition already filed.

(j) The State Board, through the Exceptional Children Division, and the State Office of Administrative Hearings shall develop and enter into a binding memorandum of understanding to ensure compliance with the statutory and regulatory procedures and timelines applicable under IDEA to due process hearings and to hearing officers' decisions, and to ensure the parties' due process rights to a fair and impartial hearing.

This memorandum of understanding shall be amended if subsequent changes to IDEA are made. The procedures and timelines shall be made part of the Board's procedural safeguards that are made available to parents and the public under G.S. 115C-109.1 and G.S. 115C-109.5.

"**§ 115C-109.7. Resolution session.**

(a) Within 15 days of receiving notice of the parent's petition filed under G.S. 115C-109.6 and before the opportunity for an impartial hearing, the local educational agency shall convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the petition. This meeting shall include a representative of the agency who has decision-making authority on behalf of that agency and may not include an attorney of the local educational agency unless the parent is accompanied by an attorney. If the parent plans to be accompanied by an attorney under this section, the parent must give prior written notice of this fact to the agency. The purposes of the meeting are (i) for the parent to have an opportunity to discuss the petition and the facts that form the basis of the petition and (ii) for the local educational agency to have the opportunity to resolve the dispute.

(b) The parent and the local educational agency jointly may agree in writing to waive the meeting under subsection (a) of this section or to use the mediation process described in G.S. 115C-109.4.

(c) If the local educational agency does not resolve the dispute to the satisfaction of the parents within 30 days of the agency's receipt of the petition, the impartial hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall commence.

(d) If a resolution is reached to resolve the dispute at a meeting under subsection (a) of this section, the parties shall execute a legally binding agreement that is:

(1) Signed by both the parent and a representative of the local educational agency who has the authority to bind the agency;

(2) Enforceable in any State administrative forum provided for in IDEA, any State court of competent jurisdiction, or in a district court of the United States; and

(3) Filed with the person designated by the State Board to receive notices and with the Office of Administrative Hearings.

(e) If the parties execute an agreement under subsection (d) of this section, either party may void the agreement by providing written notice within three business days of the agreement's execution to the person designated by the State Board to receive notices, the Office of Administrative Hearings, and the other party. Notwithstanding subsection (c) of this section, upon receipt of this notice, the impartial hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall commence.

"**§ 115C-109.8. Procedural issues.**

(a) In matters alleging a procedural violation, the hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (i) impeded the child's right to a free appropriate public education; (ii)

significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefits.

(b) A hearing officer may order a local educational agency to comply with procedural requirements under this Article and IDEA.

"**§ 115C-109.9. Review by review officer; appeals.**

(a) Any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board under G.S. 107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section. The Review Officer conducting this review shall make an independent decision upon completion of the review. The decision of the Review Officer becomes final unless an aggrieved party brings a civil action under subsection (d) of this section. A copy of the decision shall be served upon each party, and a copy shall be furnished to the attorneys of record and the Office of Administrative Hearings. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitation period for filing a civil action under subsection (d) of this section.

(b) A Review Officer shall be an educator or other professional who is knowledgeable about special education and who possesses other qualifications as may be established by the State Board of Education. No person may be appointed as a Review Officer if that person is an employee of the State Board of Education, the Department of Public Instruction, or the local educational agency that has been involved in the education or care of the child whose parents have filed the petition.

(c) The State Board may enforce the final decision of the administrative law judge under G.S. 115C-109.6, if not appealed under this section, or the final decision of the Review Officer, by ordering a local educational agency:

(1) To provide a child with appropriate education;

(2) To place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or

(3) To reimburse parents for reasonable private school placement costs in accordance with this Article and IDEA when it is determined that the local educational agency did not offer or provide the child with appropriate education and the private school in which the parent placed the child was an approved school and did provide the child an appropriate education.

(d) Any party that does not have the right to appeal under this Part and any party who is aggrieved by the decision of the Review Officer under this section may institute a civil action in State court within 30 days after receipt of the notice of the decision or in federal court as provided in 20 U.S.C. § 1415.

(e) Except as provided under IDEA, upon the filing of a petition under G.S. 115C-109.6 and during the pendency of any proceedings under this Part, the child

must remain in the child's then-current educational placement or, if applying for initial admission to a public school, the child must be placed in the public school. Notwithstanding this subsection, the parties may agree in writing to a different educational placement for the child during the pendency of any proceedings under this Part.

"Part 1E. Special Education and Related Services Personnel.

"**§ 115C-110.1. Teacher qualifications.**

The Board shall adopt rules covering the qualifications of and standards for licensure of teachers, teacher assistants, speech-language pathologists, school psychologists, and others involved in the education and training of children with disabilities.

"**§ 115C-110.2. Interpreters/transliterators.**

Each interpreter or transliterator employed by a local educational agency to provide services to hearing-impaired students must annually complete 15 hours of job-related training that has been approved by the local educational agency.

"**§ 115C-110.3 through 110.5. [Reserved]**

"Part 1F. Budgeting; Funds.

"**§ 115C-111.1. Out-of-state students; eligibility for State funds.**

Notwithstanding any policy or rule adopted by the State Board of Education, if a local school administrative unit provides services to a student under a current IEP from another state while a determination is being made regarding the student's eligibility for services as a child with disabilities in North Carolina, the local school administrative unit is entitled to receive State funding to serve the student while the determination is being made. If the student is later determined not to qualify for services in North Carolina, the local school administrative unit is not required to repay State funds received while the determination is being made.

"**§ 115C-111.2. Contracts with private service providers.**

Local educational agencies furnishing special education and related services to children with disabilities may contract with private special education facilities or service providers to furnish any of these services that the public providers are unable to furnish.

"**§ 115C-111.3. Cost of education of children in group homes, foster homes, etc.**

(a) Notwithstanding any other State law and without regard for the place of domicile of a parent, the cost of a free appropriate public education for a child with disabilities who is placed in or assigned to a group home or foster home, under State and federal law, shall be borne by the local board of education in which the group home or foster home is located. However, the local school administrative unit in which a child is domiciled shall transfer to the local school administrative unit in which the institution is located an amount equal to the actual local cost in excess of State and federal funding required to educate that child in the local school administrative unit for the fiscal year after all State and federal funding has been exhausted.

(b) The State Board of Education shall use State and federal funds appropriated for children with disabilities to establish a reserve fund to reimburse local boards of education for the education costs of children assigned to group homes or other facilities as provided in subsection (a) of this section. Local school administrative units may submit a Special State Reserve Program application for foster home or group home

children whose special education and related services costs exceed the per child group home allocation.

(c) The Department shall review the current cost of children with disabilities served in the local school administrative units with group homes or foster homes to determine the actual cost of services.

"**§ 115C-111.4. Nonreduction.**

Notwithstanding any of the other provisions of this Article, it is the intent of the General Assembly that funds appropriated by it for the operation of programs of special education and related services by local school administrative units not be reduced; rather, that adequate funding be made available to meet the special educational and related services needs of children with disabilities, without regard to which local educational agency has the child in its care, custody, control, or program.

"**§ 115C-111.5. Allocation of federal funds.**

Whenever any federal monies for the special education and related services for children with disabilities are made available, these funds shall be allocated according to a formula designed by the Board consistent with federal laws and regulations. This formula shall ensure equitable distribution of resources and shall be implemented as funds are made available from federal and State appropriations.

"**§ 115C-111.6. Obligation to provide services for preschool children with disabilities.**

State funds appropriated to the public schools to implement preschool services for children with disabilities under this Article and IDEA shall be used to provide special education and related services to preschool children with disabilities. These State funds shall be used to supplement and not supplant existing federal, State, and local funding for the public schools.

Preschool children with disabilities will continue to be served by all other State funds to which they are otherwise entitled.

"Part 1G. Council on Educational Services for Exceptional Children.

"**§ 115C-112.1. Establishment; organization; powers and duties.**

(a) There is hereby established an Advisory Council to the State Board of Education to be called the Council on Educational Services for Exceptional Children.

(b) The Council shall consist of a minimum of 24 members to be appointed as follows: four ex officio members; one individual with a disability and one representative of a private school appointed by the Governor; one member of the Senate and one parent of a child with a disability between the ages of birth and 26 appointed by the President Pro Tempore of the Senate; one member of the House of Representatives and one parent of a child with a disability appointed by the Speaker of the House of Representatives; and 14 members appointed by the State Board of Education. The State Board shall appoint members who represent individuals with disabilities, teachers, local school administrative units, institutions of higher education that prepare special education and related services personnel, administrators of programs for children with disabilities, charter schools, parents of children with disabilities, a State or local official who carries out activities under the federal McKinney-Vento Homeless Assistance Act, vocational, community, or business organizations concerned with the provision of

transition services, and others as required by IDEA. The majority of members on the Council shall be individuals with disabilities or parents of children with disabilities. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The Board shall adopt rules to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of Health and Human Services or the Secretary's designee.

(2) The Secretary of Juvenile Justice and Delinquency Prevention or the Secretary's designee.

(3) The Secretary of Correction or the Secretary's designee.

(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education is two years. The term for members appointed by the State Board of Education is four years. No person shall serve more than two consecutive four-year terms.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly.

(c) The Council shall meet in offices provided by the Department of Public Instruction on a date to be agreed upon by the members of the Council from meeting to meeting. The Council shall meet no less than once every three months. The Department of Public Instruction shall provide the necessary secretarial and clerical staff and supplies to accomplish the objectives of the Council.

(d) The Council shall:

(1) Advise the Board with respect to unmet needs within the State in the education of children with disabilities.

(2) Comment publicly on rules, policies, and procedures proposed by the Board regarding the education of children with disabilities.

(3) Assist the Board in developing evaluations and reporting on data to the Secretary of Education under the federal Individuals with Disabilities Education Act (IDEA), as amended.

(4) Advise the State Board in developing corrective action plans to address findings identified in federal monitoring reports required under the federal Individuals with Disabilities Education Act (IDEA), as amended.

(5) Advise the State Board in developing and implementing policies relating to the coordination of services for children with disabilities.

(6) Carry out any other responsibility as designated by federal law or the State Board."

SECTION 3.(a) G.S. 115C-81(b) reads as rewritten:

"(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

(1) A core curriculum for all students that takes into account the special needs of ~~children and includes appropriate modifications for the learning disabled, the academically or intellectually gifted students, and the students with discipline and emotional problems;~~children;

(2) A set of competencies, by grade level, for each curriculum area;

(3) A list of textbooks for use in providing the curriculum;

(4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with ~~special needs~~ disabilities and, in particular, include appropriate modifications;

(5) A program of remedial education;

(6) Required support programs;

(7) A definition of the instructional day;

(8) Class size recommendations and requirements;

(9) Prescribed staffing allotment ratios;

(10) Material and equipment allotment ratios;

(11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations; and

(12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I."

SECTION 3.(b) G.S. 115C-105.25(b)(4) reads as rewritten:

"(b) Subject to the following limitations, local boards of education may transfer and may approve transfers of funds between funding allotment categories:

...

(4) Funds allocated for children with ~~special needs,~~ disabilities, for students with limited English proficiency, and for driver's education shall not be transferred.

..."

SECTION 3.(c) G.S. 115C-149 reads as rewritten:

"**§ 115C-149. Policy. Chemically dependent children excluded from provisions of Article 9.**

The General Assembly of North Carolina hereby declares that the policy of the State is to ensure that an appropriate education is provided for drug and alcohol addicted children; however, drug and alcohol addicted children are not "children with ~~special needs"~~ disabilities" within the meaning of ~~G.S. 115C-109~~ G.S. 115C-106.3(1) unless because of some other condition they meet that definition."

SECTION 3.(d) G.S. 115C-233 reads as rewritten:

"**§ 115C-233. Operation of summer schools.**

Each local school administrative unit may establish and maintain summer schools. Such summer schools as may be established shall be administered by local boards of education and shall be conducted in accordance with standards developed by the State Board of Education. The standards so developed shall specify the requirements for approved curriculum, the qualifications of the personnel, the length of the session, and the conditions under which students may be granted credit for courses pursued during a summer school. In determining the eligibility of students for admission to summer schools, boards of education shall be governed by ~~the provisions of G.S. 115C-116,~~ Article 9 of this Chapter, and G.S. 115C-366(b) and 115C-367 to 115C-370. Boards of education of local school administrative units may provide for summer schools from funds made available for that purpose by the State Board of Education, funds appropriated to the local school administrative unit by the tax-levying authority, and from any other revenues available for the purpose."

SECTION 3.(e) G.S. 115C-238.29F(d)(4) reads as rewritten:

"(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with ~~special needs.~~disabilities."

SECTION 3.(f) G.S. 115C-238.29H(a) reads as rewritten:

"**§ 115C-238.29H. State and local funds for a charter school.**

(a) The State Board of Education shall allocate to each charter school:

(1) An amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with ~~special needs~~ disabilities and for the allocation for children with limited English proficiency;

(2) An additional amount for each child attending the charter school who is a child with ~~special needs;~~ disabilities; and

(3) An additional amount for children with limited English proficiency attending the charter school, based on a formula adopted by the State Board.

In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual adjustments to the amount allocated to a charter school based on its enrollment growth in school years subsequent to the initial year of operation.

In the event a child with ~~special needs~~ disabilities leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with ~~special needs~~ disabilities enrolls in a charter school during the first 60 school days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with ~~special needs.~~disabilities."

SECTION 3.(g) G.S. 115C-242 reads as rewritten:

"**§ 115C-242. Use and operation of school buses.**

Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each local school administrative unit to supervise the use of all school buses operated by such local school administrative unit so as to assure and require compliance with this section:

(1) A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the local school administrative unit. Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of this Article: Provided, that children enrolled in a Headstart program which is housed in a building owned and operated by a local school administrative unit where school is being conducted may be transported on public school buses, so long as the contractual arrangements made cause no extra expense to the State: Provided further, that children with ~~special needs~~ disabilities may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported are or have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education.

...

(5) Local boards of education, under rules ~~and regulations~~ adopted by the State Board of Education, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with ~~special needs, such as mentally retarded children and children with physical defects,~~ disabilities, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city or county-owned school bus shall not be taken out of the State.

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. Local boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire school year before

authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

Children with ~~special needs~~ disabilities may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide ~~such~~ those children with a free appropriate public education.

..."

SECTION 3.(h) G.S. 115C-250 reads as rewritten:

"**§ 115C-250. Authority to expend funds for transportation of children with ~~special needs.~~disabilities.**

(a) The State Board of Education and local boards of education may expend public funds for transportation of ~~handicapped~~ children with ~~special needs~~ disabilities who are unable because of their ~~handicap~~ disability to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide ~~such~~ these children with a free appropriate ~~education, including its duty under G.S. 115C-115.~~ education under Article 9 of this Chapter. At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of ~~exceptional~~ children with disabilities may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules ~~and regulations~~ concerning the construction and equipment of these buses and minibuses.

The Departments of Health and Human Services, Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of ~~handicapped~~ children with ~~special needs~~ disabilities who are unable because of their ~~handicap~~ disability to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide ~~such~~ these children with a free appropriate public ~~education.~~education under Article 9 of this Chapter.

If a local area mental health center places a child with ~~special needs~~ a disability in an educational program, the local area mental health center shall pay for the transportation of the ~~child, if handicapped and unable because of the handicap~~ child who is unable due to the disability to ride the regular school ~~buses,~~ buses to the program.

(b) Funds appropriated for the transportation of children with ~~special needs~~ disabilities may be used to pay transportation safety assistants employed in accordance with ~~the provisions of~~ G.S. 115C-245(e) for buses to which children with ~~special needs~~ disabilities are assigned."

SECTION 3.(i) G.S. 115C-366.2 reads as rewritten:

"**§ 115C-366.2. Applicability to certain persons.**

For the purposes of G.S. 115C-366 and 115C-366.1 for any person who is a resident of a place which is not the person's place of domicile, because: (i) of the residence of a parent, guardian, or legal custodian who is a student, employee or faculty member, of a

college or university, or a visiting scholar at the National Humanities Center; or (ii) the child is placed in or assigned to a group home, foster home, or other similar facility or institution, other than a child covered by ~~G.S. 115C-140.1(a);~~ G.S. 115C-111.3(a); or (iii) the child resides with a legal custodian who is not the child's parent or guardian, or (iv) the child resides in a pre-adoptive home following placement by a county department of social services or a licensed child-placing agency, those sections shall be applied by substituting the word "residing" for the word "domiciled," by substituting the word "residence" for the word "domicile," and by substituting the word "residents" for the word "domiciliaries". For purposes of this section, "legal custodian" means the person or agency that has been awarded legal custody of the child by a court.

This section shall not be construed to affect the ability of any person to acquire a new domicile."

SECTION 3.(j) G.S. 115C-367 reads as rewritten:

"**§ 115C-367. Assignment on certain bases prohibited.**

No person shall be refused admission to or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creeds, colors or national origins from the community.

Where local school administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts: Provided, however, that the board of education of a local school administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient.

The provisions of ~~G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116~~ Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370 shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment.

The provisions of ~~G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116~~ Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370 shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of a local school administrative unit."

SECTION 3.(k) G.S. 115C-371 reads as rewritten:

"**§ 115C-371. Assignment to special education programs.**

Assignment of students to special education programs is subject to ~~the provisions of G.S. 115C-116.~~Article 9 of this Chapter."

SECTION 3.(l) G.S. 115C-391 reads as rewritten:

"**§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.**

...

(d1) A local board of education or superintendent shall suspend for 365 calendar days any student who:

(1) Brings onto educational property or to a school-sponsored curricular or extracurricular activity off educational property, or

(2) Possesses on educational property or at a school-sponsored curricular or extracurricular activity off educational property,

a weapon, as defined in G.S. 14-269.2(b), 14-269.2(b1), 14-269.2(g), and 14-269.2(h). The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services.

...

(d3) A local board of education or superintendent shall suspend for 365 calendar days any student who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device designed to destroy or damage property by explosion, blasting, or burning, or who, with intent to perpetrate a hoax, conceals, places, or displays any device, machine, instrument, or artifact on educational property or at a school-sponsored curricular or extracurricular activity off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property. The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services. For purposes of this subsection and subsection (d1) of this section, the term "educational property" has the same definition as in G.S. 14-269.2(a)(1).

...

(g) Notwithstanding the provisions of this section, the policies and procedures for the discipline of students with disabilities shall be consistent with Article 9 of this Chapter and with federal laws and regulations.

..."

SECTION 3.(m) G.S. 115C-397.1 reads as rewritten:

"**§ 115C-397.1. Management and placement of disruptive students.**

If, after a teacher has requested assistance from the principal two or more times due to a student's disruptive behavior, the teacher finds that the student's disruptive behavior continues to interfere with the academic achievement of that student or other students in the class, then the teacher may refer the matter to a school-based committee. The

teacher may request that additional classroom teachers participate in the committee's proceedings. For the purposes of this section, the committee shall notify the student's parent, guardian, or legal custodian and shall encourage that person's participation in the proceedings of the committee concerning the student. ~~A student is not required to be screened, evaluated, or identified as a child with special needs under this section.~~ Nothing in this section requires a student to be screened, evaluated, or identified as a child with a disability under Article 9 of this Chapter. The committee shall review the matter and shall take one or more of the following actions: (i) advise the teacher on managing the student's behavior more effectively, (ii) recommend to the principal the transfer of the student to another class within the school, (iii) recommend to the principal a multidisciplinary ~~diagnosis and~~ evaluation of the student, (iv) recommend to the principal that the student be assigned to an alternative learning program, or (v) recommend to the principal that the student receive any additional services that the school or the school unit has the resources to provide for the student. If the principal does not follow the recommendation of the committee, the principal shall provide a written explanation to the committee, the teacher who referred the matter to the committee, and the superintendent, of any actions taken to resolve the matter and of the reason the principal did not follow the recommendation of the committee.

This section shall be in addition to the supplemental to disciplinary action taken in accordance with any other law. The recommendation of the committee is final and shall not be appealed under G.S. 115C-45(c). Nothing in this section shall authorize a student to refer a disciplinary matter to this committee or to have the matter of the student's behavior referred to this committee before any discipline is imposed on the student."

SECTION 3.(n) G.S. 122C-3(13c) reads as rewritten:

"(13c) "Eligible infants and toddlers" means children with or at risk for developmental delays or atypical development until:

a. They have reached their third birthday;

b. Their parents have requested to have them receive services in the preschool program for ~~handicapped~~ children with disabilities established ~~pursuant to Part 14 of Article IX~~ under Article 9 of Chapter 115C of the General Statutes; and

c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third ~~birthday.~~ birthday, unless the Secretary and the State Board enter into an agreement under G.S. 115C-106.4(c)."

SECTION 3.(o) The catch line to Part 13A of Chapter 143B of the General Statutes reads as rewritten:

"Part 13A. Interagency Coordinating Council for ~~Handicapped~~ Children with Disabilities from Birth to Five Years of Age."

SECTION 3.(p) The catch line to G.S. 143B-179.6 reads as rewritten:

"**§ 143B-179.6. Interagency Coordinating Council for ~~Handicapped~~ Children with Disabilities from Birth to Five Years of Age; agency cooperation.**"

SECTION 3.(q) G.S. 143B-216.40 reads as rewritten:

"**§ 143B-216.40. Establishment; operations.**

There are established, and there shall be maintained, the following schools for the deaf: the Eastern North Carolina School for the Deaf at Wilson (K-12) and the North Carolina School for the Deaf at Morganton (K-12). The Department of Health and Human Services shall be responsible for the operation and maintenance of the schools.

~~The Board of Directors of the North Carolina Schools for the Deaf shall advise the Department and shall adopt rules and regulations concerning the schools as provided in G.S. 115C-124 and 143B-173.~~"

SECTION 4.(a) Article 25A of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-375.5. Education for pregnant and parenting students.**

(a) Pregnant and parenting students shall receive the same educational instruction or its equivalent as other students. A local school administrative unit may provide programs to meet the special scheduling and curriculum needs of pregnant and parenting students. However, student participation in these programs shall be voluntary, and the instruction and curriculum must be comparable to that provided other students.

(b) Local boards of education shall adopt a policy to ensure that pregnant and parenting students are not discriminated against or excluded from school or any program, class, or extracurricular activity because they are pregnant or parenting students. The policy shall include, at a minimum, all of the following:

(1) Local school administrative units shall use, as needed, supplemental funds from the At-Risk Student Services allotment to support programs for pregnant and parenting students.

(2) Notwithstanding Part 1 of Article 26 of this Chapter, pregnant and parenting students shall be given excused absences from school for pregnancy and related conditions for the length of time the student's physician finds medically necessary. This includes absences due to the illness or medical appointment during school hours of a child of whom the student is the custodial parent.

(3) Homework and make-up work shall be made available to pregnant and parenting students to ensure that they have the opportunity to keep current with assignments and avoid losing course credit because of their absence from school and, to the extent necessary, a homebound teacher shall be assigned."

SECTION 4.(b) This section applies beginning with the 2006-2007 school year.

SECTION 5. Article 3 of Chapter 150B of the General Statutes is amended by adding the following new section to read:

"**§ 150B-22.1. Special education petitions.**

(a) Notwithstanding any other provision of this Chapter, timelines and other procedural safeguards required to be provided under IDEA and Article 9 of Chapter 115C of the General Statutes must be followed in an impartial due process hearing

initiated when a petition is filed under G.S. 115C-109.6 with the Office of Administrative Hearings.

(b) The administrative law judge who conducts a hearing under G.S. 115C-109.6 shall not be a person who has a personal or professional interest that conflicts with the judge's objectivity in the hearing. Furthermore, the judge must possess knowledge of, and the ability to understand, IDEA and legal interpretations of IDEA by federal and State courts. The judges are encouraged to participate in training developed and provided by the State Board of Education under G.S. 115C-107.2(h).

(c) For the purpose of this section, the term "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and its regulations."

SECTION 6.(a) The State Board of Education, through the Division of Exceptional Children and the Office of Administrative Hearings, shall develop its memorandum of understanding as required under G.S. 115C-109.6(j), as created in Section 2 of this act, by October 31, 2006. The memorandum of understanding shall establish procedures and timelines that are efficient and meet the criteria of IDEA so that impartial hearings are expeditiously handled. At the same time, the procedures and timelines should recognize there are some complicated issues that may require additional time to resolve. In particular, this memorandum should address at least the following:

(1) The reasons, number of days, and means for providing notice to parties.
(2) When a petition is initiated for the purpose of determining when a decision shall be reached. Specifically, this shall address when mediation is begun before and after a petition is filed and when no mediation is begun.
(3) Whether mediated conferences subject to Chapter 150B of the General Statutes are appropriate under IDEA and, if so, when they should occur and how they will affect the timelines.
(4) The number of extensions to be allowed and the basis on which an extension may be granted.
(5) The standard of review for cases going to review officers.
(6) Any other procedural or tolling issue that the State Board of Education or the Office of Administrative Hearings considers necessary to address.

SECTION 6.(b) The State Board and the Office of Administrative Hearings shall report jointly to the House Select Committee on the Education of Students with Disabilities by November 15, 2006, on the memorandum of understanding. This report shall make any recommendations as to funding issues that must be resolved or statutory changes that are needed, or both, in order to implement the memorandum of understanding.

SECTION 7. The State Board of Education shall ensure that the Allotment Policy Manual includes, in fiscal year 2006-2007 and thereafter, the following language related to local education agencies' use of funds allotted for textbooks:

"Local Education Agencies (LEAs) shall use their State textbook funds to provide, to the same extent as is provided to nondisabled students, textbooks for students with disabilities. LEAs also shall, at a minimum, provide teachers of children with disabilities with the same teachers' editions provided to teachers of nondisabled students."

SECTION 8. Section 7 of this act becomes effective July 1, 2006. The remainder of this act is effective when it becomes law.

Re: HB1908 – Rewrite Special Education Laws

Honorable Senators:

Thank you for listening to my presentation today. To recap today's statement: My name is Vicke Hooper Kepling, and I represent North Carolina parents of children with disabilities. **We support House Bill 1908** and the positive effect it will have on our children's education.

While we support the current bill, we feel that it could be improved by writing stronger language into our definition for Least Restrictive Environment, commonly referred to as LRE. This definition is very important to us because it determines how much time our children spend learning with their typical peers.

Our definition in HB1908 currently goes along with federal law, The Individuals with Disabilities Education Improvement Act. **We respectfully ask for the following statements to be added to our definition of LRE, definition 10 on page 2 of HB1908:**

- ***Placement in the regular classroom, in the school that the student would ordinarily attend, will be the first consideration.***

- ***Placement outside of the regular classroom will occur only when clear documentation exists that IEP goals and objectives cannot be achieved in the regular classroom, even with supplemental aids and services.***

Why should this addition be made?

First, our definition leaves room for interpretation. Interpretation occurs at each policymaking level. Federal law sets precedence. States legislative bodies interpret federal law. State education departments interpret state legislation. Local districts interpret state policy. Individual schools interpret county policies, and finally, individual teachers interpret school policies.

Second, federal law was formed as a minimum requirement for educating children with disabilities. It lends itself to further definition. More defined standards will lead to much needed program consistency across our state.

Third, many states have written stronger language for Least Restrictive Environment. **This information is attached.**

Again, we support HB1908 as it stands... but feel that it could be strengthened with extended definition of Least Restrictive Environment. Please feel free to contact me for additional information. With greatest respect,

Vicke Hooper Kepling
1370 John Lookabill Road, Lexington, NC 27292
Phone/Fax: (336) 746-4456
Email: vickehooperkepling@gmail.com

All of the following information was obtained from internet research, and many statutes listed are from 2005 revised code. Please note that all states and local districts must, at the minimum, abide by the federal laws listed in The Individuals with Disabilities Education Improvement Act (IDEA). **Specific statutes are given, with state name in bold type, when wording has expanded upon and/or gives further requirements than in the laws of IDEA.**

Least Restrict Environment and Placement Statutes by State

Alabama: "In providing for the instruction of exceptional children, the school boards shall utilize regular school facilities and adapt them to the needs of exceptional children, except as otherwise provided herein. No exceptional child shall be segregated and taught apart from other nonexceptional children until a careful study of the child's case has been made and evidence obtained which indicates that such segregation would be for the exceptional child's benefit or is necessary because of difficulties involved in teaching the child in a regular school program." [Section 16-39-8]

Alaska: Observes federal law – IDEA [?-9]

Arizona: Observes federal law – IDEA [15-764]

Arkansas: "(a)(1) To the maximum extent practicable, children with disabilities shall be educated along with children who do not have disabilities and shall attend regular classes. (2) Impediments to learning and to the normal functioning of children with disabilities in the regular school environment shall be overcome, when possible, by the provision of special aids and services rather than by separate schooling for children with disabilities." [Section 6-41-204]

California: "Special education is an integral part of the total public education system and provides education in a manner that promotes maximum interaction between children or youth with disabilities and children or youth who are not disabled, in a manner that is appropriate to the needs of both." [Section 56031]

"...each special education local plan area shall describe how specialized equipment and services will be distributed within the local plan area in a manner that minimizes the necessity to serve pupils in isolated sites and maximizes the opportunities to serve pupils in the least restrictive environment." [Section 56206]

Colorado: "...It is the intent of the general assembly, in keeping with accepted educational principles, that children with disabilities shall be educated in the least restrictive environment. To this end, the services of special education personnel shall be utilized within the regular school programs to the maximum extent permitted by good educational practices, both in rendering services directly to children and in providing consultative services to regular classroom teachers." [Section 22-20-102]

Connecticut: "(c) The use of the word disability pursuant to this section shall not be the basis for limiting the services or programs, including regular education, available to such child." [P.A. 98-168, S. 5, 26]

Delaware: Defers authority to State Board of Education [14-31-1-3101]

Florida: "In providing for the education of exceptional students, the district school superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students to the maximum extent appropriate. Segregation of exceptional students shall occur only if the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." [Section 57 (6)]

Georgia: Defers authority to the State Board of Education [20-2-152]

Hawaii: Defers authority to the State Board of Education [42-26-12]

Idaho: Defers authority to each public school district [33-2002]

Illinois: "To the maximum extent appropriate, the placement shall provide the child with the opportunity to be educated with children who are not disabled; provided that children with disabilities who are recommended to be placed into regular education classrooms are provided with supplementary services to assist the children with disabilities to benefit from the regular classroom instruction and are included on the teacher's regular education class register. Subject to the limitation of the preceding sentence, placement in special classes, separate schools or other removal of the disabled child from the regular educational environment shall occur only when the nature of the severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

"No otherwise qualified disabled child receiving special education and related services under Article 14 shall solely by reason of his or her disability be excluded from the participation in or be denied the benefits of or be subjected to discrimination under any program or activity provided by a State agency." (105 ILCS 5)

Indiana: ""Inclusion school" ...(2) as an inclusion school, educates each child with disabilities in the school located in the child's attendance area in the school corporation of the child's legal settlement; and (3) integrates each child with a disability in regular education classes for as much of the student instructional day as possible to normalize the child's academic learning and social experience." (IC 20-35-10-2 – Pilot program)

Iowa: "...Whenever possible, hindrances to learning and to the normal functioning of children requiring special education within the regular school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education." (Title 7, Subtitle 1, Chapter 256.B (3))

Kansas: Observes federal law – IDEA (72-976)

Kentucky: Defers authority to the Kentucky Department of Education (?-2)

Louisiana: "During each IEP *[Individualized Education Program]* review or revision, the educational placement of the student shall be changed to a less restrictive environment, unless the LEA *[Local Education Agency]* documents that the educational needs indicated on the updated IEP/Placement document indicate that a change in educational placement would cause a reduction

in quality of services needed or have a potentially harmful effect on the student." [Title 28, Part XLIII, Statute 448 (A)]

Maine: "An exceptional student shall be educated with students in regular programs to the maximum extent possible." [Title 20-A, Part 4, Subpart 1, Chapter 303, Subchapter 1, Statute 7201 (2)]

Maryland: Defers authority to the State Board of Education [198.187.128.12]

Massachusetts: ""Least restrictive environment", the educational placement that assures that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, ..." [Chapter 71B, Section 1]

"Children receiving or requiring special education shall be entitled to participate in any of the following programs: (1) additional direct or indirect instruction consultative service, materials, equipment or aid provided children or their regular classroom teachers which directly benefits children requiring special education; ..." [Chapter 72b, Section 2]

Michigan: "A goal of providing educational and training services in a manner that maximizes for the benefit of the pupil the combination of the provisions of this act and federal law relating to inclusion..." [Section 380.1703 (d)]

Minnesota: "Least Restrictive Environment. To the maximum extent appropriate, pupils with disabilities shall be educated with children who do not have disabilities and shall attend regular classes. A pupil with a disability shall be removed from a regular educational program only when the nature or severity of the disability is such that education in a regular educational program with the use of supplementary aids and services cannot be accomplished satisfactorily. Furthermore, there must be an indication that the pupil will be better served outside of the regular program. The needs of the pupil shall determine the type and amount of services needed." [Minnesota Rule 3525.0400]

Mississippi: Defers authority to the State Department of Education [37-23-5]

Missouri: Observes federal law – IDEA [5 CSR 70-742]

Montana: "Regular classes preferred – obligation to establish special education program. ...A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive environment. ...Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." [Code 20-7-411]

Nebraska: "Least Restrictive Environment (LRE) Requirements. ...The school district shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities including children in public or nonpublic schools and approved service agencies are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children will disabilities from the regular educational environment occurs only

when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." [92-51-008.01A]

"Each school district or approved cooperative shall assure an array of special education placement options are available. Those options shall include: instruction in regular classes; supplemental services such as resource room; itinerant instruction or consultative services to be provided in conjunction with regular class placement; special classes; special schools; home instruction and instruction in hospitals and institutions." [92-51-008.01D]

Nevada: Defers authority to Superintendent of Public Instruction [NRS 395-040]

New Hampshire: Observes federal law – IDEA [186-C:3-a]

New Jersey: "The programs and services shall include a full range of student placement programs and options including the provision of programs and services within a local school district, the county unit, or other appropriate setting. The county unit shall work to increase the opportunities available to students with educational disabilities to be served in the least restrictive environment and to create a network of local community resources to assist students and their families." [A2105 (3a)]

New Mexico: Observes federal law – IDEA [6.31.2C]

New York: "Provide, to the extent appropriate to the individual needs of the student with a disability that such student is educated in a setting with students who are nondisabled." [4402 (3i)]

North Carolina: Observes federal law – IDEA

North Dakota: Defers authority to Superintendent of Public Instruction [15.1-32.06]

Ohio: "The state board shall establish procedures and standards to assure that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped." [3323.04]

Oklahoma: "Individualized learning plans, which shall include prescriptive teaching plans to teachers, for students who are having learning problems; consultation for educators and parents working with or having students with learning problems; providing special education material for special education teachers; and providing special education material on a prescriptive basis to the classroom teacher who has students with learning problems and consultation services and interpretation of evaluation data to assist parents and planning for effective educational interventions in the least restrictive environment." [70-1210.275]

Oregon: Defers authority to the State Board of Education [662-4-343.155]

Pennsylvania: "It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following: (1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act... and to ensure that (i)

Children with disabilities have available to them a free appropriate public education which is designed to enable the student to participate fully and independently in the community, including preparation for employment or higher education." [Chapter 22, Code 14.102]

Rhode Island: "Least restrictive environment. General. The LEA [*Local Education Agency*] must have on file with the RIDE procedures that ensure that the requirements of these regulations are met, including the provision of an array of service options to meet the unique needs of each child with a disability. The procedures must include a description of the LEA's plan to educate children with disabilities with non-disabled peers and how children with disabilities access the general education curriculum." [300.130]

South Carolina: Defers authority to the State Board of Education [59-33-30]

South Dakota: Defers authority to the Department of Education [13-37-46]

Tennessee: "Impediments to learning and to the normal functioning of children with disabilities in the regular school environment shall be overcome by the provision of special aids and services rather than by separate schooling for the disabled." [49-10-103]

Texas: "...ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes; ..." [29A.001]

Utah: Defers authority to the State Board of Education [53A-15-301]

Vermont: Observes federal law – IDEA [16-101-16-2959]

Virginia: Defers authority to the Board of Education [22.1-214]

Washington: "School districts are strongly encouraged to provide parental training in education of the children and to involve parents in the classroom." [RCW 28A.155.020]

West Virginia: "Provisions shall be made for educating exceptional children (including the handicapped and the gifted) who differ from the average or normal in physical, mental or emotional characteristics, or in communicative or intellectual deviation characteristics, or in both communicative and intellectual deviation characteristics, to the extent that they cannot be educated safely or profitably in the regular classes of the public schools or to the extent that they need special educational provisions within the regular classroom in order to educate them in accordance with their capacities, limitations and needs." [Statute 18-20-1]

Wisconsin: Observes federal law – IDEA [115.76]

Wyoming: Defers authority to each school district [21-2-502]

I attest, that to the best of my knowledge, that the above information is accurate and reflects exact wording in statutes as given on government websites.

–Vicke Hooper Kepling, June 10, 2006

Statute Research - Special Education - Least Restrictive Environment

State	*Defers authority*	*IDEA - Federal law*	*Expanded and/or stronger statutes*
Alabama			√
Alaska		√	
Arizona		√	
Arkansas			√
California			√
Colorado			√
Connecticut			√
Delaware	√		
Florida			√
Georgia	√		
Hawaii	√		
Idaho	√		
Illinois			√
Indiana			√
Iowa			√
Kansas		√	
Kentucky	√		
Louisiana			√
Maine			√
Maryland	√		
Massachusetts			√
Michigan			√
Minnesota			√
Mississippi	√		
Missouri		√	
Montana		√	
Nebraska			√
Nevada	√		
New Hampshire		√	
New Jersey			√
New Mexico		√	
New York			√
North Carolina		√	
North Dakota	√		
Ohio			√
Oklahoma			√
Oregon	√		
Pennsylvania			√
Rhode Island			√
South Carolina	√		
South Dakota	√		
Tennessee			√
Texas			√
Utah	√		
Vermont		√	
Virginia	√		
Washington			√
West Virginia			√
Wisconsin		√	
Wyoming	√		
Totals	*15*	*10*	*25*

HOUSE BILL 1908:
Rewrite Special Ed Laws

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 21, 2006
Introduced by:	Reps. Glazier, Farmer-Butterfield, Preston, Wiley	**Summary by:**	Shirley Iorio, Ph D Legislative Analyst
Version:	Second Edition		

SUMMARY: This bill is recommended by the House Select Committee on the Education of Students with Disabilities ("Committee"). It would make numerous changes to the laws governing the special education of children with disabilities. Some of these changes are required to comply with federal law; other changes reorganize the law to make it clear, up-to-date, and consistent with federal law.

BILL ANALYSIS:

Section 1 would repeal all the parts of Article 9 of Chapter 115C of the General Statutes ("Article 9"). (The parts that appear to be missing were repealed in previous years.)

Section 2 would rewrite Article 9. Much of the language comes from current law, but is rearranged so that it is in a more logical order and is condensed by removing duplicative or outdated language. The new language that has been added is primarily from the federal Individuals with Disabilities Education Improvement Act ("IDEA").

This rewrite of Article 9 in Section 2 would make the following changes, as recommended by the Committee:

- Conforms State terminology to federal terminology where there is no dispute.
- Resolves contradictory provisions to clarify that children with disabilities who reside in the State are eligible for special education and related services.
- Clarifies the maximum statutory age for services as through the age of 21, and for the remainder of the school year if the child has his or her 22nd birthday during the school year. Also clarifies that services do not have to be provided once the child graduates from high school even if the age limit has not yet been reached.
- Deletes the State's broader purpose clause and substitutes the federal purpose.
- Allows the State Board of Education to set standards that are higher than those required by IDEA.
- Adds a definitions section.
- Redefines the categories of disabilities to conform to IDEA and authorizes additional disabilities if added subsequently under IDEA.
- Removes pregnancy from the list of disabilities.
- Adds children ages 3 through 7 with developmental delays as a category of children entitled to special education and related services.
- Adds charter schools as a local educational agency.
- Removes temporary disabilities.

- Allows the State Board of Education ("State Board") and the Department of Health and Human Services to enter into an agreement to exempt some preschool children with disabilities from the requirement they be provided special education.
- Includes language to strengthen the State Board's monitoring and enforcement of the State's provision of special education and related services.
- Retains a two-tiered system with initial due process complaints going to the Office of Administrative Hearings ("OAH"), but will require copies going to the State Board and the opposing party. Makes the following changes to the due process procedures:
    - Requires State Board and OAH to create a binding memorandum of understanding ("MOU") to address statutory and regulatory procedures and timelines applicable under IDEA to due process hearings and to hearing officers' decisions, and to ensure parties' due process rights to a fair and impartial hearing.
    - Removes references to procedural statutes governing mediators for mediated settlement conferences (G.S. 7A-38.1, G.S. 7A-38-2) in the Mediation statute.
    - Clarifies that mediation may be requested before or after a petition for a hearing is filed.
    - Authorizes the Exceptional Children's Division in the Department of Public Instruction to assign an impartial mediator from a list of trained mediators.
    - Provides the State will bear the cost of the mediation process, unless the parties opt to use a mediator that is not on the list or if the parties use an alternative method of dispute resolution.
    - Authorizes that when resolutions are reached, the parties must execute legally binding agreements that are enforceable in any State administrative forum provided for in IDEA.
    - Establishes one year as the statute of limitations for filing a petition.
    - Removes references to G.S. 150B-23 regarding time periods tolled as related to the filing of a petition for a hearing and a request for mediation.
    - Adds federal language requiring a resolution session and its timelines.
- Requires records to be made available to parents, upon their request, earlier than 45 days if needed to prepare for IEP meetings. There is an exception to this requirement if it would be specifically prohibited by court order.
- Removes conflicting language in the section providing for access to records.
- Deletes language from current law that requires prior written approval of the State Board for contracts between public and private service providers.
- Adds a required member on the Council on Educational Services for Exceptional Children, and authorizes the State Board to add members as may be required under IDEA.
- Requires the State Board to file annual reports with the Joint Legislative Education Oversight Committee.

Section 3 would make conforming changes to numerous statutes.

Section 4 would create a new G.S.115C-375.5, applicable beginning with the 2006-07 school year, by specifying that pregnant and parenting students must receive the same educational instruction or its equivalent as other students. This new section would require local boards of education to adopt policies

to ensure these students are not discriminated against or excluded from school or any program, class, or extracurricular activity because they are pregnant or parenting students. Specifically, these students must be given excused absences for pregnancy and related conditions if medically necessary. Also, homework and make-up work must be made available to them. A homebound teacher must be assigned to the extent necessary.

Section 5 would create a new G.S. 150B-22.1 to specify that the timelines and other procedural safeguards required under IDEA and Article 9 must be followed in impartial due process hearings that are initiated by a petition filed with OAH. This new section also requires administrative law judges to possess federally required knowledge of IDEA, and encourages these judges to participate in training developed and provided by the State Board.

Section 6 would direct the State Board and OAH to enter into the MOU to address specific procedures and timelines for due process hearings. The MOU must be developed by October 31, 2006, and reported to the Committee by November 15, 2006. The report must include any recommended statutory changes that may be necessary.

Section 7 would direct the State Board to revise its Allotment Policy Manual to require school systems to (i) use their State textbook funds to provide, to the same extent as provided to nondisabled students, textbooks for children with disabilities, and (ii) provide teachers of students with disabilities the same teachers' editions provided to teachers of nondisabled students.

EFFECTIVE DATE: *Section 8* provides that Section 7 of the bill would become effective July 1, 2006. The remainder of the act would take effect when it becomes law.

HOUSE BILL 771:
UNC/Dual Office Holding.-AB

BILL ANALYSIS

Committee:	Senate Education/Higher Education	**Date:**	June 19, 2006
Introduced by:	Rep. Dickson	**Summary by:**	Sara Kamprath
Version:	Second Edition		Committee Staff

SUMMARY: ***House Bill 771 would remove the current prohibition against spouses of officers or employees of the State from being members of the UNC Board of Governors, trustees of UNC constituent institutions or the State Board of Community Colleges.***

CURRENT LAW:

UNC Board of Governors

Spouses of the following ***cannot*** be members of the UNC Board of Governors:

- A member of the General Assembly
- An officer of the State
- An employee of the State
- An officer of any constituent institution
- An employee of any constituent institution

UNC Constituent Institutions

Spouses of the following ***cannot*** be trustees of the constituent institutions:

- A member of the General Assembly
- An officer of the State
- An employee of the State
- An officer of any constituent institution
- An employee of any constituent institution

State Board of Community Colleges

Spouses of the following ***cannot*** be members of the State Board of Community Colleges

- A member of the General Assembly
- An officer of the State
- An employee of the State
- An officer of an institution under the jurisdiction of the State Board of Community Colleges
- An employee of an institution under the jurisdiction of the State Board of Community Colleges

BILL ANALYSIS: House Bill 771 would allow the spouses of officers or employees of the State to be eligible to be members of the UNC Board of Governors, members of the board of trustees of UNC constituent institutions, and members of the State Board of Community Colleges. However, the following prohibitions would remain in place:

UNC Board of Governors

Spouses of the following ***could not*** be members of the UNC Board of Governors:

- A member of the General Assembly
- An officer of The University of North Carolina
- An employee of The University of North Carolina
- An officer of any constituent institution
- An employee of any constituent institution

UNC Constituent Institutions

Spouses of the following ***could not*** be trustees of constituent institutions:

- A member of the General Assembly
- An officer of the constituent institution in question
- An employee of the constituent institution in question

State Board of Community Colleges

Spouses of the following ***could not*** be members of the State Board of Community Colleges:

- A member of the General Assembly
- An officer of the Community College System
- An employee of the Community College System
- An officer of an institution under the jurisdiction of the State Board of Community Colleges
- An employee of an institution under the jurisdiction of the State Board of Community Colleges

BACKGROUND: There is no statutory definition of a public office or public officer but the North Carolina courts have held that an office is a delegation to an elected or appointed individual of some of the sovereign functions of the government to be exercised for the public benefit. Some of the criteria that are considered include the following: whether the position was created by election or appointment and not by contract of employment; whether the individual is required to take an oath or post a bond before assuming the duties of the position; whether the statute or constitution that creates the position designates it as a public office; executive, legislative, or judicial functions have been delegated to the individual and the exercise of those powers will bind the rights of others; and the individual is largely independent of the control of others and has the power of direction supervision and control.

**Drupti Chauhan contributed substantially to this summary.*

H0771e2-SMRJ

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 771
Committee Substitute Favorable 4/19/05

Short Title: UNC/Dual Office Holding.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE PROHIBITION AGAINST CERTAIN SPOUSES OF MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, MEMBERS OF THE BOARD OF TRUSTEES OF A CONSTITUENT INSTITUTION, OR MEMBERS OF THE STATE BOARD OF COMMUNITY COLLEGES FROM BEING EMPLOYEES OR OFFICERS OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116-7(b) reads as rewritten:

"(b) ~~From and after July 1, 1973, no~~No member of the General Assembly or officer or employee of the ~~State or of~~State, The University of North Carolina, or any constituent institution ~~or spouse of any such member, officer or employee~~ may be a member of the Board of Governors. No spouse of a member of the General Assembly, or of an officer or employee of The University of North Carolina, or any constituent institution may be a member of the Board of Governors. Any member of the Board of Governors who is elected or appointed to the General Assembly or who becomes an officer or employee of the State or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes ~~such~~ an officer or employee of The University of North Carolina, or any constituent institution shall be deemed thereupon to resign from his membership on the Board of Governors."

SECTION 2. G.S. 116-31(h) reads as rewritten:

"(h) ~~From and after July 1, 1973, no~~No member of the General Assembly or officer or employee of the ~~State or of~~State, The University of North Carolina, or any constituent institution ~~or spouse of any such member, officer or employee~~ shall be eligible for election or appointment as a trustee. No spouse of a member of the General Assembly, or of an officer or employee of a constituent institution may be a trustee of that constituent institution. Any trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the ~~State or of~~State, The University of North Carolina, or any constituent institution or whose spouse is elected

or appointed to the General Assembly or becomes ~~such~~ an officer or employee of that constituent institution shall be deemed thereupon to resign from ~~his~~ membership on the board of trustees."

SECTION 3. G.S. 115D-2.1(d) reads as rewritten:

"(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board ~~and no spouse of any of those persons,~~ shall be eligible to serve on the State Board. No spouse of a member of the General Assembly or of an officer or employee of the Community College System or of an institution under the jurisdiction of the State Board shall be eligible to serve on the State Board. ~~Furthermore, no~~No person who within the prior five years has been an employee of the Community Colleges System Office shall be eligible to serve on the State Board."

SECTION 4. This act becomes effective June 30, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 771
Committee Substitute Favorable 4/19/05

Short Title: UNC/Dual Office Holding.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE PROHIBITION AGAINST CERTAIN SPOUSES OF MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, MEMBERS OF THE BOARD OF TRUSTEES OF A CONSTITUENT INSTITUTION, OR MEMBERS OF THE STATE BOARD OF COMMUNITY COLLEGES FROM BEING EMPLOYEES OR OFFICERS OF THE STATE.

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SECTION 4. This act becomes effective June 30, 2005.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. 771 DATE June 21, 2006

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 13

( ) WHICH CHANGES THE TITLE

by deleting "June 30, 2005" and substituting "When it becomes law".

SIGNED Jeanne H. Lucas

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



A+ Schools Program

University of North Carolina at Greensboro

Thank you for restoring State Funding to the A+ Schools Program!

New legislative funding of $100,000 a year for FY 2005-07 helps support 42 A+ Schools in 23 North Carolina school districts.

The A+ Schools Program needs $500,000 a year to establish and support an A+ School in every school district in North Carolina.

Key Facts About A+. . .

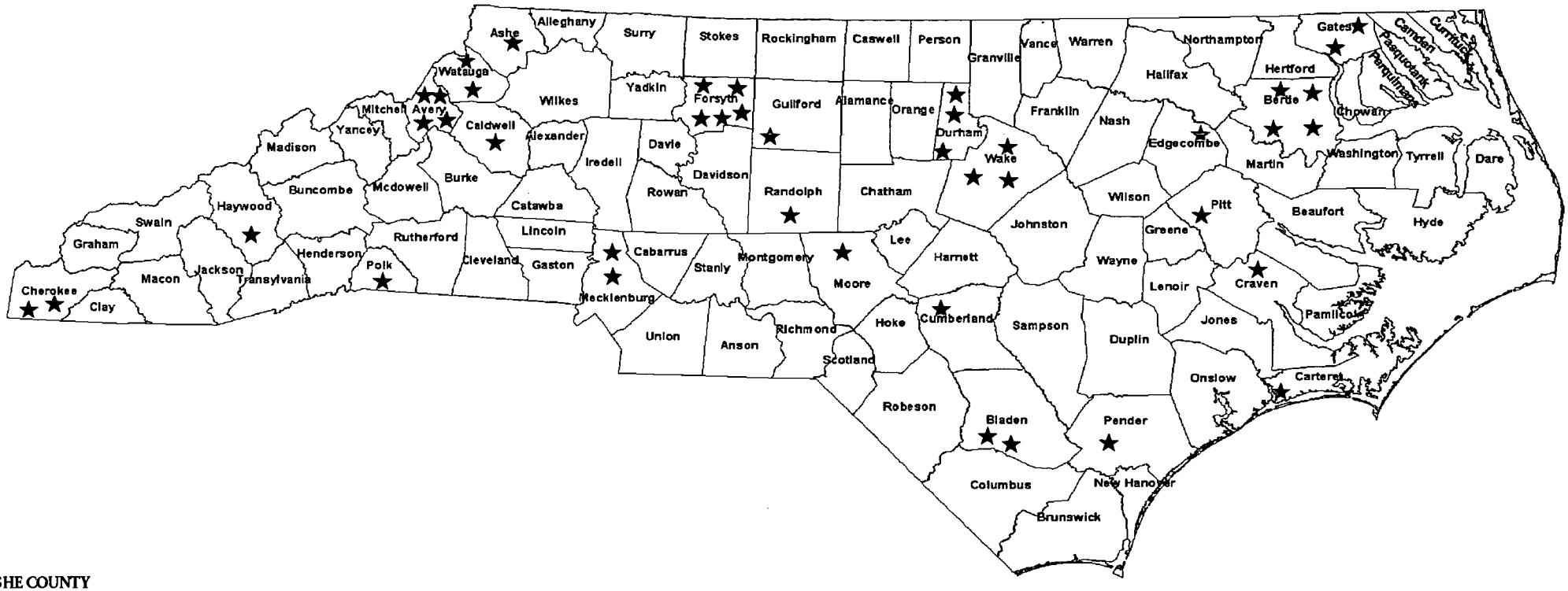
- "Home grown" in North Carolina as a public-private partnership
- Serving K-12 public schools since 1995
- Meets NC curriculum accountability standards
- Nationally recognized, research-based program
- Arts-integrated whole-school reform model

A+ Funding Facts. . .

- Partially funded by the North Carolina General Assembly from 1995 – 2001
- Partially funded by the Kenan Institute for the Arts and corporate foundations
- In 2003 the Program moved to UNCG with Kenan support ending in 2005
- Continually seeks public and private grant funding

For additional information contact:
Gerry Howell, Executive Director
A+ Schools Program at UNCG
336.334.3114
gerryhowell@uncg.edu

North Carolina A+ Schools 1995-2006



ASHE COUNTY
Westwood Elementary School, West Jefferson, NC (PK-6)

AVERY COUNTY
Avery Middle School, Newland, NC (6-8)
*Banner Elk Elementary School, Banner Elk, NC (PK-5)
*Beech Mountain Elementary School, Elk Park, NC (K-8)
Cranberry Middle School, Elk Park, NC (6-8)

BERTIE COUNTY
*Askewville Elementary School, Windsor, NC (PK-5)
*Aulander Elementary School, Aulander, NC (PK-5)
J.P. Law Elementary School, Merry Hill, NC (PK-5)
Windsor Elementary School, Windsor, NC (K-5)

BLADEN COUNTY
*Booker T. Washington Primary School, Clarkton, NC (PK-5)
*Clarkton School of Discovery, Clarkton, NC (6-8)

CALDWELL COUNTY
*Davenport A+ School, Lenoir, NC (PK-5)

CARTERET COUNTY
*White Oak Elementary School, Cape Carteret, NC (K-5)

CHARLOTTE/MECKLENBERG COUNTY
Community Charter School, Charlotte, NC (K-5)
Irwin Avenue Open School, Charlotte, NC (PK-5)

CHEROKEE COUNTY
*Hiwassee Dam Elementary/Middle School, Murphy, NC (PK-8)
*Hiwassee Dam High School, Murphy, NC (9-12)

CRAVEN COUNTY
Oaks Road Elementary School, New Bern, NC (K-5)

CUMBERLAND COUNTY
*Mary McArthur Elementary School, Fayetteville, NC (PK-5)

DURHAM COUNTY/DURHAM CITY
*Durham School for the Arts, Durham, NC (6-12)
*Little River Elementary School, Durham, NC (K-5)
R.N. Harris Magnet School, Durham, NC (K-5)

EDGECOMBE COUNTY
*Partillo A+ School, Tarboro, NC (4-6)

GATES COUNTY
*Gatesville Elementary School, Gatesville, NC (K-5)
*T.S. Cooper Elementary School, Sunbury, NC (PK-5)

GUILFORD COUNTY
*Parkview A+ Magnet School, High Point, NC (PK-5)

HAYWOOD COUNTY
*Central Elementary School, Waynesville, NC (PK-5)

MOORE COUNTY
STARS Charter School, Vass, NC (K-5)

PENDER COUNTY
*Burgaw Elementary School, Burgaw, NC (PK-5)

PITT COUNTY
*Sadie Saulter Elementary School, Greenville, NC (K-5)

POLK COUNTY
*Saluda School, Saluda, NC (PK-8)

RANDOLPH COUNTY/ASHEBORO CITY
*Donna Lee Loflin Elementary School, Asheboro, NC (K-5)

WAKE COUNTY
*Bugg Creative Arts and Science, Raleigh, NC (PK-5)
Douglas Creative Arts and Science, Raleigh, NC (K-5)
East Millbrook Middle School, Raleigh, NC (6-8)

WATAUGA COUNTY
Mabel Elementary School, Zionville, NC (PK-8)
Valle Crucis Elementary School, Sugar Grove, NC (K-8)

WINSTON-SALEM/FORSYTH COUNTY
Arts Based Elementary School, Winston-Salem, NC (K-5)
Diggs Visual and Performing Arts Magnet, Winston-Salem, NC (PK-5)
Hill Magnet Middle School, Winston-Salem, NC (6-8)
*Mineral Springs Elementary School, Winston-Salem, NC (K-5)
*Mineral Springs Middle A+ Academy, Winston-Salem, NC (6-8)

*Denotes one of the original 25 A+ Schools Program sites in 1995

VISITOR REGISTRATION SHEET

Senate Education/Higher Education Committee — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Diann Irwin	DPI
Lynn Smith	DPI
Bob Stuzay	Wake Co. Schools
Tony L. Mitchell	DPI
Jane Smith	DHHS
Esther Haigh	DHHS
David Boden	AG
AL DeMICH	DOA/YAID
Jeffery Walston	DOA/YAFO
STUART FOCARSIE	AUA
	CBC Innovis
Kim Bolt-Davidson	ANC
Brandi Rochelle	ANC

VISITOR REGISTRATION SHEET

Senate Education/Higher Education Committee — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Trawick	Don Beason Intern
Adam Keith	NCGA Intern
Amy Sheldon	Hobbs & Co
Ira Wolfe	NCDPI
Mary N. Watson	NCDPI
Jill Stotzberger	ACLU-NC
Paula L. Wolf	ACLU-NC
Rebekah Gonzales	ACLU-NC
Ellen Russell	The Arc of NC & Special Needs Federation
Christine O Trotter	Carolina Legal Assistance (CLA)
Rebecca Williford	Carolina Legal Assistance (law student)

VISITOR REGISTRATION SHEET

Senate Education/Higher Education Committee — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erin Schuettpelz	UNC-GA
Mark Kemmy	work for Erin
Gene Causby	NCSCA
	NCPAPA
Kristin Kelly	office of gov.
	WCPSS
Paige O'Hale	Gov's office
Jim Lawrence	Attorney
Leanne Winner	WCSBOE
BRIAN LEWIS	Covenant w/ NC's Children

VISITOR REGISTRATION SHEET

Senate Education/Higher Education Committee — June 21, 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
Sheila Knapp	Council for Educational Svcs for Exceptional Children
Rita T Jones	SBE
Debra McInerney	NC DPI
Nancy Wilson	SBE
Kay Evans	OES/DHHS
Adam Pridemore	NCASA
Jami Hagerman	NCPTC
Iris Green	GACPD

SENATE EDUCATION/HIGHER EDUCATION COMMITTEE

Wednesday, July 26, 2006
4:55 P.M.
Senate Chamber, Legislative Building

MINUTES

The Senate Education/Higher Education Committee met at 4:55 P.M on Wednesday July 26, 2006, in the Senate Chamber at the desk of Senator Swindell. Senator Swindell called the meeting to order with 15 members of the committee present.

Senator Swindell stated that House Bill 1155, "Safe Transportation for School Students" is before the Committee for consideration. Senator Dorsett moved the adoption of the Proposed Committee Substitute for House Bill 1155 for discussion.

Senator Swindell recognized staff to explain the bill. After Committee discussion, Senator Dannelly moved an unfavorable report to House Bill 1155 and a favorable report for the Senate Committee Substitute for House Bill 1155. The motion carried by unanimous voice vote.

The Chair thanked everyone for their attendance.
The meeting adjourned at 5:05 P.M.

Senator A.B. Swindell, Presiding

Joyce Crews Hodge, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

EDUCATION/HIGHER EDUCATION COMMITTEE REPORT
Senator Jeanne Hopkins Lucas, Co-Chair
Senator A. B. Swindell, Co-Chair
Senator John A. Garwood, Co-Chair

Monday, June 26, 2006

Senator SWINDELL,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1155** Safe Transportation for School Students.

Draft Number:	PCS 30640
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-208
HOUSE BILL 1155

AN ACT TO ENSURE THE SAFEST TRANSPORTATION POSSIBLE FOR NORTH CAROLINA PUBLIC SCHOOL STUDENTS INVOLVED IN SCHOOL-SPONSORED TRAVEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-247 reads as rewritten:

"**§ 115C-247. Purchase of activity buses by local boards.**

The several local boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity ~~buses. The~~ buses.

Each local board of education that operates activity buses shall adopt a policy relative to the proper use of the vehicles. The policy shall permit the use of these buses for travel to athletic events during the regular season and playoffs and for travel to other school-sponsored activities.

The provisions of G.S. 115C-42 shall be fully applicable to the ownership and operation of such activity school buses. Activity buses may also be used as provided in G.S. 115C-243."

SECTION 2. The Department of Public Instruction, in cooperation with the Department of Transportation, shall develop a program for issuing a statewide permit to commercial motor coach companies that seek to contract with local school systems for the transportation of students, school personnel, and other persons authorized by the school system for school-sponsored trips. This program is intended to provide commercial motor coach companies with a single permit that can be used statewide and will be an alternative to the current system that requires motor coach companies to meet the varying requirements of each school system that they contract with for such transportation services. The Department of Public Instruction shall review and amend the recommended guidelines and procedures for school charter transportation, adopted by the School Charter Transportation Safety Committee in December 2004, to meet the requirements of the new permit program.

The requirements of the program shall include, but not be limited to, all of the following:

(1) The motor coach company demonstrates compliance with the Federal Motor Carrier Safety Regulations (FMCSR) as evidenced by a prior on-site examination of its motor carrier operation in which the company received a safety fitness rating of "satisfactory" in accordance with 49 C.F.R. Part 385.

(2) The previously issued "satisfactory" safety rating is current at the time the local board of education contracts for services.

(3) The motor coach company has not had an out-of-service order issued against it within the prior 12 months.

(4) The requirement that the motorcoach companies adhere to the motor vehicle laws of the jurisdiction in which they are operating.

(5) The collection of a reasonable fee to offset the costs of implementing and maintaining the program.

(6) The consideration of the needs of schools that serve large populations of students with special needs.

The Department of Public Instruction, in establishing the program, shall consult with the North Carolina State Highway Patrol, the North Carolina School Boards Association, the Federal Motor Carrier Safety Administration, the North Carolina Motorcoach Association, the North Carolina PTA, and other interested parties to discuss the proposed requirements of the program.

The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee by November 15, 2006, on development of the program. The Committee shall report its findings, together with any recommended legislation, including the amount of any reasonable fees, to the 2007 General Assembly upon its convening.

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

In the General Assembly read three times and ratified this the 27th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 9:51 a.m. this 8th day of August, 2006

2005

SENATE
FINANCE

COMMITTEE
MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

Senate Finance Committee

2005

John H. Kerr, III
Chairman

David W. Hoyle
Chairman

DeAnne Mangum
Committee Assistant

SENATE FINANCE COMMITTEE MEMBERS

2005-2006

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John H. Kerr, III, Cochairman

Daniel G. Clodfelter, Vice Chairman
Larry Shaw, Vice Chairman

Fletcher Hartsell, Ranking Minority Member

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Bob Weiss
Dave Crotts
Martha Walston
Sabra Faires
DeAnne Mangum

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0009	Holliman	THOMASVILLE DEANNEXATION.	SR	Ch. SL 2005-108	04-05-05	06-15-05
H0020	Holliman	HEALTH INSURANCE CREDIT/MINIMUM WAGE.	*S	Ref To Com On Finance	08-11-05	
H0035	Alexander	ADET SCHOOL/FEE/ QUALIS. INCREASE.	*S	Pres. To Gov. 8/ 17/2005	05-18-05	08-10-05
H0085	Womble	VARIOUS SPECIAL LICENSE PLATES	*SR	Ch. SL 2005-216	05-25-05	06-23-05
H0099	Gibson	AMEND WORKERS' COMP ACT.	*S	Ratified	03-16-05	08-10-05
H0105	Luebke	MOTOR FUEL TAX CHGS & REV LAWS TECHNICAL CHGS.	*S	Concurred On 3rd Reading	05-12-05	08-09-05
H0116	Brubaker	PROPERTY TAX CHANGES	*S	Pres. To Gov. 8/ 17/2005	05-09-05	08-12-05
H0125=	Wilson	WEST JEFFERSON OCCUPANCY TAX.	SR	Ch. SL 2005-49	04-14-05	05-12-05
H0131	Grady	DEED RECORDING/TAX CERT FOR VARIOUS COUNTIES.	*SR	Ch. SL 2005-109	03-21-05	06-09-05
H0143=	Coates	EXEMPT AGRI-TOURISM FROM PRIVILEGE TAX.	S	Ref To Com On Finance	08-23-05	
H0254	Crawford	GARVEE BOND ISSUANCE.	*S	Pres. To Gov. 8/ 23/2005	07-14-05	08-11-05
H0278	Brown	WALKERTOWN DEANNEXATIONS.	SR	Ch. SL 2005-50	04-14-05	05-12-05
H0350	Stiller	HOLDEN BEACH CANAL DREDGING FEE.	*S	Ref To Com On Finance	04-14-05	
H0351	Owens	MODIFY PASQUOTANK/ ELIZ. CITY OCCUPANCY TAX.	*SR	Ch. SL 2005-16	04-14-05	04-21-05
H0370	Steen	SATELLITE ANNEXATIONS/ VARIOUS MUNICIPLALITIES.	*SR	Ch. SL 2005-173	04-14-05	06-09-05
H0370	Steen	SATELLITE ANNEXATIONS/ VARIOUS MUNICIPLALITIES.	*SR	Ch. SL 2005-173	06-15-05	06-23-05
H0392	LaRoque	AMEND DEFINITION OF MALT BEVERAGE IN ABC LAW.	*SR	Ch. SL 2005-277	07-07-05	08-02-05
H0393=	Stam	HOLLY SPRINGS EMINENT DOMAIN.	SR	Ch. SL 2005-57	04-18-05	05-18-05
H0399	Owens	UNIFIED GOVERNMENT.	*SR	Ch. SL 2005-35	04-14-05	04-21-05
H0446	L. Allen	ROANOKE RAPIDS ANNEXATION/ETJ/WELDON ANNEX.	SR	Ch. SL 2005-9	04-05-05	04-13-05
H0449	Stam	GIFT TAX CHANGES.	*S	Ref To Com On Finance	04-18-05	
H0464	Parmon	WINSTON-SALEM MOTOR VEHICLE TAX INCREASE.	*SR	Ch. SL 2005-278	05-03-05	08-12-05
H0470	Walend	TRANSYLVANIA OCCUPANCY TAX.	*SR	Ch. SL 2005-88	06-01-05	06-09-05
H0474=	Ross	MILL REHABILITATION TAX CREDIT.	*S	Ref To Com On Finance	08-24-05	
H0476	Tolson	WILSON/GREENE BOUNDARY SETTLEMENT.	SR	Ch. SL 2005-259	04-05-05	08-09-05

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0478	Folwell	TOBACCOVILLE DEANNEXATION.	SR	Ch. SL 2005-51	04-14-05	05-12-05
H0488	Weiss	CARY CHARTER REWRITE.	*SR	Ch. SL 2005-117	05-03-05	06-09-05
H0498=	Hollo	TAYLORSVILLE SATELLITE ANNEXATIONS.	SR	Ch. SL 2005-52	04-05-05	05-12-05
H0540	L. Allen	HALIFAX AND ROANOKE RAPIDS OCCUPANCY TAXES.	*SR	Ch. SL 2005-46	04-14-05	05-11-05
H0544	Rapp	MADISON COUNTY OCCUPANCY TAX.	SR	Ch. SL 2005-118	04-14-05	06-23-05
H0580	Rayfield	BELMONT & TROUTMAN OCCUPANCY TAX.	*SR	Ch. SL 2005-220	05-02-05	06-20-05
H0581=	Rayfield	BELMONT STREET LIGHTING ASSESSMENTS.	SR	Ch. SL 2005-111	05-02-05	06-15-05
H0613	Harrell	UPDATE CERTIFICATION/ LICENSURE/REC. THERAPY.	*S	Pres. To Gov. 8/ 23/2005	08-10-05	08-12-05
H0631	Haire	MAGGIE VALLEY SATELLITE ANNEXATIONS.	*SR	Ch. SL 2005-79	04-05-05	05-26-05
H0646	Holliman	INSURANCE COMPANY FEE CONSOLIDATION.-AB	*S	Ratified	05-09-05	08-10-05
H0650	Haire	BUSINESS COURT CASES/ FEE.	*S	Concurred In S/ Com Sub	08-12-05	08-23-05
H0689	Gibson	MONROE MEALS TAX.	*SR	Ch. SL 2005-261	05-17-05	08-09-05
H0691	Insko	CARRBORO MOTOR VEHICLE TAX.	*SR	Ch. SL 2005-306	05-03-05	08-10-05
H0705=	Hill	PRESENT-USE VALUE BUYOUT CREDITS.	SR	Ch. SL 2005-293	04-18-05	08-09-05
H0723	Glazier	UNC/CRIMINAL RECORD CHECKS/FEE.-AB	*S	Re-ref Com On Finance	08-11-05	
H0736=	Holliman	CODE ENFORCEMENT OFFICIAL EXAM FEES.-AB	*SR	Ch. SL 2005-289	04-25-05	08-09-05
H0743	Coates	EAST SPENCER ANNEXATION.	SR	Ch. SL 2005-112	04-05-05	06-15-05
H0766	Howard	ENHANCE PASSENGER TRAMWAY SAFETY ACT.-AB	*S	Ratified	04-25-05	08-09-05
H0787	Wilson	VARIOUS LOCAL ACTS.	*S	Ratified	06-06-05	08-10-05
H0803	Holliman	MANUFACTURED HOUSING LICENSE AMENDMENTS.	*SR	Ch. SL 2005-297	05-02-05	08-09-05
H0819	Saunders	REGIONAL COUNCILS OF GOVERNMENT.	*SR	Ch. SL 2005-290	05-02-05	08-09-05
H0828	Stiller	BELVILLE DEANNEXATION.	SR	Ch. SL 2005-113	04-05-05	06-15-05
H0843	Tucker	DUPLIN OCCUPANCY TAX.	*SR	Ch. SL 2005-53	04-14-05	05-12-05
H0864	Cole	MAYO STATE PARK CONDEMNATION.	*S	Ref To Com On Finance	04-20-05	
H0871	Preston	EMERALD ISLE CANAL DREDGING FEE.	*SR	Ch. SL 2005-47	04-18-05	05-11-05
H0876	Rapp	HAYWOOD COUNTY SALES TAX.	*S	Ref To Com On Finance	08-24-05	
H0882	Sutton	ROBESON-TAX CERTIFICATIONS BEFORE FILINGS.	S	Ref To Com On Finance	04-21-05	
H0890	Alexander	CRIME LAB COST RECOVERY FEE.	*S	Pres. To Gov. 8/ 23/2005	05-25-05	08-09-05
H0896	Haire	STATE BAR/APPEAL/FEE.	*SR	Ch. SL 2005-237	06-09-05	07-07-05
H0945	Luebke	OMNIBUS OCC. TAXES.	*S	Ref To Com On	06-13-05	08-09-05

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Rules, Calendar, and Operations of the House		
H0986	McLawhorn	VARIOUS SATELLITE ANNEXATIONS.	*SR	Ch. SL 2005-71	04-19-05	05-12-05
H0988	Blackwood	PROPERTY TAX - VALUE OF MOTOR VEHICLES.	*SR	Ch. SL 2005-303	05-09-05	08-09-05
H0990	Starnes	DEFINITION OF FARMER FOR SALES AND USE TAX.	*S	Ref To Com On Finance	08-24-05	
H1000	LaRoque	GREENE DEEDS/PROPERTY TAX CERTIFICATION.	S	Ref To Com On Finance	04-20-05	
H1004	Gibson	EXTEND JDIG AND BILL LEE ACT.	*SR	Ch. SL 2005-241	05-09-05	07-12-05
H1005	McMahan	PINEVILLE ANNEXATION.	SR	Ch. SL 2005-119	05-18-05	06-23-05
H1025	Luebke	WINEMAKING ON PREMISES PERMIT.	S	Re-ref Com On Finance	08-12-05	
H1030	Stiller	BRUNSWICK COUNTY AIRPORT AUTHORITY.	*S	Pres. To Gov. 8/17/2005	05-16-05	08-10-05
H1037	McComas	INCREASE WRIGHTSVILLE BEACH MOTOR VEHICLE TAX.	*S	Ref To Com On Finance	05-03-05	
H1051	Haire	MACON-JACKSON REGIONAL AIRPORT AUTHORITY.	*SR	Ch. SL 2005-219	07-12-05	07-20-05
H1056	Preston	AMEND CARTERET COUNTY OCCUPANCY TAX.	SR	Ch. SL 2005-120	04-25-05	06-23-05
H1080	Daughtridge	DORTCHES DEANNEXATION.	SR	Ch. SL 2005-60	04-18-05	05-18-05
H1095=	Gibson	CLARIFY CLEAN WATER FUNDING AND PROCEDURE.	*S	Concurred On 3rd Reading	08-10-05	08-12-05
H1117	Ross	PUBLIC FINANCE CHANGES.	*SR	Ch. SL 2005-238	05-09-05	07-07-05
H1136	Culpepper	MERCURY SWITCH REMOVAL-2.	*S	Pres. To Gov. 8/23/2005	08-12-05	08-12-05
H1169	Church	INVESTMENTS OF STATE AND LOCAL FUNDS.	*S	Pres. To Gov. 8/23/2005	05-09-05	08-10-05
H1217	Earle	NOTARY FEE INCREASE.	*S	Pres. To Gov. 8/17/2005	05-17-05	08-11-05
H1231	Steen	SHP RETIREE PLATE MODIFICATIONS.	*S	Ref To Com On Finance	08-24-05	
H1261	Underhill	WIRELESS TELEPHONE SERVICE.	*S	Ratified	08-10-05	08-11-05
H1277	Faison	CLARIFY HUNTER SAFETY.	*S	Pres. To Gov. 8/23/2005	08-09-05	08-12-05
H1281	L. Allen	COUNTY CONTROL/ NOXIOUS AQUATIC WEEDS.	*S	Pres. To Gov. 8/23/2005	06-29-05	08-09-05
H1284	Culpepper	IMPROVE REAL ESTATE LICENSING LAW.	*S	Pres. To Gov. 8/23/2005	08-10-05	08-11-05
H1327	Harrison	CRIM. RECORD CHECKS/ PSYCHOLOGY PRACTICE ACT.	*S	Re-ref Com On Finance	08-10-05	
H1349	Wilkins	RAISE CEILING ON FEES/ BOARD OF PHARMACY.	*S	Concurred On 3rd Reading	08-12-05	08-12-05
H1357	Fisher	AMEND ACUPUNCTURE LAWS/FEES.	*S	Pres. To Gov. 8/23/2005	06-15-05	08-10-05
H1429	Harrell	WINE SHIPPER FEE/WINE PRIMARY SOURCE	*S	Pres. To Gov. 8/23/2005	07-12-05	08-09-05

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1473	Coates	CLAWBACK FAILED INCENTIVES.	S	Ref To Com On Finance	06-06-05	
H1507	Alexander	AMEND INTERPRETER/ TRANSLITERATOR LICENSE ACT.	SR	Ch. SL 2005-299	06-22-05	08-09-05
H1541	Earle	HOMEOWNER ASSOCIATION AMENDMENTS.	*S	Ratified	08-11-05	08-12-05
$ H1630	**Luebke**	**2005 CONTINUING BUDGET AUTHORITY/ REVENUE.**	***SR**	**Ch. SL 2005-144**	**06-13-05**	**06-23-05**
H1635	Adams	AMEND DISPLACED HOMEMAKER LAWS/UP FUND FEES.	*S	Ratified	07-06-05	08-12-05
H1775	McComas	UNC NONAPPROPRIATED CAPITAL PROJECTS.	*S	Pres. To Gov. 8/ 17/2005	07-28-05	08-09-05
$ H1779	**Folwell**	**PROPERTY TAX PAID WITH VEHICLE REGISTRATION.**	***SR**	**Ch. SL 2005-294**	**08-02-05**	**08-09-05**
S0014=	R. C. Soles, Jr.	HOLDEN BEACH CANAL DREDGING FEE.	*SR	Ch. SL 2005-90	01-31-05	03-16-05
S0015=	R. C. Soles, Jr.	WATER & SEWER DISTRICT BOUNDARIES/ PER DIEM.	*SR	Ch. SL 2005-127	01-31-05	03-16-05
S0016=	R. C. Soles, Jr.	TABOR CITY SATELLITE ANNEXATION.	*SR	Ch. SL 2005-8	01-31-05	03-16-05
S0037=	A. B Swindell	REENACT LONG-TERM CARE INSURANCE TAX CREDIT.	S	Ref To Com On Finance	02-03-05	
S0073	Kay R. Hagan	NC WILDLIFE HABITAT FOUNDATION SPECIAL PLATE.	S	Ref To Com On Finance	02-08-05	
S0080=	John A. Garwood	WEST JEFFERSON OCCUPANCY TAX.	S	Ref To Com On Finance	02-09-05	
S0083=	Charlie S. Danne	ADET SCHOOL/FEE/ QUALIFICATIONS INCREASE.	*S	Re-ref Com On Finance	02-23-05	
S0092	John A. Garwood	WATAUGA DIST. U OCC. TAX/FORCE ACCOUNT LIMIT.	*SR	Ch. SL 2005-197	04-21-05	05-12-05
S0101	Charles W. Alber	SWEEPERS MOTOR FUEL TAX REFUND.	S	Ref To Com On Finance	02-10-05	
S0117=	William R. Purce	MEDICAID REF. STUDY/ COUNTY SHARE PHASE OUT.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	02-14-05	
S0122=	William R. Purce	LONG-TERM CARE INSURANCE TAX CREDIT.	S	Ref To Com On Finance	02-14-05	
S0126	Harry Brown	MARINE CORPS LEAGUE REGISTRATION PLATE.	S	Ref To Com On Finance	02-14-05	
S0138	Jerry W. Tillman	ARCHDALE EXTRATERRITORIAL JURISDICTION.	*SR	Ch. SL 2005-115	02-16-05	05-12-05
S0145	John H. Kerr III	STREAMLINED SALES TAX CHANGES.	S	Ref To Com On Finance	02-16-05	
S0146	John H. Kerr III	IRC UPDATE.	S	Ref To Com On Finance	02-16-05	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0153=	Clark Jenkins	GARVEE BOND ISSUANCE.	S	Ref To Com On Finance	02-16-05	
S0159	Fletcher L. Hart	REVENUE LAWS TECHNICAL CHANGES.	S	Ref To Com On Finance	02-16-05	
S0166	Charles W. Alber	REGULATE GOLF CARTS/ SEVEN LAKES MV REGULATION.	*SR	Ch. SL 2005-11	02-23-05	03-30-05
S0170=	Walter H. Dalton	WACO TOWN CENTER.	SR	Ch. SL 2005-199	02-21-05	03-16-05
S0172	Fred Smith	CORPORATE INCOME TAX EXEMPTION.	S	Ref To Com On Finance	02-21-05	
S0175	Hamilton C. Hort	PUBLIC LAWS - 1.	S	Re-ref Com On State and Local Government	05-03-05	08-08-05
S0185	Robert Lee Hollo	WINDSHIELD REPLACERS-STICKERS W/O FEE.	*S	Re-ref Com On Appropriations Subcommittee on Transportation	02-23-05	07-07-05
S0190=	Hamilton C. Hort	INCOME TAX CREDIT - ENERGY EFFICIENT HOMES.	S	Ref To Com On Finance	02-23-05	
S0193	Larry Shaw	NC BRIDGE AND TOLL ROAD AUTHORITY.	S	Ref To Com On Finance	02-23-05	
S0201=	David W. Hoyle	CITY OF BELMONT OCCUPANCY TAX.	S	Ref To Com On Finance	02-24-05	
S0202	David F. Weinste	13TH SENATORIAL DISTRICT LOCAL ACT-1.	S	Re-ref Com On Finance	05-24-05	
S0204=	Richard Stevens	HOLLY SPRINGS EMINENT DOMAIN.	S	Ref To Com On Finance	02-24-05	
S0206	Charles W. Alber	SALEMBURG BOUNDARY VALIDATION.	*SR	Ch. SL 2005-84	04-13-05	05-11-05
S0208=	Jeanne H. Lucas	AMEND OCCUPATIONAL THERAPY LAWS/FEE.	*S	Passed 3rd Reading	05-03-05	08-10-05
S0214	Martin L. Nesbit	INCREASE CIGARETTE EXCISE TAX BY 75 CENTS.	S	Ref To Com On Finance	02-24-05	
S0246	John Snow	50TH SENATORIAL DISTRICT LOCAL ACT-4.	S	Re-ref Com On Finance	05-17-05	
S0249	Tom Apodaca	ASHEVILLE SATELLITE ANNEXATIONS.	*SR	Ch. SL 2005-85	05-05-05	05-18-05
S0270	Richard Stevens	CARY CHARTER REWRITE.	S	Ref To Com On Finance	03-01-05	
S0278	Jim Jacumin	FOOTHILLS AIRPORT AUTHORITY LAND ACQUISITION.	*SR	Ch. SL 2005-171	05-11-05	05-26-05
S0290	David W. Hoyle	SECURITIES TRANSFER ON DEATH.	*S	Passed 2nd & 3rd Reading	04-07-05	08-11-05
S0291=	David W. Hoyle	AMEND TAXATION OF CONSTRUCTION MACHINERY.	S	Ref To Com On Finance	03-02-05	
S0301	Fletcher L. Hart	MOUNT PLEASANT CHARTER REVISAL.	S	Ref To Com On Finance	03-02-05	
S0303	Janet Cowell	16TH SENATORIAL DISTRICT LOCAL ACT-1.	S	Re-ref Com On Finance	04-13-05	
S0322	Daniel G. Clodfe	SALES TAX EXEMPTION FOR SCHOOLS.	S	Ref To Com On Finance	03-03-05	
S0327	Tony Rand	NC STATE BAR CHANGES/	*S	Pres. To Gov. 8/	06-14-05	07-07-05

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		FEES.		23/2005		
S0339	Robert Lee Hollo	OMNIBUS OCCUPANCY TAXES-III	*S	Re-ref Com On Finance	05-09-05	05-12-05
S0339	Robert Lee Hollo	OMNIBUS OCCUPANCY TAXES-III	*S	Re-ref Com On Finance	08-23-05	
S0341=	David W. Hoyle	MODERN ESCHEAT INVESTMENT PROGRAM.	SR	Ch. SL 2005-252	03-03-05	05-11-05
S0342=	David W. Hoyle	LEASE PURCHASE FOR SCHOOL WAREHOUSE.	S	Ref To Com On Finance	03-03-05	
S0343	David W. Hoyle	ELECTRICITY FRANCHISE TAX DISTRIBUTION.	*S	Ref To Com On Public Utilities	05-24-05	05-26-05
S0344	David W. Hoyle	2005 ECONOMIC GROWTH AND TAX RELIEF ACT.	*S	Re-ref Com On Finance	07-07-05	08-10-05
S0344	David W. Hoyle	2005 ECONOMIC GROWTH AND TAX RELIEF ACT.	*S	Re-ref Com On Finance	08-13-05	
S0348=	John A. Garwood	NORTH WILKESBORO/LAND FOR PRISONS.	*SR	Ch. SL 2005-258	05-16-05	08-10-05
S0350=	John A. Garwood	TAYLORSVILLE SATELLITE ANNEXATIONS.	S	Ref To Com On Finance	03-03-05	03-16-05
S0352=	David W. Hoyle	MILL REHABILITATION TAX CREDIT.	S	Ref To Com On Finance	03-03-05	
S0356=	David W. Hoyle	FUEL TAX REFUND FOR PUMPERS AND SWEEPERS.	*S	Passed 2nd & 3rd Reading	03-03-05	04-20-05
S0358	Philip E. Berger	ROCKINGHAM LOCAL ACT-2.	S	Re-ref Com On Finance	06-21-05	
S0361	Martin L. Nesbit	TOWN OF BLACK MOUNTAIN LOCAL ACT.	S	Re-ref Com On Finance	05-26-05	
S0363=	John Snow	TRANSYLVANIA OCCUPANCY TAX.	S	Ref To Com On Finance	03-03-05	
S0364	Walter H. Dalton	SMALL BUSINESS HEALTH INSURANCE CREDIT.	S	Ref To Com On Finance	03-03-05	
S0369	Doug Berger	OMNIBUS OCCUPANCY TAXES.	*SR	Ch. SL 2005-233	05-12-05	06-01-05
S0370	Doug Berger	7TH SENATORIAL DISTRICT LOCAL ACT-2.	S	Re-ref Com On Finance	05-31-05	
S0390=	David W. Hoyle	BELMONT STREET LIGHTING ASSESSMENTS.	S	Ref To Com On Finance	03-07-05	
S0396	David W. Hoyle	COUNTY SERVICE DISTRICTS.	*SR	Ch. SL 2005-136	03-07-05	03-30-05
S0405	Fletcher L. Hart	WILDLIFE CONSERVATION PRESENT-USE VALUE.	S	Ref To Com On Finance	03-07-05	
S0407	Fletcher L. Hart	CABARRUS LOCAL ACTS.	*SR	Ch. SL 2005-116	03-07-05	05-12-05
S0418	Hugh Webster	TAXPAYERS' BILL OF RIGHTS FOR NC.	S	Ref To Com On Finance	03-07-05	
S0420=	Philip E. Berger	OAK RIDGE VOL. ANNEX./ RED CROSS BUDGET ORD.	*SR	Ch. SL 2005-245	03-16-05	03-30-05
S0425=	Richard Stevens	CARY REIMBURSEMENT.	S	Ref To Com On Finance	03-09-05	
S0429	Tony Rand	SHAG DANCING SPECIAL REGISTRATION PLATE.	S	Ref To Com On Finance	03-09-05	
S0436	Bob Atwater	DURHAM COUNTY LOCAL ACT-1.	S	Re-ref Com On Finance	06-15-05	
S0440	John A. Garwood	ALEXANDER LOCAL SALES TAX.	S	Ref To Com On Finance	03-09-05	
S0442	John A. Garwood	BLOWING ROCK OFF-STREET PARKING FUND.	SR	Ch. SL 2005-86	03-09-05	05-12-05

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S0443	Julia Boseman	PUBLIC HOSPITAL INVESTMENTS.	*S	Concurred In H/ com Sub	03-09-05	06-01-05
S0450	Walter H. Dalton	RUTHERFORD AIRPORT AUTHORITY LEASES.	SR	Ch. SL 2005-105	03-10-05	05-12-05
S0458=	Bob Atwater	LEE LOCAL SALES TAX.	S	Ref To Com On Finance	03-10-05	
S0460	Fletcher L. Hart	KANNAPOLIS SATELLITE ANNEXATIONS.	S	Ref To Com On Finance	03-10-05	
S0466	Philip E. Berger	BURLINGTON/ GIBSONVILLE BOUNDARY.	*SR	Ch. SL 2005-87	03-10-05	05-12-05
S0468=	Malcolm Graham	CRIME LAB COST RECOVERY FEE.	*S	Re-ref Com On Finance	04-13-05	
S0473=	Harry Brown	ONSLOW DEED RECORDING.	S	Ref To Com On Finance	03-10-05	
S0475	John H. Kerr III	GREENVILLE SATELLITE ANNEXATIONS.	S	Ref To Com On Finance	03-10-05	
S0481	Larry Shaw	CUMBERLAND COUNTY OCCUPANCY TAX.	S	Ref To Com On Finance	03-10-05	
S0493=	Kay R. Hagan	GUILFORD BATTLEGROUND SPECIAL PLATE.	S	Ref To Com On Finance	03-15-05	
S0505	William R. Purce	MEDICAL EXAMINER FEE INCREASE.-AB	*S	Passed 3rd Reading	03-15-05	08-09-05
S0508	Walter H. Dalton	EXEMPT BUILDERS' INVENTORY.	S	Ref To Com On Finance	03-15-05	
S0511	Eleanor Kinnaird	SPAY/NEUTER FUNDING.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	03-15-05	
S0514	Daniel G. Clodfe	EARNED INCOME TAX CREDIT.	S	Ref To Com On Finance	03-15-05	
S0520	Daniel G. Clodfe	COURT FEE CHANGES.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	03-15-05	
S0521	Daniel G. Clodfe	TAX CREDIT FOR CERTAIN REAL PROP. DONATIONS.	S	Ref To Com On Finance	03-15-05	
S0525	Daniel G. Clodfe	NASCAR HALL OF FAME FINANCING.	*SR	Ch. SL 2005-68	05-11-05	05-18-05
S0527	Daniel G. Clodfe	CAMPUS POLICE ACT.	*SR	Ch. SL 2005-231	04-04-05	05-26-05
S0528	Daniel G. Clodfe	TAX INCREMENT FINANCING CHANGES.	*S	Concurred In H/ com Sub	03-15-05	08-04-05
S0535	Daniel G. Clodfe	HISTORIC REHABILITATION CERTIFICATION CHANGES.	S	Ref To Com On Finance	03-15-05	
S0537	Daniel G. Clodfe	ALLOW PAYMENT OF TAX BY OFFSET.	*SR	Ch. SL 2005-134	03-15-05	05-26-05
S0540	Daniel G. Clodfe	FRANCHISE TAX LOOPHOLE CLOSING.	*S	Ref To Com On Finance	03-15-05	03-30-05
S0541	Daniel G. Clodfe	UPDATE CORPORATE TAX APPORTIONMENT FORMULA.	S	Ref To Com On Finance	03-15-05	
S0545	James Forrester	TEACHER TAX CREDIT.	S	Ref To Com On Finance	03-15-05	
S0546	Tony Rand	INCOME TAX - EXEMPT CERTAIN MILITARY INCOME.	S	Ref To Com On Finance	03-15-05	

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S0551=	Don East	PRESENT-USE VALUE BUYOUT CREDITS.	S	Ref To Com On Finance	03-15-05	05-24-05
S0559	Eleanor Kinnaird	EXPUNCTION/ CONVICTIONS OF NONVIOLENT CRIMES.	*S	Re-ref Com On Finance	04-26-05	
S0561=	Janet Cowell	INCOME TAX CREDIT FOR PUBLIC SCHOOL TEACHERS.	S	Ref To Com On Finance	03-15-05	
S0587	Scott Thomas	WAIVE 1/3 MILITARY BASE GAS TAX.	S	Ref To Com On Finance	03-16-05	
S0589	David F. Weinste	REGISTERS OF DEEDS/ TAX CERTIFICATION.	S	Ref To Com On Finance	03-16-05	
S0590	Katie G. Dorsett	CONSUMER CREDIT COUNSELING/DEBT MANAGEMENT.	*S	Conf Com Appointed	05-18-05	05-26-05
S0592	Eleanor Kinnaird	INDIGENT DEFENSE TECHNICAL REVISIONS.	*SR	Ch. SL 2005-250	04-14-05	05-25-05
S0593	Eleanor Kinnaird	COPY COSTS IN INDIGENT CASES.	*SR	Ch. SL 2005-251	04-19-05	05-24-05
S0594	Eleanor Kinnaird	RECOUPMENT BY COURT-APPOINTED ATTORNEYS.	*SR	Ch. SL 2005-254	04-19-05	05-25-05
S0605	Clark Jenkins	CONTRACT AGENT FEES.	S	Ref To Com On Finance	03-16-05	
$ S0612=	**Tony Rand**	**AMEND LOBBYING LAWS.**	***SA**	**Conf Report Adopted**	**03-31-05**	**04-11-05**
S0614=	Scott Thomas	INSURANCE COMPANY FEE CONSOLIDATION.	S	Ref To Com On Finance	03-17-05	
$ S0622=	**Linda Garrou**	**2005 APPROPRIATIONS ACT.**	***SR**	**Ch. SL 2005-276**	**05-03-05**	**05-03-05**
S0639	Richard Stevens	FRIENDS OF NC NATURAL SCIENCES MUSEUM PLATES.	S	Ref To Com On Finance	03-17-05	
S0643	David W. Hoyle	TAX REFUND DONATION FOR PROSTATE CANCER.	S	Ref To Com On Finance	03-17-05	
S0645=	David W. Hoyle	CODE-ENFORCEMENT OFFICIAL EXAM FEES.	S	Ref To Com On Finance	03-17-05	
S0649	Andrew C. Brock	ANNEXATIONS/MANDATORY WATER/SEWER HOOKUP.	S	Ref To Com On Finance	03-17-05	
S0659=	Clark Jenkins	SCUBA SPECIAL REGISTRATION PLATE.	S	Ref To Com On Finance	03-17-05	
S0668	Fletcher L. Hart	UNIFORM TAX REFUND PROCEDURE.	S	Ref To Com On Finance	03-17-05	
S0670=	Fletcher L. Hart	SPECIAL OBLIGATION BONDS FOR UNC.-AB	S	Ref To Com On Finance	03-17-05	
S0682	Robert Lee Hollo	ADD AGENCIES TO SET-OFF DEBT COLLECTION.	*S	Pres. To Gov. 8/ 17/2005	03-21-05	03-30-05
S0682	Robert Lee Hollo	ADD AGENCIES TO SET-OFF DEBT COLLECTION.	*S	Pres. To Gov. 8/ 17/2005	06-23-05	08-12-05
$ S0684=	**Robert Lee Hollo**	**ADVANCED VEHICLE RESEARCH CENTER INCENTIVE.**	**S**	**Ref to Finance. If fav, re-ref to Appropriations/ Base Budget**	**03-21-05**	
$ S0705	**Martin L. Nesbit**	**AMEND SUBSTANCE ABUSE LAWS.**	***S**	**Ratified**	**05-17-05**	**06-01-05**
S0712=	Walter H. Dalton	EXTEND SUNSET ON WORKER TRAINING FUNDS.	S	Ref To Com On Finance	03-21-05	

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2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0719	David W. Hoyle	TAX CREDIT FOR SUSTAINING NC ECONOMY.	S	Ref To Com On Finance	03-22-05	
S0720	David W. Hoyle	MANUFACTURED HOUSING LICENSE AMENDMENTS.	S	Ref To Com On Finance	03-22-05	
S0722=	Scott Thomas	INCOME TAX - MILITARY/ NATIONAL GUARD EXEMPT.	S	Ref To Com On Finance	03-22-05	
S0773=	William R. Purce	REGIONAL COUNCILS OF GOVERNMENT.	*S	Re-ref Com On Finance	04-19-05	
S0774	William R. Purce	SEAT BELT USE ENHANCEMENTS.	*S	Ref To Com On Rules, Calendar, and Operations of the House	05-10-05	08-10-05
S0796	Scott Thomas	CRIMINAL RECORD CHECKS/ARCHAEOLOGICAL OPS.	*S	Ratified	06-14-05	06-23-05
S0813	Daniel G. Clodfe	CIGARETTE EXCISE TAX/ MSA PAYMENTS.	S	Ref To Com On Finance	03-23-05	
S0817	David W. Hoyle	ALLOW PERSONALIZED DEALER PLATES.	S	Ref To Com On Finance	03-23-05	
S0820	Clark Jenkins	EXTEND BILL LEE IN TIERS 1-3.	S	Ref To Com On Finance	03-23-05	
S0822	Clark Jenkins	FOOD PROCESSING DISTRIBUTION CENTER CREDIT.	S	Ref To Com On Finance	03-23-05	
$ S0836=	**John H. Kerr III**	**FINANCE NC MUSEUM OF ART EXPANSION.**	**S**	**Ref To Com On Finance**	**03-23-05**	
S0841	John H. Kerr III	TRANSPORTER PLATES.	S	Re-ref Com On Finance	05-12-05	
S0842	John H. Kerr III	TAX ON POTTING SOIL.	S	Ref To Com On Finance	03-23-05	
S0852	Daniel G. Clodfe	HOMESTEAD PROPERTY TAX EXEMPTION ACT.	S	Ref To Com On Finance	03-23-05	
S0860	Robert Lee Hollo	MILITARY VET-FREE SPECIAL REGISTRATION PLATE.	S	Ref To Com On Finance	03-23-05	
S0868	Doug Berger	BILL LEE -MULTI-JURISDICTION INDUS. PARK.	*S	Concurred In H/ com Sub	03-23-05	08-12-05
S0881	Linda Garrou	LAPSE IN LIABILITY INSURANCE.	*S	Ref To Com On Insurance	06-29-05	08-09-05
$ S0885	**Robert Pittenger**	**REDUCE TAX/CUT GOVERNMENT SPENDING.**	**S**	**Ref To Com On Finance**	**03-23-05**	
S0905	Janet Cowell	FOUNDER'S STOCK TAX INCENTIVES.	S	Ref To Com On Finance	03-23-05	
S0930	Daniel G. Clodfe	RAILROAD INCENTIVES.	S	Ref To Com On Finance	03-24-05	
S0931	Daniel G. Clodfe	RAISE CIGARETTE TAX FOR MEDICAID.	S	Ref To Com On Finance	03-24-05	
S0934	Fletcher L. Hart	NOTARY PUBLIC ACT.-AB	*S	Re-ref Com On Finance	05-12-05	
S0938	Robert Pittenger	TAX CREDIT FOR ORGAN DONATION.	S	Ref To Com On Finance	03-24-05	
S0948	David W. Hoyle	AMEND BOATING SAFETY/ VESSEL TITLING LAW.	*S	Re-ref Com On Finance	08-09-05	
S0971	Eleanor Kinnaird	NORTH CAROLINA LIBRARIES SPECIAL	S	Ref To Com On Finance	03-24-05	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		PLATE.				
S0977	Hugh Webster	CONFORM TAX FILING EXTENSIONS.	S	Ref To Com On Finance	03-24-05	
S0988	David W. Hoyle	TRANSFER TEXTILE CENTER TO GASTON COLLEGE.	*SR	Ch. SL 2005-103	04-13-05	04-19-05
S0994=	Daniel G. Clodfe	CHANGE GAS TAX RATES/ INCREASE TANK FEES.	S	Ref To Com On Finance	03-24-05	
S1000	Charles W. Alber	AGR. DEVELOPMENT FACILITY TAX CREDIT.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	03-24-05	
S1011=	Kay R. Hagan	RANDLEMAN DAM BONDS.	SR	Ch. SL 2005-249	03-24-05	06-01-05
S1013=	David W. Hoyle	GEN. CONTRACTORS/FEES/ COST RECOVERY.	*S	Passed 3rd Reading	06-22-05	08-10-05
S1015=	Clark Jenkins	ALTERNATIVE FUEL VEHICLE TAX CREDIT.	S	Ref To Com On Finance	03-24-05	
$ S1017	**Martin L. Nesbit**	**RURAL ENHANCEMENT & SUSTAINABILITY ACT.**	**S**	**Ref to Finance. If fav, re-ref to Appropriations/ Base Budget**	**03-24-05**	
S1022	W. Edward (Eddie	FRANCHISE TAX PENALTIES.	S	Ref To Com On Finance	03-24-05	
S1030	Janet Cowell	ELECTRONICS RECYCLING AND JOB CREATION.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	03-24-05	
S1049	David W. Hoyle	BUSINESS GROWTH AND INVESTMENT ACT OF 2005.	S	Ref To Com On Finance	03-24-05	
S1059=	William R. Purce	PERFUSIONISTS LICENSURE.	*SR	Ch. SL 2005-267	05-05-05	06-01-05
S1077	Tony Rand	MOTORCYCLE LEARNER'S PERMIT.	*S	Ref To Com On Finance	05-23-05	06-09-05
S1078	Philip E. Berger	AMEND UNEMPLOYMENT TAX.	S	Ref To Com On Finance	03-24-05	
$ S1085	**Charles W. Alber**	**RENEWABLE ENERGY PORTFOLIO STANDARD.**	***S**	**Re-ref Com On Finance**	**08-11-05**	
S1086	John H. Kerr III	FINANCE FACILITY FOR CHERRY HOSPITAL.	S	Ref To Com On Finance	03-24-05	
S1087	John H. Kerr III	LIMITED DRIVING PRIVILEGES-DWLR.	*S	Ref To Com On Judiciary I	04-19-05	08-10-05
S1089	John H. Kerr III	PITT COUNTY LOCAL OPTION SALES TAX.	S	Ref To Com On Finance	03-24-05	
S1099	Martin L. Nesbit	SALES TAX ON R&D EQUIPMENT.	S	Ref To Com On Finance	03-24-05	
S1104	Martin L. Nesbit	MODIFY AUTO REPAIR SALES TAX.	S	Ref To Com On Finance	03-24-05	
S1114=	Charles W. Alber	ENHANCE LOCAL GOVT. ADM. OF ENV. PRGMS.	*S	Re-ref Com On Finance	05-31-05	
$ S1126	**Charles W. Alber**	**IMPLEMENT CRFL/AMEND FISHERIES LAWS.**	***S**	**Conf Report Adopted 3rd**	**04-05-05**	**04-06-05**
S1144=	Julia Boseman	FILM INDUSTRY JOBS INCENTIVES.	*S	Ref To Com On Finance	03-24-05	06-15-05
S1149	Clark Jenkins	ENERGY CREDIT BANKING/ SELLING PROGRAM/FUND.	*S	Passed 2nd & 3rd Reading	08-11-05	08-12-05

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2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S1150=	Clark Jenkins	RENEWABLE FUELS MOTOR FUELS TAX EXEMPTION.	S	Ref To Com On Finance	03-24-05	
S1157=	Charles W. Alber	OYSTER SHELLS/BAN LANDFILLING/TAX CREDIT.	*S	Re-ref Com On Finance	04-19-05	

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SENATE FINANCE COMMITTEE
Tuesday, March 15, 2005 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 15, 2005, in Room 544 of the Legislative Office Building. Twenty-seven members of the committee were present. Sen. Kerr presided.

S.B. 14 - Holden Beach Canal Dredging Fee.

Senator Soles explained the proposed committee substitute, Senator Dannelly moved for a favorable report and the motion carried. A copy of the committee substitute and explanation are attached.

S.B. 15 – Water and Sewer District Boundaries.

Senator Soles introduced the bill and made a motion for favorable report. The motion carried. A copy of the bill and explanation are attached.

S.B. 16 – Tabor City Satellite Annexation.

Senator Soles introduced a proposed committee substitute, Senator Webster moved for a favorable report and the motion carried. A copy of the committee substitute and explanation are attached.

S.B. 166 – Town or Rose Hill – Regulate Golf Carts.

Senator Albertson explained the bill. Senator Kerr requested that the bill be displaced until staff had time to study members' questions concerning the bill. A copy of the bill and explanation are attached.

S.B. 170 – Waco Town Center.

Senator Dalton explained the bill. Senator Dannelly made a motion for a favorable report and the motion carried. A copy of the bill and explanation are attached.

S.B. 350 – Taylorsville Satellite Annexation.

Senator Garwood explained the bill. Senator Rand made a motion for a favorable report and the motion carried. A copy of the bill and explanation are attached.

The meeting adjourned at 1:42 PM.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

Wednesday, March 16, 2005

Senator KERR,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **15** Water and Sewer District Boundaries.
Sequential Referral: None
Recommended Referral: None

S.B. **170** Waco Town Center.
Sequential Referral: None
Recommended Referral: None

S.B. **350** Taylorsville Satellite Annexations.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **14** Holden Beach Canal Dredging Fee.
Draft Number: PCS65184
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **16** Tabor City Satellite Annexation.
Draft Number: PCS75170
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comments:

Senate Finance Committee
Tuesday, March 15, 2005, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Introduction of Members and Staff

Bills

SB 14	Holden Beach Canal Dredging Fee.	Senator Soles, Jr.
SB 15	Water and Sewer District Boundaries.	Senator Soles, Jr.
SB 16	Tabor City Satellite Annexation.	Senator Soles, Jr.
SB 166	Town of Rose Hill--Regulate Golf Carts.	Senator Albertson
SB 170	Waco Town Center.	Senator Dalton
SB 350	Taylorsville Satellite Annexations.	Senator Garwood

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance — March 15, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Clyde Lashley Jr.	Clinton City Schools
Joyce Peters	HP Assoc.
Lee Hodge	KCLH
[signature]	IFNB
Cindy Malpass	Sampson Economic Development
Jeffrey Howard	Howard, Faison, & Ass.
Chris Rayner	Sampson County Gov
Roderick Simmons	Sampson County Gov
Judi Nicholson	Clinton Rec. & Parks
Cindy Ezzell	Town of Harrells
JOHN WENGERT	STAR TELEPHONE

VISITOR REGISTRATION SHEET

Senate Finance — March 15, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMH
Judie Burke	League of Wm. Voters - Orange, Durham, Chatham
Mary Klenz	League of Women Voters of NC
Stephanie Simpson	NCAR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 14
PROPOSED COMMITTEE SUBSTITUTE S14-CSSV-3 [v.1]

3/11/2005 2:30:27 PM

Short Title: Holden Beach Canal Dredging Fee. (Local)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW TOWN OF HOLDEN BEACH TO IMPOSE A CANAL DREDGING FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-104 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the ~~Town~~ Towns of Holden Beach and Ocean Isle Beach."

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

SENATE BILL 14:
Holden Beach Canal Dredging Fee

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Soles
Date:	March 15, 2005	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition S14-CSSV-3		Committee Counsel

SUMMARY: ***Senate Bill 14 is a local bill that would allow the Town of Holden Beach to create a fee-supported canal dredging district for all properties that are contiguous to a canal. The fee may not exceed the cost of dredging and will be imposed on owners of each dwelling unit or parcel that could or does benefit from water access through the canal system. <u>The PCS makes a technical correction to the 2004 Session Law reference.</u>***

BILL ANALYSIS: Last year, the General Assembly authorized the Town of Ocean Isle Beach to create a fee-supported canal dredging district for properties that are contiguous to a canal within the town limits (House Bill 1734; S.L. 2004-104). The legislation provided the following:

- The annual fee may not exceed the cost of providing for the dredging of canals, both natural and concrete.
- The fee would be imposed on owners of each dwelling unit or parcel of property that could or does benefit from water access through the canal system.
- The dredging fee may be included on the property tax bill and collected in the same manner as property taxes. The remedies for collection of taxes will also apply to the collection of these fees.
- The fees collected shall be placed in a separate fund to be used only to pay the bill for canal dredging.

This legislation was proposed to provide the means to remove the silt and sand that have flowed into the canals in the Town impeding the navigability of the canals. These canals provide water access from the Intracoastal Waterway to lots and rights-of-way within the Town limits.

Senate Bill 14 would authorize the Town of Holden Beach to create a fee-supported canal dredging district in the same manner and under the same conditions that have already been authorized for the Town of Ocean Isle Beach.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 14

Short Title:	Holden Beach Canal Dredging Fee.	(Local)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW TOWN OF HOLDEN BEACH TO IMPOSE A CANAL DREDGING FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-14 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the ~~Town~~ Towns of Holden Beach and Ocean Isle Beach."

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

SENATE BILL 15:
Water and Sewer District Boundaries

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Soles
Date:	March 15, 2005	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: Senate Bill 15 would allow State-owned property to be moved from one county water and sewer district to another, but only if the State acquired the property from the county. This act would be effective when it becomes law.

CURRENT LAW: The board of commissioners of any county may create a county water and sewer district after notice and a public hearing. Following the public hearing, the board of commissioners may, by resolution, create a county water and sewer district if the board finds all of the following:

(1) There is a demonstrable need for providing in the district water services, or sewer services, or both.
(2) The residents of all the territory to be included in the district will benefit from the district's creation.
(3) It is economically feasible to provide the proposed service or services in the district without unreasonable or burdensome annual tax levies.

A board of commissioners also has authority to annex territory to any water and sewer district if certain conditions are met. Before adopting any resolution extending the boundaries of a water and sewer district, a board of commissioners must hold a public hearing.

Among its powers, a county water and sewer district may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; and may establish, revise and collect rates, fees or other charges and penalties for the use of or the services furnished or to be furnished by any sanitary sewer system, water system or sanitary sewer and water system of the district.

BILL ANALYSIS: Senate Bill 15 allows a county, by resolution, to transfer State-owned property from one county water and sewer district to another, but only if the State acquired the property from the county. The transfer from district to another would not require a public hearing, but a copy of the resolution must be sent to the Department of Administration.

BACKGROUND: Columbus County has five water and sewer districts. The county would like to have the property on which a new correctional facility will be built to be shifted from one water and sewer district to another within the county to help finance certain improvements within the transferee district.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 15

Short Title:	Water and Sewer District Boundaries.	(Public)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW STATE-OWNED PROPERTY TO BE MOVED FROM ONE COUNTY WATER AND SEWER DISTRICT TO ANOTHER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 162A of the General Statutes is amended by adding the following new section:

"**§ 162A-87.1B. Transfer of State-owned property from one district to another.**

If any property owned by the State is located in a county water and sewer district, the board of commissioners of that county by resolution may transfer the property to another county water and sewer district in that county. This section only applies if the State acquired the property from the county. Any such resolution shall become effective on the date specified in the resolution, and a copy of the resolution shall be sent to the Department of Administration."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 16
PROPOSED COMMITTEE SUBSTITUTE S16-CSSV-1 [v.1]

2/22/2005 11:34:52 AM

Short Title: Tabor City Satellite Annexation. (Local)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF TABOR CITY.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the Town of Tabor City: That certain parcel or tract of land lying and being in South Williams Township, Columbus County, North Carolina bounded on the southwest by NC Hwy. 904 and on all other sides by AMS Ventures LLC, et al. (DB 638 PG 478), and being more particularly described as follows: BEGINNING at a new iron rod, said rod being located S 45°37'17" E 144.02 feet from an existing railroad spike at the point of intersection of the centerline of NC Hwy. 904 and a small branch, said spike being the westernmost corner of Tract #9 as shown on a map entitled "Pine Lands Tree Farm" recorded in Map Book 6 Page 13, Columbus County Registry in the northeast right-of-way of NC Hwy. 904 and running thence as a new line leaving said right-of-way N 56°24'26" E 376.99 feet to a new iron rod; thence N 23°16'28" W passing over a new iron rod located 59.43 feet, a total distance of 63.95 feet to a point; thence N 66°43'32" E 1081.88 feet to a new iron rod; thence N 65°22'39" E 1059.74 feet to a new iron rod; thence S 30°17'50" E 1874.99 feet to a new iron rod; thence S 57°22'45" W 1755.00 feet to a new iron rod; thence N 36°33'50" W 502.00 feet to a new iron rod; thence S 56°21'09" W 462.91 feet to a new iron rod; thence S 50°50'36" W 148.90 feet to a new iron rod in the northeast right-of-way of NC Hwy. 904; thence as said right-of-way N 33°35'28" W 1651.78 feet to the BEGINNING, containing 107.95 acres, more or less, and being a portion of that tract described in Deed Book 638 Page 478, Columbus County Registry.

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

SENATE BILL 16:
Tabor City Satellite Annexation

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Soles
Date:	March 15, 2005	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition S16-CSSV-1		Committee Counsel

SUMMARY: Senate Bill 16 authorizes the town of Tabor City to make voluntary satellite annexation of approximately 108 acres of property to the city limits. The PCS makes a technical correction to the proper name of the township in which the property is situated.

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

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

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

BILL ANALYSIS: Senate Bill 16 authorizes the town of Tabor City to make voluntary satellite annexation of certain property to the city limits. The property being annexed is the future site for a correctional facility. By adding the population of prisoners to the Town's overall population, Tabor City will derive enough funds to help pay for the land on which the prison will be situated.

[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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 16

Short Title:	Tabor City Satellite Annexation.	(Local)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF TABOR CITY.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the Town of Tabor City: That certain parcel or tract of land lying and being in Williams Township, Columbus County, North Carolina bounded on the southwest by NC Hwy. 904 and on all other sides by AMS Ventures LLC, et al. (DB 638 PG 478), and being more particularly described as follows: BEGINNING at a new iron rod, said rod being located S 45°37'17" E 144.02 feet from an existing railroad spike at the point of intersection of the centerline of NC Hwy. 904 and a small branch, said spike being the westernmost corner of Tract #9 as shown on a map entitled "Pine Lands Tree Farm" recorded in Map Book 6 Page 13, Columbus County Registry in the northeast right-of-way of NC Hwy. 904 and running thence as a new line leaving said right-of-way N 56°24'26" E 376.99 feet to a new iron rod; thence N 23°16'28" W passing over a new iron rod located 59.43 feet, a total distance of 63.95 feet to a point; thence N 66°43'32" E 1081.88 feet to a new iron rod; thence N 65°22'39" E 1059.74 feet to a new iron rod; thence S 30°17'50" E 1874.99 feet to a new iron rod; thence S 57°22'45" W 1755.00 feet to a new iron rod; thence N 36°33'50" W 502.00 feet to a new iron rod; thence S 56°21'09" W 462.91 feet to a new iron rod; thence S 50°50'36" W 148.90 feet to a new iron rod in the northeast right-of-way of NC Hwy. 904; thence as said right-of-way N 33°35'28" W 1651.78 feet to the BEGINNING, containing 107.95 acres, more or less, and being a portion of that tract described in Deed Book 638 Page 478, Columbus County Registry.

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

SENATE BILL 166:
Town of Rose Hill - Regulate Golf Carts.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Albertson
Date:	March 15, 2005	**Summary by:**	Trina Griffin*
Version:	1st Edition		Committee Counsel

SUMMARY: Senate Bill 166 authorizes the Town of Rose Hill to regulate the operation of golf carts on public streets or roads within the Town. This bill received a favorable report in Senate State and Local Government. It has been referred to Senate Finance because it authorizes the town to charge a registration fee.

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:

Section 1 of Senate Bill 166 allows the Town of Rose Hill to enact an ordinance to regulate the operation of electric golf carts on any public street or road within the Town. With regard to golf carts, by ordinance, the Town 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.

Section 2 establishes that Senate Bill 166 would become effective when it becomes law.

BACKGROUND:

- The General Assembly has enacted similar legislation for golf carts in the following locations: Cary (S.L. 2001-485), Lake Waccamaw (S.L. 2001-356), Whispering Pines (S.L. 2002-82), and Seven Lakes (2002-82).
- The General Assembly has also enacted similar legislation for golf carts and utility vehicles in: Beech Mountain (S.L. 2003-124) and Seven Devils (S.L. 2004-58).
- There are two cases where the legislation allowed fees to be charged: the Town of Lake Waccamaw (S.L. 2001-356) and the Village of Bald Head Island (S.L. 2002-129).

**Theresa Matula, Committee Staff to the Senate State & Local Government Committee substantially contributed to this summary.*

S166e1-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 166

Short Title:	Town of Rose Hill–Regulate Golf Carts.	(Local)
Sponsors:	Senator Albertson.	
Referred to:	State and Local Government.	

February 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF ROSE HILL TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Town of Rose Hill may, by ordinance, regulate the operation of electric golf carts on any public street or road within the Town.

By ordinance, the Town may require the registration of golf carts, charge a fee for the registration, specify the persons authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

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

SENATE BILL 170:
Waco Town Center

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Dalton
Date:	March 15, 2005	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: Senate Bill 170 amends the charter of the Town of Waco to correctly identify the center of town.

BILL ANALYSIS: Senate Bill 170 amends the charter of the Town of Waco to correctly identify the center of town. The current description references a railroad bridge that no longer exists. Therefore, the revised description with survey coordinates more accurately reflects the location of the center of the town.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 170*

Short Title:	Waco Town Center.	(Local)
Sponsors:	Senator Dalton.	
Referred to:	Finance.	

February 21, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTER OF THE TOWN OF WACO TO CORRECTLY IDENTIFY THE CENTER OF TOWN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of the Charter of the Town of Waco, being Chapter 147 of the 1907 Private Laws, reads as rewritten:

"Sec. 2. ~~That the incorporate limits of said corporation of Waco shall remain hereafter as formerly defined and located, as follows: All that territory covered by and included in the circle having as its center the railroad bridge in the town of Waco, and made by a radius extending one-half of a mile in length from said center; that is, all that territory within a radius of one-half mile from the railroad bridge, the present center of the Town of Waco.~~The center of the Town of Waco is described as follows: Mag nail set in the centerline of the intersection of Cherryville Road (NC Hwy. 150) and Main Street (S.R. 1001). Grid coordinates: Y=595,434.5286; X=1,276,039.0584. Latitude=35°21'42.234723"; Longitude=81°25'42.607645"."

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

SENATE BILL 350:
Taylorsville Satellite Annexations

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Garwood
Date:	March 15, 2005	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 350 would exempt the town of Taylorsville from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.***

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

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

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

BILL ANALYSIS: Senate Bill 350 would permanently exempt the town of Taylorsville from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

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

BACKGROUND: Four businesses in Alexander County have requested annexation to the town of Taylorsville in order to help lower their water and sewer costs, since the town is the only sewer provider in the county. However, since the town has already reached its 10% cap with satellite annexations, they cannot consider their petitions for satellite annexation.

[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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 350*

Short Title:	Taylorsville Satellite Annexations.	(Local)
Sponsors:	Senator Garwood.	
Referred to:	Finance.	

March 3, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

SENATE FINANCE COMMITTEE
Wednesday, March 30, 2005 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 30, 2005, in Room 544 of the Legislative Office Building. Twenty-eight members of the committee were present. Senator David Hoyle and Senator Kerr presided. Ms. Riley Jones of Gastonia, Ms. Laura Pascal of Gastonia, Ms. Nicole Aycock of Pikeville, and Ms. Shelly Lancaster of Stantonsburg served as pages.

S.B. 166 – Town of Rose Hill – Regulate Golf Carts

Senator Albertson explained the proposed committee substitute. Senator Tillman moved for a favorable report and the motion carried. A copy of the committee substitute and explanation are attached.

S.B. 396 – County Service Districts

Senator Hoyle explained the proposed committee substitute. Senator Webster moved for a favorable report and the motion carried. A copy of the committee substitute and explanation are attached.

S.B. 420 – Oak Ridge Voluntary Annexations

Senator Berger explained the bill, Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and explanation are attached.

S.B. 540 – Franchise Tax Loophole Closing

Senator Clodfelter explained the proposed committee substitute. Senator Stevens moved for a favorable report and the motion carried. A copy of the committee substitute and explanation are attached.

S.B. 682 – Public Health Authority Setoff Debt Collection

Senator Holloman explained the proposed committee substitute. Senator Smith moved for a favorable report and the motion carried. A copy of the committee substitute and explanation are attached.

The meeting adjourned at 1:45 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Wednesday, March 30, 2005

Senator HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **420** Oak Ridge Voluntary Annexations.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **166** Town of Rose Hill--Regulate Golf Carts.
Draft Number: 55203
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **396** County Service Districts.
Draft Number: 75279
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **540** Franchise Tax Loophole Closing.
Draft Number: 65292
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **682** Public Health Authority Set-Off Debt Collect.
Draft Number: 65293
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Eddie Finch	Revenue
Doug Heron	NC BAR Assoc
Sharon Miller	CUCA
John Mattes	Convergys
Lennie Collins	NC DOR
Guy Ralford	NC DOR
Warren Plonk	OSBM
Tom Vaughn	NCCRT
Jim Blackburn	N.C. Association of County Commissioners
Mary Thomas	REBIC
Velma H. McLaurin	Visitor

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Trantman	NCACC
Kevin Mills	Senator Purcell's Intern
Alan Garland	NC DOT
Denise McNeely	Food Lion - Salisbury, NC
Teross Young	Food Lion - Salisbury, NC
Fran Preston	NCRMA
Ron Burrus	NCCSI
Catherine Davis	ElectriCities of NC
Julia Preston	Dogwood Alz Comm.
Ken McHan	D.O.R.
Roger Bone	Bone Assoc.

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joyce Peters	JP Assoc.
Elizabeth Dalton	NCCBI
Sandy Sand	NCSR
Lucius Pulley	NC Mining Assoc.
Peg Murray	
Scott Hyatt	
Paul Meyer	NCACC
Nancy Thompson	NMCK
Tom Pierce	Duke Energy
Lee Hobby	NCLH
DON HOBART	NC DOC

Visitor Registration Sheet

Senate Finance Meeting March 30, 2005

Please Sign in below

name	firm or agency
1.	NCR
2.	WKSBD
3. Gene Ainsworth	RJR
4. Lisa Martin	NC Home Builders
5.	
6.	
7.	
8.	
9.	
10.	
11.	

Senate Finance Committee
Wednesday, March 30, 2005, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 166	Town of Rose Hill--Regulate Golf Carts.	Senator Albertson
SB 396	County Service Districts.	Senator Hoyle
SB 420	Oak Ridge Voluntary Annexations.	Senator Berger
SB 540	Franchise Tax Loophole Closing.	Senator Clodfelter
SB 682	Public Health Authority Set-Off Debt Collect.	Senator Holloman

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 166
PROPOSED COMMITTEE SUBSTITUTE S166-CSSV-4 [v.1]

3/22/2005 10:57:12 AM

Short Title: Certain Towns to Regulate Golf Carts. (Local)

Sponsors:

Referred to:

February 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWNS OF ROSE HILL AND BLADENBORO TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a town may, by ordinance, regulate the operation of electric golf carts on any public street or road within the town.

By ordinance, a town may require the registration of golf carts, charge a fee for the registration, specify the persons authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

SECTION 2. This act applies only to the Towns of Rose Hill and Bladenboro.

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

SENATE BILL 166:
Town of Rose Hill - Regulate Golf Carts.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Albertson
Date:	March 30, 2005	**Summary by:**	Trina Griffin*
Version:	PCS for 1st Edition		Committee Counsel
	S166-CSSVf-4		

SUMMARY: Senate Bill 166 authorizes the Town of Rose Hill to regulate the operation of electric golf carts on public streets or roads within the Town. It has been referred to Senate Finance because it authorizes the town to charge a registration fee. The General Assembly has enacted similar legislation for seven other towns, but only one is currently charging a fee. The PCS would add the Town of Bladenboro.

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.

In 2001, the General Assembly authorized a new classification of vehicle called "low-speed vehicles" to operate on public streets. A low-speed vehicle is a four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but less than 25 miles per hour. Therefore, if a golf cart meets the definition of a "low-speed vehicle," then it may be driven on the public streets where the posted speed limit is 35 miles per hour or less. It must also be equipped with certain types of equipment such as headlamps, turn signals, parking brakes, rearview mirrors, windshield wipers, and seatbelts.

BILL ANALYSIS: Senate Bill 166 allows the Town of Rose Hill to enact an ordinance to regulate the operation of electric golf carts on any public street or road within the Town. The PCS would add the Town of Bladenboro. Under the ordinance, the towns may:

- Require registration
- Charge a fee for the registration
- Specify the persons authorized to operate
- Specify required equipment
- Specify load limits
- Specify hours and methods of operation.

BACKGROUND:

- The General Assembly has enacted similar legislation for golf carts in the following locations: Cary (S.L. 2001-485), Whispering Pines (S.L. 2002-82), Seven Lakes (2002-82), Beech Mountain (S.L. 2003-124), and Seven Devils (S.L. 2004-58). None of these towns are authorized to charge a fee for registration.

- There are two additional cases where the legislation allows fees to be charged: the Town of Lake Waccamaw (S.L. 2001-356) and the Village of Bald Head Island (S.L. 2002-129). However, the Town of Lake Waccamaw has apparently never approved an actual ordinance. The Village of Bald Head Island is unique in that it has the authority to regulate all motor vehicles on the island and charge a fee on the use of all vehicles within the Village's jurisdiction. The fees collected are used by the Village to maintain the roads.

**Theresa Matula, Committee Staff to the Senate State & Local Government Committee substantially contributed to this summary.*

S166-SMSV-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 166

Short Title:	Town of Rose Hill–Regulate Golf Carts.	(Local)
Sponsors:	Senator Albertson.	
Referred to:	State and Local Government.	

February 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF ROSE HILL TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Town of Rose Hill may, by ordinance, regulate the operation of electric golf carts on any public street or road within the Town.

By ordinance, the Town may require the registration of golf carts, charge a fee for the registration, specify the persons authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 396
PROPOSED COMMITTEE SUBSTITUTE S396-CSSVx-7 [v.1]

3/29/2005 4:59:24 PM

Short Title: County Service Districts. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING COUNTIES TO MAKE CHANGES IN SERVICE DISTRICTS CREATED PURSUANT TO ARTICLE 16 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-304.3. Changes in adjoining service districts.**

(a) Changes. – The board of county commissioners may by resolution relocate the boundary lines between adjoining county service districts if the districts were established for substantially similar purposes. The boundary lines may be changed in accordance with a petition from landowners or may be changed in any manner the board deems appropriate. Upon receipt of a request to change service district boundaries, the board of county commissioners shall set a date and time for a public hearing on the request prior to taking action on the request.

(b) Report. – Before the public hearing required by subsection (a) of this section, the board of county commissioners shall cause to be prepared a report containing all of the following:

(1) A map of the service district and the adjacent territory showing the current and proposed boundaries of the district.

(2) A statement indicating that the proposed boundary relocation meets the requirements of subsection (a) of this section.

(3) A plan for providing service to the area affected by the relocation of district boundaries.

(4) The effect that the changes in the amount of taxable property will have on the ability of the district to provide services or to service any debt.

The report shall be available for public inspection in the office of the clerk of the board for at least two weeks before the date of the public hearing.

(c) Notice and Hearing. – The board shall hold a public hearing before adopting any resolution relocating the boundaries of a service district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing.

(d) Effective Date. – The resolution changing the boundaries of the districts shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board."

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

SENATE BILL 396:
County Service Districts

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Hoyle
Date:	March 30, 2005	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition S396-CSSVx-7		Committee Counsel

SUMMARY: ***Senate Bill 396 would allow counties, after notice and a public hearing, to relocate boundary lines between adjoining county service districts, if the districts were established for substantially similar purposes. A resolution changing the boundaries would take effect at the beginning of the fiscal year commencing after its passage. The PCS adds a requirement that the board address in its report any effect the relocation may have on any outstanding debt.***

CURRENT LAW: Article 16 of Chapter 153A authorizes counties to create county service districts in order to finance and provide the following types of services, facilities, or functions at a greater extent than those financed and provided for the entire county:

- Beach erosion control and flood and hurricane protection works
- Fire protection
- Recreation
- Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems
- Solid waste collection and disposal systems
- Water supply and distribution systems.
- Ambulance and rescue
- Watershed improvement projects, drainage projects, and water resources development projects
- Cemeteries
- Law enforcement, under certain circumstances

To finance these services, facilities, or functions, a county may levy property taxes within a defined service district in addition to those levied throughout the county. The tax rate is capped at an amount that, when combined with the rate levied countywide, does not exceed $1.50 on each $100 of appraised value of property, unless a greater rate is approved by a majority of qualified voters residing within the district.

Prior to adopting a resolution creating a service district, the board of county commissioners must make the following findings, followed by notice and a public hearing:

1. There is a demonstrable need for providing one or more of the services listed above.
2. It is impossible or impracticable to provide those services on a countywide basis.
3. There is a demonstrable demand for the proposed services by persons residing in the district.

Current law provides for the extension of, consolidation of, reduction of after annexation, and abolition of service districts but does not provide for the relocation of boundary lines.

BILL ANALYSIS: Senate Bill 396 creates a new statutory section in the Article on County Service Districts that would allow counties, by resolution, to relocate the boundary lines between adjoining

county service districts if the districts were established for substantially similar purposes. Before relocating the boundary lines, a county would be required to do the following:

1. Issue a Report. – The report must contain a map of the service district showing the current and proposed boundaries of the district, a statement indicating that the adjoining service districts were established for substantially similar purposes, and a plan for providing service to the area affected by the relocation. **The PCS adds an additional requirement that the board consider any effect the relocation will have on any outstanding debt that may be secured by district tax revenues.**
2. Provide Notice. – The notice must include a statement that the report is available for public inspection. The notice must be published not less than one week before the date of the hearing.
3. Hold a Public Hearing.

The resolution changing the boundaries of the districts shall take effect at the beginning of the fiscal year commencing after the passage of the resolution.

The bill would be effective when it becomes law.

BACKGROUND: This bill was requested by the Gaston County EMS Director. When initially established, district lines reflect the needs of current conditions, but as infrastructure develops, travel patterns are altered, often changing the most reasonable responder to a particular location. Since the current law does not allow counties to reduce a district other than as the result of an annexation, this change would allow counties to readjust boundary lines to reflect growth and changing infrastructure to best serve the citizens.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 396

Short Title:	County Service Districts.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING COUNTIES TO MAKE CHANGES IN SERVICE DISTRICTS CREATED PURSUANT TO ARTICLE 16 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-304.3. Changes in adjoining service districts.**

(a) Changes. – The board of county commissioners may by resolution relocate the boundary lines between adjoining county service districts if the districts were established for substantially similar purposes. The boundary lines may be changed in accordance with a petition from landowners or may be changed in any manner the board deems appropriate. Upon receipt of a request to change service district boundaries, the board of county commissioners shall set a date and time for a public hearing on the request prior to taking action on the request.

(b) Report. – Before the public hearing required by subsection (a) of this section, the board of county commissioners shall cause to be prepared a report containing all of the following:

(1) A map of the service district and the adjacent territory showing the current and proposed boundaries of the district.

(2) A statement indicating that the proposed boundary relocation meets the requirements of subsection (a) of this section.

(3) A plan for providing service to the area affected by the relocation of district boundaries.

The report shall be available for public inspection in the office of the clerk of the board for at least two weeks before the date of the public hearing.

(c) Notice and Hearing. – The board shall hold a public hearing before adopting any resolution relocating the boundaries of a service district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a

statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing.

(d) Effective Date. – The resolution changing the boundaries of the districts shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 420

Short Title:	Oak Ridge Voluntary Annexations.	(Local)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	State and Local Government.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF OAK RIDGE TO MAKE VOLUNTARY ANNEXATIONS WITHIN A CERTAIN DESCRIBED AREA.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.2 of the Charter of the Town of Oak Ridge, being S.L. 1998-113, reads as rewritten:

"Section 1.2. (a) Except as provided by subsection (c) of this section, Article 4A of Chapter 160A of the General Statutes does not apply to the Town of Oak Ridge until July 1, 2018.

(b) G.S. 160A-58.1(b)(2) does not apply to (i) the City of Greensboro as it relates to the Town of Oak Ridge or (ii) the Town of Kernersville as it relates to the Town of Oak Ridge.

(c) Parts 1 and 4 of Article 4A of Chapter 160A of the General Statutes apply to the Town of Oak Ridge as to the following described territory in Guilford County:

Beginning at a point located at the intersection of Haw River Road and the Forsyth/Guilford County line; thence following the Forsyth/Guilford County line north to the point at which the Forsyth/Guilford County line intersects with the corporate limits of the Town of Stokesdale; thence continuing in an easterly and southeasterly direction following the Town of Stokesdale corporate limits to Haw River Road at which point the Town of Oak Ridge corporate limits begin; thence continuing southwesterly along the southern right-of-way of Haw River Road to the point and place of beginning."

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

SENATE BILL 420:
Oak Ridge Voluntary Annexations.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Berger of Rockingham
Date:	March 30, 2005	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: ***This bill would authorize the Town of Oak Ridge to annex non-contiguous property by petition. The act is effective when it becomes law.***

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

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

However, the town charter of Oak Ridge precludes it from annexing property under North Carolina statutory provisions for annexation until July 1, 2018.

BILL ANALYSIS: The bill would amend the Town Charter to allow Oak Ridge to seek annexation by petition of a described property that is non-contiguous to the current town property limits. The property, measuring approximately 3 square miles, is agricultural and rural residential in nature. The act is effective when it becomes law.

S420-SMSV-001

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 540
PROPOSED COMMITTEE SUBSTITUTE S540-CSSVx-8 [v.2]

3/30/2005 12:16:08 PM

Short Title: Franchise Tax Loophole Closing. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO APPLY THE FRANCHISE TAX TO CERTAIN LIMITED LIABILITY COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-114(b)(2) 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, 2006.

SENATE BILL 540:
Franchise Tax Loophole Closing

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Clodfelter
Date:	March 30, 2005	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition S540-CSSVx-8		Committee Counsel

SUMMARY: ***Senate Bill 540 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 act would apply for taxable years beginning on or after January 1, 2006. The PCS would 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.***

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.

In 2001, the General Assembly enacted S.L. 2001-327 to close this loophole. 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[2] 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

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

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.[3]

The 2004 General Assembly attempted 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 and exempts small LLCs.

BILL ANALYSIS: Senate Bill 540 would apply 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.

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.

The PCS would provide 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.

BACKGROUND: 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 N.C.; or (3) total actual investment in tangible property in N.C.

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

[3] 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.

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 540

Short Title:	Franchise Tax Loophole Closing.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Finance.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO APPLY THE FRANCHISE TAX TO CERTAIN LIMITED LIABILITY COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-114(b)(2) 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. This act is effective for taxable years beginning on or after January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 540 (First Edition)

SHORT TITLE: Franchise Tax Loophole Closing.

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: 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, 2006.

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: Applies the corporate franchise tax to limited liability companies (LLCs) that elect to be taxed as a C corporation for federal income tax purposes and 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 continue to address the issue of the potential avoidance of franchise tax liability by tax planning arrangements. The current concern has to do with corporations domiciled in other states but having a North Carolina subsidiary. Under some corporate structuring arrangements the franchise tax would not apply, even though the taxpayer has income tax liability, because the company does not have nexus (taxable connection to the State) for franchise tax purposes.

The Department has no data on whether any companies have established such arrangements. Thus, the proposed legislation is similar in purpose to the 2004 legislative fix in that it attempts to prevent the potential tax avoidance. In addition, it could be argued that the fiscal impact of the bill's concept has been captured in the estimates used for the 2001 legislation that attempted to close the original franchise tax loophole.

SOURCES OF DATA: Discussions with Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: March 29, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 682
PROPOSED COMMITTEE SUBSTITUTE S682-CSSV-6 [v.2]

3/30/2005 9:33:00 AM

Short Title: Public Health Authority Setoff Debt Collect. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO EXTEND TO PUBLIC HEATH AUTHORITIES THE SETOFF DEBT COLLECTION PROCEDURES CURRENTLY AVAILABLE TO COUNTIES AND CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2(6) reads as rewritten:

"(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.

b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.

e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes."

SECTION 2. This act becomes effective January 1, 2006, and applies to income tax refunds determined on or after that date.

SENATE BILL 682:
Public Health Authority Set-Off Debt Collect.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Holloman
Date:	March 30, 2005	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition S682-CSSV-6		Committee Counsel

SUMMARY: ***Senate Bill 682 would add public health authorities to the list of agencies authorized under the Setoff Debt Collection Act to collect debts owed to those authorities through an offset to an individual's income tax refund. The bill would become effective January 1, 2006, and apply to tax refunds determined on or after that date.***

CURRENT LAW: The Setoff Debt Collection Act authorizes State and local agencies to collect debts by diverting part or all of an individual's income tax refund to pay a debt the individual owes to a particular agency. Thus, the debt the individual owes the agency is set off against the individual's income tax refund. Before January 1, 2001, the setoff program was open only to State agencies. Now, counties and municipalities participate through a clearinghouse. Because there are so many local agencies, funneling their claims through a clearinghouse avoids an undue administrative burden on the Department of Revenue. A $15.00 collection assistance fee is added to each local agency debt submitted for setoff, which is remitted to the clearinghouse that submitted the debt. The fee does not, however, apply to child support debts. While the use of debt setoff for State agencies is mandatory, usage by local agencies is optional. The Act also only applies to debts that are at least $50 and to a refund that is at least this same amount.

Although a public health authority functions similarly to a county agency, it is a separate legal entity created under G.S. 130A-45.02. A public health authority is created by joint resolution of a county board of commissioners and the local board of health. It functions as a policy-making, rule-making, and adjudicatory body designed to protect and promote the public health. Among its powers, a public health authority may establish a fee schedule for services received from public health facilities. Currently, there is only one public health authority, created under this authorizing legislation, and it is the Hertford County Public Health Authority.

In 2003, the General Assembly added water and sewer authorities to the list of entities eligible to participate in debt setoff. In 2004, regional joint agencies created by interlocal agreement were added. This year, House Bill 272 has been introduced to add sanitary districts.

BILL ANALYSIS: This bill would allow public health authorities to participate under the Setoff Debt Collection Act in the same manner as counties and cities. Like counties and cities, a public health authority would be authorized to submit its debts for collection by setoff through a local clearinghouse only after providing the debtor with notice, an opportunity to be heard before the authority, and an appeal process pursuant to the Administrative Procedure Act.

The PCS clarifies that a public health authority is an entity created under Part 1B of Article 2 of Chapter 130A of the General Statutes.

The bill would become effective January 1, 2006, and apply to income tax refunds determined on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 682

Short Title:	Public Health Authority Set-Off Debt Collect.	(Public)
Sponsors:	Senators Holloman; Apodaca, Bingham, Cowell, Graham, Hartsell, Jacumin, Jenkins, Kerr, Malone, Purcell, Stevens, and Swindell.	
Referred to:	Finance.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO EXTEND TO PUBLIC HEATH AUTHORITIES THE SET-OFF DEBT COLLECTION PROCEDURES CURRENTLY AVAILABLE TO COUNTIES AND CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2(6) reads as rewritten:

"(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.

b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A public health authority."

SECTION 2. This act becomes effective January 1, 2006, and applies to income tax refunds determined on or after that date.

SENATE FINANCE COMMITTEE
Wednesday, April 6, 2005 at 12:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 12:00 PM on April 6, 2005, in Room 544 of the Legislative Office Building. Twenty-seven members of the committee were present. Sen. Kerr presided. The pages were Chris Hoover from Richlands and Darius Smith from Raleigh.

S.B. 1126 – Amend Fishing License Requirements - 2.

Senator Albertson explained the proposed committee substitute. Jeff Hudson, Research Division staff attorney, and Fred Harris, Deputy Director of the Wildlife Resources Commission, were recognized to answer questions. Senator Albertson moved for a favorable report and the motion carried. A copy of the committee substitute and explanation are attached.

S.B. 612 – Amend Lobbying Laws.

Senator Rand explained the proposed committee substitute. Walker Reagan, Research Division staff attorney, was recognized to answer questions. Senator Smith and Senator Hagan introduced amendments to the proposed committee substitute, both which passed. Senator Rand made a motion for a favorable report and the motion carried. A copy of the committee substitute, amendments, and explanation are attached.

The meeting adjourned at 1:32 PM.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 6, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Daley Montgomery	SOS
Bob Hall	Democracy North Carolina
Bill Rustin	ACP
George Judd	PBV
Butch Gunnells	NCSDA
Mary Jean	GSK
Susan Valaskas	NCHousing
John Bowdich	ADA
Pam Wasatt	Sobel
Sandra Long	Martin Marietta Materials
Molly Ryan	NCSBA
Tripp Melton	Intern

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 6, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Patricia A. Young	ACLU/ERLTC

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 6, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jessy Schill	NC Fisheries Association
Christine Wunsche	NCPIRG
[illegible]	NCPIRG
Robert Glazer	NC Auto Dealers
Mike Kalet	CCA
Marc Riesel	NC Coalition for Ceiling Reform
[illegible]	CCA
Mike Ward	CCA
Bill Mandulak	CCA
John Hood	JLF
Chris Fitzsimon	NC Policy Watch
Barbara Carols	BSCGR
Chip Killian	[illegible]

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 6, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Brian Elderbroom	The Common Sense Foundation
David Mills	Common Sense Foundation
Erin Kinney	NC Conservation Network
Bill Holman	CWMTF
Robin Smith	DENR
Preston Pate	DMF
Steve Wall	DENR
Fred Harris	NCWRC
Joan Troy	" "
[signature]	NCRA
BOB ORR	NCICL

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 6, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

Dean Plunkett	NCBWWA
Andy Ellen	NCRMA
[signature]	[signature]
Ken Melton	D.O.R

NAME	FIRM OR AGENCY AND ADDRESS
Kary Isenhour	Adam
David Beaver	PPS
Bill Stoppa	PPC
Kelly Hawkins	Progress Energy
Fran Pierce	Duke Energy
John Mathis	Duke Energy
Kevin Wills	Senator Purcell's Office
Gary Harris	NCPMA
Doug Howey	NCPMA
Lee Hodge	KCLH
Annmarie Faughnan	US
Ann Tate	NHRS
Fred Baker	Baker & Hoss.
PGP	NCPB
PM	John McMillan

SENATE BILL 1126:
Amend Fishing License Requirements-2.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Albertson
Date:	April 6, 2005	**Summary by:**	Jeff Hudson,
Version:	Second Edition		Staff Attorney

SUMMARY: ***Senate Bill 1126 would amend various coastal and inland fishing license statutes and establish a unified fishing license that authorizes fishing in inland, joint, and coastal fishing waters.***

CURRENT LAW: Under current law, an individual is required to hold a license issued by the Wildlife Resources Commission to fish with hook and line in all inland and joint waters. Under S.L. 2004-187, effective January 1, 2006, an individual will be required to hold a license issued by the Division of Marine Fisheries to engage in recreational fishing in coastal fishing waters by means of recreational gear.

BILL ANALYSIS: Senate Bill 1126 would make a number of changes to the inland and coastal fishing license statutes as follows:

Sections 1 – 4: Amend Coastal Recreational Fishing Licenses (CRFL).
(A CRFL authorizes recreational fishing in coastal and joint waters)
License Types

- Annual Resident CRFL – $15.00.
- Annual Nonresident CRFL – $30.00.
- 10-day Resident CRFL – $5.00.
- 10-day Nonresident CRFL – $10.00.
- Various Lifetime CRFL's – Fees vary.

Exemptions for individuals who:

- Are under 16 years of age.
- Hold a Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License purchased prior to January 1, 2005. (also exempts certain individuals who hold Lifetime CRFL's for disabled veterans, totally disabled individuals, legally blind individuals, and adult care home residents).

Optional For Hire Blanket CRFL (annual license that authorizes all individuals aboard a for hire boat to fish without an individual CRFL) – Fees are based on vessel length and range from $150.00 to $450.00.

Sections 5 – 10 and Section 25: Abolish Board of Trustees; Create Marine Resources Fund and Marine Resources Endowment Fund; Funds Disbursed by Wildlife Resources Commission (WRC).

- Abolishes Board of Trustees of Saltwater Fishing Fund
- Converts Saltwater Fishing Fund into Marine Resources Fund to hold license revenues from non-lifetime licenses.
- Establishes Marine Resources Endowment Fund to hold license revenues from lifetime licenses.
- Provides that the WRC may disburse funds from the Marine Resources Fund and investment income from the Marine Resources Endowment Fund to manage, restore, develop, cultivate, conserve, and enhance State marine resources.

- Authorizes the Chair of the WRC to designate 5 members of the Commission to advise the Commission on the disbursement of funds.

Sections 11 – 21, 24, and 28: Amend Inland Fishing Licenses.
(An Inland Fishing License authorizes recreational fishing in inland and joint waters)

- Makes technical, conforming, and clarifying changes requested by WRC.
- Repeals home county/natural bait exemption from inland fishing license requirements.
- Prohibits WRC from disclosing personal information of license applicants and directs WRC to provide licensee information to the Division of Marine Fisheries and the Marine Fisheries Commission.

Section 22: Establish Unified Fishing Licenses.
(A Unified License authorizes fishing in coastal, joint, and inland waters).

- Annual Resident Unified Sportsman/Coastal Recreational Fishing License (hunting and fishing) – $55.00.
- Annual Resident Unified Inland/Coastal Recreational Fishing License (fishing only) – $35.00.
- Various Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses (hunting and fishing). – Fees vary.
- Lifetime Unified Inland/Coastal Recreational Fishing License (fishing only) – $450.00.
- Resident Subsistence Unified Inland/Coastal Recreational Fishing Voucher (fishing only) – No charge.

Section 23: Authorizes Division of Marine Fisheries to disclose information about commercial license applicants.

Section 27: Transfer of Funds. Transfers the sum of $3,000,000 from the Wildlife Endowment Fund to the Marine Resources Endowment fund over a period of 5 years.

Section 29: Severability Clause.

Sections 26 and 30: Effective Dates.
Licensing provisions become effective March 1, 2006.

The PCS for S1126, 2nd Edition, makes the following substantive changes:

- Directs WRC to consult with the Marine Fisheries Commission and the Division of Marine Fisheries on the disbursement of funds from the Marine Resources Fund and the Marine Resources Endowment Fund.
- Directs WRC to report to the Joint Legislative Commission on Seafood and Aquaculture on the Marine Resources Fund and the Marine Resources Endowment Fund.
- Provides that certain WRC disabled lifetime licenses will be grandfathered for purposes of the coastal recreational fishing license requirement if the licenses were purchased prior to January 1, 2005.
- Provides that the repeal of statutory authority for certain licenses doesn't invalidate licenses that have already been issued under that authority.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1126

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/5/05
PROPOSED COMMITTEE SUBSTITUTE S1126-CSSBf-7 [v.2]

4/5/2005 7:01:01 PM

Short Title: Amend Fishing License Requirements-2. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, AND TO AMEND CERTAIN STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-174 reads as rewritten:

"**§ 113-174. Definitions.**

As used in this Article:

~~(1) "Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish that are not to be sold. "Recreational fishing" does not include the taking of finfish:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5) "SFL" means Saltwater Fishing License.~~"

SECTION 2. G.S. 113-174.1 reads as rewritten:

"**§ 113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License Purchase Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Article 21 or Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and rules adopted by the Commission under this Article.~~applicable requirements of this Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing still apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a~~

~~charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of Fraudulent License; Penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission may issue a new license to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 3. G.S. 113-174.2 reads as rewritten:

"**§ 113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic~~

~~mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00.~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. – An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age – $100.00~~

~~b. Six years of age to younger than 11 years of age – $150.00~~

~~c. 11 years of age to younger than 18 years of age – $200.00~~

~~d. 18 years of age or older – $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $10.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2005:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).

c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).

d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).

e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).

f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).

g. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).

h. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(3) Holds any of the following licenses:

a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).

b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 4. Article 14B of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-174.3. For Hire Blanket CRFL; enforcement.**

(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division of Marine Fisheries. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals on the for hire boat to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1)	Vessel of 18 feet or less in length	$150.00.
(2)	Vessel of greater than 18 feet in length but 38 feet or less in length	$250.00.
(3)	Vessel of greater than 38 feet in length but 50 feet or less in length	$350.00.
(4)	Vessel of greater than 50 feet in length	$450.00.

(b) Enforcement. – An inspector or other law enforcement officer may only verify the licensure of a person who operates a for hire boat after the boat has returned to shore. An inspector or other law enforcement officer may only verify the licensure of an individual engaged in recreational fishing from a for hire boat after the boat has returned to shore and the individual has disembarked from the boat. Except as provided in this section and G.S. 113-174.2(d), each individual on board a for hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for hire boat is not responsible for the licensure of a customer fishing from the boat."

SECTION 5. G.S. 113-175 reads as rewritten:

"**§ 113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses

issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment"~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License"~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 6. G.S. 113-175.1 reads as rewritten:

"**§ 113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Marine Resources Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the principal of the Marine Resources Fund and marine resources investment income only upon the written direction of the Wildlife Resources Commission.

(c) The Wildlife Resources Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Wildlife Resources Commission shall consult with the Marine Fisheries Commission and the Division of Marine Fisheries on the disbursement of the principal of the Marine Resources Fund and marine resources investment income."

SECTION 7. G.S. 113-175.2 is repealed.

SECTION 8. G.S. 113-175.3 is repealed.

SECTION 9. G.S. 113-175.4 is repealed.

SECTION 10. Article 14C of Chapter 113 of the General Statutes is amended by adding two new sections to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(4) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(5) Transfers to the Endowment Fund.

(6) Any endowment investment income, marine resources investment income, or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Wildlife Resources Commission.

(c) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose

investments contribute to the Endowment Fund. In recognition of this special trust, all of the following restrictions are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16 years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law.

(d) The Wildlife Resources Commission may authorize the disbursement of endowment investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Wildlife Resources Commission shall consult with the Marine Fisheries Commission and the Division of Marine Fisheries on the disbursement of endowment investment income from the Marine Resources Endowment Fund.

(e) Expenditure of the endowment investment income shall be made through the State budget accounts of the Wildlife Resources Commission in accordance with the provisions of the Executive Budget Act. The Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"**§ 113-175.6. Marine Resources Committee.**

The Chair of the Wildlife Resources Commission shall designate five members of the Wildlife Resources Commission who shall constitute the Marine Resources Committee of the Wildlife Resources Commission. The Marine Resources Committee shall advise the Wildlife Resources Commission on the disbursement of funds from the Marine Resources Fund pursuant to G.S. 113-175.1 and on the disbursement of endowment investment income from the Marine Resources Endowment Fund pursuant to G.S. 113-175.5.

"**§ 113-175.7. Report.**

The Executive Director of the Wildlife Resources Commission shall submit to the Joint Legislative Commission on Seafood and Aquaculture by October 1 of each year a report on the Marine Resources Fund and the Marine Resources Endowment Fund that shall include the source and amounts of all moneys credited to each fund and the purpose and amount of all disbursements from each fund during the prior fiscal year."

SECTION 11. G.S. 113-270.1 reads as rewritten:

"**§ 113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.
(2) The Wildlife Resources Commission's headquarters.
(3) Employees of the Wildlife Resources Commission.
(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.
(2) Duties of the license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license agents to pay penalties of twenty five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

(d) ~~The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.~~

~~(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.~~

~~(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.~~

~~(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.~~

~~(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 12. G.S. 113-270.1C reads as rewritten:

"**§ 113-270.1C. Combination hunting and <u>inland</u> fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 13. G.S. 113-270.1D reads as rewritten:

"**§ 113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 14. G.S. 113-271 reads as rewritten:

"**§ 113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one-day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one-day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three-day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 70 Resident Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 15. G.S. 113-272.3 (c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~ certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 16. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 17. G.S. 113-276(e) is repealed.

SECTION 18. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes ~~of:~~of

~~(1)~~ ~~Purchasing~~purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and ~~(6)a.; and~~(6)a.

~~(2)~~ ~~Utilizing the natural bait exemption in subsection (e) above.~~"

SECTION 19. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing still apply."

SECTION 20. G.S. 113-276.1 reads as rewritten:

"**§ 113-276.1. Regulatory authority of Wildlife Resources Commission as to license requirements and exemptions.**

(a) In its discretion and in accordance with the best interests of the conservation of wildlife resources, the Wildlife Resources Commission may implement the provisions of this Article with rules that:

(1) [Reserved.]

(2) Regulate license requirements and exemptions applying to the taking of wildlife on particular waters forming or lying across a county boundary where there may be confusion as to the location of the boundary, hardship imposed as to the location of the boundary, or difficulty of administering or enforcing the law with respect to the actual boundary location.

(3) Require persons subject to license requirements, and persons exempt from license requirements, to carry, display, or produce identification that may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements.

(4) Require individuals aboard vessels or carrying weapons or other gear that may be used to take wildlife resources, and in an area at a time wildlife resources may be taken, to exhibit identification that includes the individual's name and current address. More than one piece of

identification, including a vehicle driver license, may be required to be exhibited, if available.

(5) Implement a system of tagging and reporting fur-bearing animals and big game. Upon the implementation of a tagging system for any species of fur-bearing animal, the Wildlife Resources Commission may charge a reasonable fee to defray its costs, not to exceed two dollars twenty-five cents ($2.25) per tag, for each tag furnished. The price of the big game hunting license includes the cost of big game tags.

(b) Except as provided in this subsection, the Wildlife Resources Commission shall not disclose personal information provided by an applicant for a license issued under Article 14B, Article 21, or Article 25A of Chapter 113 of the General Statutes. The Wildlife Resources Commission shall disclose to the Division of Marine Fisheries and the Marine Fisheries Commission information on the holders of licenses issued under Article 14B and Article 25A of Chapter 113 of the General Statutes."

SECTION 21. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.

(2) Paralysis of one or more ~~limbs;~~limbs.

(3) Dysfunction of one or more limbs rendering the ~~person~~ individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.

(4) Disease, injury, or defect confining the ~~person~~ individual to a wheelchair, walker, or ~~crutches;~~crutches.

(5) Legal ~~deafness; or~~deafness.

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 22. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"**§ 113-351. Unified hunting and fishing licenses; subsistence license waiver.**

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses and Waivers. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses and waivers issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions f., h., and i. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

a. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $20.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

h. Resident Legally Blind Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

i. Resident Adult Care Home Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(4) Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00. This license is valid for the lifetime of the licensee and authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver. – A county department of social services shall issue a Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver to an individual who receives benefits from Medicaid, Food Stamps, or Work First Family Assistance through the County Department of Social Services and who requests a waiver. County departments of social services shall supply the Wildlife Resources Commission with the

name, mailing address, and telephone number of each individual who receives a waiver. This waiver shall be issued at no charge. This waiver is valid for a period of one year from the date of issuance. This waiver shall be issued only to an individual who is a resident of the State. This waiver authorizes the waiver holder to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters."

SECTION 23. G.S. 143B-289.52(h) reads as rewritten:

"(h) Neither the Commission nor the ~~Department~~ Division may disclose personal information provided by an applicant for a license issued under Article ~~14A or~~ 14B of Chapter 113 of the General Statutes. Neither the Commission nor the Division may disclose information on license holders provided by the Wildlife Resources Commission pursuant to G.S. 113-276.1(b)."

SECTION 24. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

SECTION 25. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 26. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective ~~January~~ March 1, 2006. All other sections of this act become effective when the act becomes law."

SECTION 27. The General Assembly finds that individuals who purchased certain lifetime licenses issued by the Wildlife Resources Commission prior to January 1, 2005, had a reasonable expectation that these lifetime licenses would authorize these licensees to engage in recreational fishing throughout the State and that these licensees would not be required to purchase any additional license to engage in recreational fishing in coastal waters during the lifetime of the licensee. In recognition of this expectation, the General Assembly has provided in G.S. 113-174.2(d), as enacted by Section 3 of this act, that the holders of these lifetime licenses are exempt from the license requirement for engaging in recreational fishing in coastal fishing waters that was established in S.L. 2004-187. The General Assembly further finds that, because the holders of these lifetime licenses will be authorized to take marine resources from the coastal fishing waters of the State under the provisions of this act, it is appropriate that a portion of the revenues derived from the sale of these lifetime licenses should be transferred to the Marine Resources Endowment Fund so that the endowment investment income generated by the transferred license revenues will be used to manage, restore, develop, cultivate, conserve and enhance the marine resources of the

State. The General Assembly specifically finds that this transfer of funds is consistent with the overall spirit, intent, and purpose underlying the creation of the Wildlife Endowment Fund and the Marine Resources Endowment Fund. Therefore, in accordance with G.S. 143-250.1(d)(3), the State Treasurer shall transfer the sum of three million dollars ($3,000,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred thousand dollars ($600,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 28.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 28.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 29. The first report required pursuant to G.S. 113-175.7, as enacted by Section 10 of this act, is due by October 1, 2006.

SECTION 30. The repeal by this act of the statutory authority of the Wildlife Resources Commission to issue a type of license shall not affect the authority of an individual to whom a license of that type is issued prior to the effective date of the repeal to engage in the activity that the repealed license type authorizes so long as the license is otherwise valid.

SECTION 31. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 32. Sections 5, 6, 7, 8, 9, 10, 19, 20, 23, 25, 26, 28, 29, 30, 31, and 32 of this act are effective when this act becomes law. Sections 15, 16, 21, and 24 of this act become effective January 1, 2006. Sections 1, 2, 3, 4, 12, 13, 14, 17, 18, 22, and 27 of this act become effective March 1, 2006. Section 11 of this act is effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006. Section 28 of this act expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1126

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/5/05

Short Title: Amend Fishing License Requirements-2. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, AND TO AMEND CERTAIN STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-174 reads as rewritten:

"**§ 113-174. Definitions.**

As used in this Article:

~~(1) "Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish that are not to be sold. "Recreational fishing" does not include the taking of finfish:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5) "SFL" means Saltwater Fishing License.~~"

SECTION 2. G.S. 113-174.1 reads as rewritten:

"**§ 113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License Purchase Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Article 21 or Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and rules adopted by the Commission under this Article.~~applicable requirements of this Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing still apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. – An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in~~

~~recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of Fraudulent License; Penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission may issue a new license to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 3. G.S. 113-174.2 reads as rewritten:

"**§ 113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00.~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. – An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age – $100.00~~

~~b. Six years of age to younger than 11 years of age – $150.00~~

~~c. 11 years of age to younger than 18 years of age – $200.00~~

~~d. 18 years of age or older – $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $10.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2005:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).

c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).

d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).

e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).

f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).

(3) Holds any of the following licenses that were purchased prior to March 1, 2006:

a. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).

b. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(4) Holds any of the following licenses:

a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).

b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 4. Article 14B of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-174.3. For Hire Blanket CRFL; enforcement.**

(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division of Marine Fisheries. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals on the for hire boat to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1)	Vessel of 18 feet or less in length	$150.00.
(2)	Vessel of greater than 18 feet in length but 38 feet or less in length	$250.00.
(3)	Vessel of greater than 38 feet in length but 50 feet or less in length	$350.00.
(4)	Vessel of greater than 50 feet in length	$450.00.

(b) Enforcement. – An inspector or other law enforcement officer may only verify the licensure of a person who operates a for hire boat after the boat has returned to shore. An inspector or other law enforcement officer may only verify the licensure of an individual engaged in recreational fishing from a for hire boat after the boat has returned to shore and the individual has disembarked from the boat. Except as provided in this section and G.S. 113-174.2(d), each individual on board a for hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for hire boat is not responsible for the licensure of a customer fishing from the boat."

SECTION 5. G.S. 113-175 reads as rewritten:

"**§ 113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the

Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment"~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License"~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 6. G.S. 113-175.1 reads as rewritten:

"**§ 113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Marine Resources Fund in accordance with the provisions of G.S. 147-69.2 and

G.S. 147-69.3. The State Treasurer shall disburse the principal of the Marine Resources Fund and marine resources investment income only upon the written direction of the Wildlife Resources Commission.

(c) The Wildlife Resources Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State."

SECTION 7. G.S. 113-175.2 is repealed.

SECTION 8. G.S. 113-175.3 is repealed.

SECTION 9. G.S. 113-175.4 is repealed.

SECTION 10. Article 14C of Chapter 113 of the General Statutes is amended by adding two new sections to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(4) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(5) Transfers to the Endowment Fund.

(6) Any endowment investment income, marine resources investment income, or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Wildlife Resources Commission.

(c) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Endowment Fund. In recognition of this special trust, all of the following restrictions are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16 years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law.

(d) The Wildlife Resources Commission may authorize the disbursement of endowment investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(e) Expenditure of the endowment investment income shall be made through the State budget accounts of the Wildlife Resources Commission in accordance with the provisions of the Executive Budget Act. The Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"**§ 113-175.6. Marine Resources Committee.**

The Chair of the Wildlife Resources Commission shall designate five members of the Wildlife Resources Commission who shall constitute the Marine Resources Committee of the Wildlife Resources Commission. The Marine Resources Committee shall advise the Wildlife Resources Commission on the disbursement of funds from the Marine Resources Fund pursuant to G.S. 113-175.1 and on the disbursement of endowment investment income from the Marine Resources Endowment Fund pursuant to G.S. 113-175.5."

SECTION 11. G.S. 113-270.1 reads as rewritten:

"**§ 113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources

Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.
(2) The Wildlife Resources Commission's headquarters.
(3) Employees of the Wildlife Resources Commission.
(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.
(2) Duties of the license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of

whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license agents to pay penalties of twenty-five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

(d) ~~The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an~~

~~authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.~~

~~(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any~~

~~appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.~~

~~(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.~~

~~(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.~~

~~(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 12. G.S. 113-270.1C reads as rewritten:

"**§ 113-270.1C. Combination hunting and inland fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled", means physically incapable of being gainfully employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 13. G.S. 113-270.1D reads as rewritten:

"**§ 113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing

waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 14. G.S. 113-271 reads as rewritten:

"**§ 113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of~~

~~subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 70 Resident Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who~~

~~has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 15. G.S. 113-272.3 (c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~ certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 16. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 17. G.S. 113-276(e) is repealed.

SECTION 18. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes ~~of:~~of

~~(1)~~ ~~Purchasing~~purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and ~~(6)a.; and~~(6)a.

~~(2)~~ ~~Utilizing the natural bait exemption in subsection (e) above.~~"

SECTION 19. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing still apply."

SECTION 20. G.S. 113-276.1 reads as rewritten:

"**§ 113-276.1. Regulatory authority of Wildlife Resources Commission as to license requirements and exemptions.**

(a) In its discretion and in accordance with the best interests of the conservation of wildlife resources, the Wildlife Resources Commission may implement the provisions of this Article with rules that:

(1) [Reserved.]

(2) Regulate license requirements and exemptions applying to the taking of wildlife on particular waters forming or lying across a county boundary where there may be confusion as to the location of the boundary, hardship imposed as to the location of the boundary, or difficulty of administering or enforcing the law with respect to the actual boundary location.

(3) Require persons subject to license requirements, and persons exempt from license requirements, to carry, display, or produce identification that may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements.

(4) Require individuals aboard vessels or carrying weapons or other gear that may be used to take wildlife resources, and in an area at a time wildlife resources may be taken, to exhibit identification that includes the individual's name and current address. More than one piece of identification, including a vehicle driver license, may be required to be exhibited, if available.

(5) Implement a system of tagging and reporting fur-bearing animals and big game. Upon the implementation of a tagging system for any species of fur-bearing animal, the Wildlife Resources Commission may charge a reasonable fee to defray its costs, not to exceed two dollars twenty-five cents ($2.25) per tag, for each tag furnished. The price of the big game hunting license includes the cost of big game tags.

(b) Except as provided in this subsection, the Wildlife Resources Commission shall not disclose personal information provided by an applicant for a license issued under Article 14B, Article 21, or Article 25A of Chapter 113 of the General Statutes. The Wildlife Resources Commission shall disclose to the Division of Marine Fisheries

and the Marine Fisheries Commission information on the holders of licenses issued under Article 14B and Article 25A of Chapter 113 of the General Statutes."

SECTION 21. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.

(2) Paralysis of one or more ~~limbs;~~limbs.

(3) Dysfunction of one or more limbs rendering the ~~person~~ individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.

(4) Disease, injury, or defect confining the ~~person~~ individual to a wheelchair, walker, or ~~crutches;~~crutches.

(5) Legal ~~deafness; or~~deafness.

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 22. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"**§ 113-351. Unified hunting and fishing licenses; subsistence voucher.**

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses and Vouchers. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses and vouchers issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a

resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions f., h., and i. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

a. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $20.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and

who is totally and permanently disabled as determined by the Social Security Administration.

h. Resident Legally Blind Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

i. Resident Adult Care Home Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(4) Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00. This license is valid for the lifetime of the licensee and authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing Voucher. – A county department of social services shall issue a Resident Subsistence Unified Inland/Coastal Recreational Fishing Voucher to an individual who receives benefits from Medicaid, Food Stamps, or Work First through the County Department of Social Services and who requests a voucher. County departments of social services shall supply the Wildlife Resources Commission with the name, mailing address, and telephone number of each individual who receives a voucher. This voucher shall be issued at no charge. This voucher is valid for a period of one year from the date of issuance. This voucher shall be issued only to an individual who is a resident of the State. This voucher authorizes the voucher holder to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters."

SECTION 23. G.S. 143B-289.52(h) reads as rewritten:

"(h) Neither the Commission nor the ~~Department~~ Division may disclose personal information provided by an applicant for a license issued under Article ~~14A or~~ 14B of Chapter 113 of the General Statutes. Neither the Commission nor the Division may disclose information on license holders provided by the Wildlife Resources Commission pursuant to G.S. 113-276.1(b)."

SECTION 24. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

SECTION 25. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 26. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective ~~January~~ March 1, 2006. All other sections of this act become effective when the act becomes law."

SECTION 27. Notwithstanding G.S. 143-250.1, the State Treasurer shall transfer the sum of three million dollars ($3,000,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred thousand dollars ($600,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 28.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 28.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 29. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 30. Sections 5, 6, 7, 8, 9, 10, 19, 20, 23, 25, 26, 28, 29, and 30 of this act are effective when this act becomes law. Sections 15, 16, 21, and 24 of this act become effective January 1, 2006. Sections 1, 2, 3, 4, 12, 13, 14, 17, 18, 22, and 27 of this act become effective March 1, 2006. Section 11 of this act is effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006. Section 28 of this act expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1126 (Second Edition)

SHORT TITLE: Amend Fishing License Requirements-2.

SPONSOR(S): Senator Albertson

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
Note: Below estimates represent the change between current law and SB 1126. See Table 10 for an estimate of total revenues generated by CRFL sales.					
REVENUES					
Marine Resources Fund	$748,001	$2.15 m	$2.16 m	$2.17 m	$2.19 m
Marine Res. Endowment	$1.04 m	$1.84 m	$1.85 m	$1.85 m	$1.85 m
Wildlife Fund	$744,442	$744,442	$744,442	$744,442	$744,442
Wildlife Endowment	($600,000)	($600,000)	($600,000)	($600,000)	($600,000)
Discounted Unified Lic.*	$208,800	$208,800	$203,032	$209,264	$209,496
Total Net Revenues	**$2.14 m**	**$4.34 m**	**$4.36 m**	**$4.37 m**	**$4.39 m**
EXPENDITURES					
Wildlife Resources Comm.	$1.60 m	$2.86 m	$2.86 m	$2.86 m	$2.86
Division of Marine Fisheries	No significant additional expenditure expected				
County Depts. of Soc. Services	No estimate available, impact expected				
Dept. of Correction	Exact amount cannot be determined; no substantial impact anticipated				
Judicial Branch	Exact amount cannot be determined; no substantial impact anticipated				

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Wildlife Resources Commission, Dept. of Environment and Natural Resources-Division of Marine Fisheries, County Depts. of Social Services

EFFECTIVE DATE: License requirements effective March 1, 2006.

*Bill does not state into which fund these revenues are deposited.

BILL SUMMARY:

Amends Article 14B of GS Chapter 113 relating to Coastal Recreational Fishing Licenses (for coastal and joint waters) to provide that annual licenses are $15 for residents and $30 for nonresidents, and 10-day licenses are $5 for residents and $10 for nonresidents. Lifetime licenses and for-hire blanket licenses are available as well. Exempt from license requirement are children under 16 years old, holders of certain lifetime licenses acquired before 2005, and certain disabled individuals.

Amends Article 14C of GS Chapter 113 (NC Saltwater Fishing Fund) to abolish board of trustees, convert the Fund into a Marine Resources Fund and Marine Resources Endowment Fund, to which the license fees will be credited, and provide for disbursement of funds by Wildlife Resources Commission (WRC) to manage marine resources. Amends Article 21 of GS Chapter 113 and GS 113-196(b) regarding inland fishing licenses, to repeal home county/natural bait exemption, prohibit disclosure of license applicants' personal information, and make clarifying and technical changes.

Enacts Article 25A of GS Chapter 113 to establish unified fishing licenses for hunting and for fishing in coastal, joint, and inland waters. Prohibits WRC from disclosing applicants' personal information and allows disclosure of information about commercial license applicants. Provides for five annual transfers of $600,000 each from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. Licensing changes effective March 1, 2006.

ASSUMPTIONS AND METHODOLOGY:

Revenues:

Coastal Recreational Fishing License Revenues: SB 1126 includes several changes to existing law that impact the amount of revenue generated from the sale of CRFLs. To determine the net impact of this bill on coastal recreational fishing license (CRFL) revenues, it is necessary to 1) calculate the amount of revenue generated under current law, 2) calculate the amount of revenue generated under this bill, and 3) calculate the difference.

The amount of revenue generated by the sale of CRFLs depends on the license fees, the number of licenses sold, and the type of licenses sold. Table 1 summarizes the CRFL fees in current law and those proposed by SB 1126. The bill also creates unified hunting and fishing licenses, which are summarized in Table 2.

Table 1: Proposed Changes to Short-Term and Annual CRFL Fees

Current	Proposed Resident	Nonresident		Resident	Nonresident
Seven-day license	$1	$1	Ten-day license	$5	$10
Annual license	$15	$15	Annual license	$15	$30
Lifetime Licenses					
< 6 years old	$100	$100	Infant (<1 year)	$100	$100
6 - 11 years old	$150	$150	Youth (1-11 years old)	$150	$150
11 - 18 years old	$200	$200	Adult (12-69 years old)	$250	$500
> 18 years old	$500	$500	Elderly (70 + years old)	$5	N/A
			Disabled Vet	$10	N/A
			Total Disabled	$10	N/A
			Blind	$0	N/A
			Resident Adult Care Home	$0	N/A
Replacement License	N/A	N/A	Replacement License	$5	$5

Table 2: Proposed Unified Licenses

	Resident	Nonresident
Annual Licenses		
Resident Unified Sportsman/Coastal Recreational Fishing	$55	N/A
Resident Unified Inland/Coastal Recreational Fishing	$35	N/A
Lifetime Licenses		
Infant Unified Sportsman/Coastal Recreational Fishing	$275	$275
Youth Unified Sportsman/Coastal Recreational Fishing	$450	$450
Adult Unified Sportsman/Coastal Recreational Fishing	$675	$1,350
Elderly Unified Sportsman/Coastal Recreational Fishing	$20	$20
Disabled Vet Unified Sportsman/Coastal Recreational Fishing	$110	N/A
Totally Disabled Unified Sportsman/Coastal Recreational Fishing	$110	N/A
Legally Blind Unified Sportsman/Coastal Recreational Fishing	$0	N/A
Resident Adult Care Home Unified Sportsman/Coastal Rec. Fishing	$0	N/A
Unified Inland/Coastal Recreational Fishing	$450	N/A

To determine the number of persons subject to CRFL fees, it is necessary to first estimate the number of coastal recreational anglers in North Carolina. Although there is no precise data at this time, the best estimate available is based on an annual Marine Recreational Fishery Statistics survey compiled by the Division of Marine Fisheries (DMF). Table 3 summarizes the results of this annual survey over the last four years.

Table 3: Estimated Number of Marine Recreational Anglers in NC, 2000-2003

	State Residents	Nonresidents	Total Anglers
2000	607,946	1,203,779	1,811,725
2001	696,583	1,281,925	1,978,508
2002	634,345	1,120,938	1,755,283
2003	808,984	1,278,804	2,087,788
4 Year Average	686,965	1,221,362	1,908,326
Percentage	36%	64%	

Based on the four-year average number of estimated marine anglers, there are 1,908,326 recreational coastal anglers in North Carolina. However, there are a number of provisions in the bill that reduce the number of anglers subject to the CRFL fees. Current law exempts anglers age 18 and younger that are currently enrolled in school and are making progress towards obtaining a high school diploma or its equivalent from saltwater fishing license requirements. Since there is no way to verify a person's enrollment in school for enforcement purposes, this fiscal note assumes that all anglers age 18 and younger are exempt. Based on the Marine Recreational Fishery Statistics survey, approximately 8.5% of coastal anglers are age 18 or under, reducing the number of potential licensees by 162,208.

Current law also provides for a free subsistence license for residents that fall below the federal poverty level. According to 2000 census data, 12.5% of North Carolinians fall beneath this threshold. Table 4 summarizes the adjustments necessary to determine the number of license sales in each year. This table assumes that 64% of licenses are sold to nonresidents and 36% of licenses are sold to residents, based on the Marine Recreational Fishery Statistics survey data in Table 3.

Table 4: Estimated Number of CRFLs Sold Under Current Law

Total # of anglers	1,908,326
less exempted youth (8.5%)	(162,208)
Anglers requiring an individual CRFL	1,746,118
Nonresident Sales	***1,117,516***
Residents	628,603
less those eligible for subsistence license (12.5%)	-78,575
Resident Sales	***550,027***
Total Sales	**1,667,543**

Table 5 summarizes the estimated revenue generated by the sale of CRFLs under the current law. This revenue estimate assumes the following:

1. Even though the total number of anglers varies from year to year, the average has remained relatively stable at approximately 1.9 million anglers since 2000. Consequently, no growth is assumed in projecting future license sales.

2. License sales are to begin January 1, 2006. Consequently, license revenue for the last six months of FY 2005-2006 is estimated to be 35% of the annual amount to align with current marine license sales.

3. The distribution of resident license sales is assumed to be the following: 7-day licenses: 10%, annual licenses: 89%, lifetime licenses: 1%.

4. The distribution of nonresident license sales is assumed to be the following: 7-day licenses: 89%, annual licenses: 10%, lifetime licenses: 1%.

5. The distribution of lifetime license sales is based on experience gained from WRC lifetime license sales.

6.

Age Distribution	Percent of Total Lifetime Sales
0-6 years of age	27%
6-11 years of age	4%
11-17 years of age	2%
18 years and older	67%

Table 5: Estimated Revenues Generated by Sale of CRFLs Under Current Law

	Fee	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Short-term and Annual License Sales						
Resident						
7-day license	$1	$19,251	$55,003	$55,003	$55,003	$55,003
Annual	$15	$2,570,002	$7,342,864	$7,342,864	$7,342,864	$7,342,864
Non Resident						
10-day license	$1	$348,106	$994,589	$994,589	$994,589	$994,589
Annual	$15	$586,696	$1,676,274	$1,676,274	$1,676,274	$1,676,274
Subtotal		**3,524,055**	**10,068,729**	**10,068,729**	**10,068,729**	**10,068,729**
Lifetime License Sales						
0-6 years of age	$100	$157,583	$450,237	$450,237	$450,237	$450,237
6-11 years of age	$150	$35,018	$100,053	$100,053	$100,053	$100,053
11-17 years of age	$200	$23,346	$66,702	$66,702	$66,702	$66,702
18 years and older	$500	$1,955,194	$5,586,269	$5,586,269	$5,586,269	$5,586,269
Subtotal		***$2,171,141***	***$6,203,260***	***$6,203,260***	***$6,203,260***	***$6,203,260***
Total		**$5,695,196**	**$16,271,989**	**$16,271,989**	**$16,271,989**	**$16,271,989**

In contrast, SB 1126 would change the CRFL youth exemption to anglers under 16 years of age. Based on data from the Marine Recreational Fishery Statistics survey, 7.3% of coastal anglers would fall under this youth exemption. Note that the 1.2% of anglers between the ages of 16 and 18 would no longer be exempt from CRFL requirements.

The bill also exempts holders of a Wildlife Resources Commission (WRC) Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License ("WRC lifetime license holders") purchased prior to January 1, 2005 from CRFL requirements. As of January 1, 2005, 222,347 persons held WRC lifetime licenses: 44,161 under 16 and 178,186 age16 and older. The number of WRC lifetime license holders age 16 and older constitutes the potential pool of exemptions, since youth under 16 are already exempt. This pool of WRC lifetime license holders that would otherwise have been subject to CRFL fees, however, will not remain static over time. WRC lifetime license holders who are currently under 16 will be added to the pool as they age out of the CRFL youth exemption. Assuming an even age distribution, this fiscal note assumes that 2,760 (44,161 youth license holders divided by 16 years) will added to pool each year for the next 16 years. Furthermore, a number of persons will be removed from the pool each year due to attrition (i.e. death, etc.). This fiscal note assumes that attrition will be 2% in FY 2005-06 and will increase 0.25% each year thereafter. Note that, due to attrition, the impact of this exemption will diminish over time and eventually be eliminated. Finally the pool must be adjusted for those WRC lifetime license holders that do not saltwater fish. A WRC survey of these license holders suggests that 38% do not saltwater fish, and therefore, would not be subject to CRFL requirements. Table 6 summarizes the number of WRC lifetime license holders in the exempt pool in each year.

Table 6: Estimated Number of WRC Lifetime License Holders Exempt from CRFL Fees

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Previous # of WRC lifetime license holders over 16	178,186	177,382	176,151	174,507	172,468
Less attrition	(3,564)	(3,991)	(4,404)	(4,799)	(5,174)
Plus those who have aged out of youth exemption	2,760	2,760	2,760	2,760	2,760
Current # of adult WRC lifetime license holders	177,382	176,151	174,507	172,468	170,054
Less those not coastal anglers (38%)	(67,405)	(66,937)	(66,313)	(65,538)	(64,621)
# exempt from CRFL fees	**109,977**	**109,214**	**108,195**	**106,930**	**105,434**

SB 1126 establishes a For Hire Blanket license that would cover anglers fishing from any for hire boat (i.e. charter/head/dive boat). While additional revenue will be generated from the sale of these new licenses, coastal anglers that do not fish using a means other than a for hire boat would no longer have to purchase an individual CRFL. Data from the Marine Recreational Fishery Statistics survey indicates that 3% of fishing trips are on charter/head/dive boats (see Table 7). This fiscal note assumes that 3% of anglers fish use a for hire boat, 80% of which do not fish using another means.

Table 7: Estimated Marine Recreational Fishing Trips in NC, 2000-2003

	Beach/Bank	Charter Boats	Man-Made	Private Boats	Total
2000	2,136,284	183,219	1,665,748	2,105,734	6,090,985
2001	2,409,723	197,710	1,809,738	2,142,621	6,559,792
2002	1,973,242	181,073	1,396,937	2,011,633	5,562,885
2003	2,056,347	170,235	2,228,386	2,134,535	6,589,503
4 Year Average	2,143,899	183,059	1,775,202	2,098,631	6,200,791
Percentage	35%	3%	29%	34%	

Based on DMF For Hire Boat registration information, there are 711 for hire boats in North Carolina. Table 8 summarizes the blanket license fee schedule and the distribution of vessels among these fee categories.

Table 8: Number of For Hire Boats By Vessel Length

	Proposed Fee	# of For Hire Boats
Vessel 18 ft or <	$150	67
Vessel 18 ft - 38 ft	$250	409
Vessel 38 ft - 50 ft	$350	117
Vessel 50 ft or >	$450	118
Total		711

Finally, the bill also provides for a free Subsistence Unified Inland/Coastal Recreational Fishing Voucher for individuals who received benefits from Medicaid, Food Stamps, or Work First through the County Department of Social Services. Based on census poverty rates, this fiscal note will assume that 12.5% of residents will qualify for this free voucher, and therefore, not be subject to CRFL fees.

Table 9 summarizes the adjustments necessary to determine the number of anglers subject to CRFL fees after accounting for these various provisions. Based on data from the Marine Recreational Fishery Statistics survey presented in Table 3, this table assumes that 36% of coastal anglers are state residents and 64% are nonresidents.

Table 10 summarizes the estimated revenue generated by the sale of CRFLs under SB 1126. This revenue estimate assumes the following:

1. Even though the total number of anglers varies from year to year, the average has remained relatively stable at approximately 1.9 million anglers since 2000. Consequently, no growth is assumed in projecting future license sales.

2. License sales are assumed to begin January 1, 2006, two months prior to the CRFL effective data of March 1, 2006. Consequently, license revenue for the last six months of FY 2005-2006 is estimated to be 35% of the annual amount to align with current marine license sales.

3. The distribution of resident license sales is assumed to be following: 10-day licenses: 10%, annual licenses: 89%, lifetime licenses: 1%.

4. The distribution of nonresident license sales is assumed to be the following: 10-day licenses: 89%, annual licenses: 10%, lifetime licenses: 1%.

5. The distribution of lifetime license sales is based on experience gained from WRC lifetime license sales.

Lifetime License	% of Total Lifetime Sales
Infant (< 1 year old)	24%
Youth (1-12 years old)	5%
Adult (12+ years old)	24%
Resident Elderly (70+ years)	40%
Resident Disabled Vet/Totally Disabled	7%
Legally Blind/Adult Care Home Resident	0.2%

6. Residents will purchase 97% of the Adult Lifetime Licenses, and nonresident will purchase 3%, based on WRC's experience with sales of resident and nonresident lifetime sportsman licenses.

7. SB 1126 states that the apportionment of the net proceeds of unified license sales shall be jointly determined by the DMF and the WRC. The Unified Inland/CRFL and Unified Infant, Youth, and Adult Sportsman/CRFL offer a 10% discount, while the other unified licenses do not. For the unified licenses that do not offer a discount, this fiscal note assumes that the allocation between the relevant marine resources fund and the wildlife fund will mirror the amount that would have been generated to each fund if the person had purchased each license separately. Consequently, the sale of non-discounted unified licenses will be treated as if each privilege granted by the unified license had been purchased separately.

8. A survey of coastal anglers by DMF revealed that 11% of coastal anglers also hold a WRC lifetime license, 68% of which hold a WRC Lifetime Sportsman license. Consequently, it is assumed that 11% of coastal anglers interested in obtaining a lifetime CRFL will purchase a unified license and that 68% will of this group will purchase a Unified Sportsman/CRFL. In accordance with the above assumption, it is unclear only where the revenue generated by the sale of discounted unified lifetime licenses will be deposited and how much will be used for marine resource purposes. Therefore, the additional revenue generated from the sale of discounted unified licenses will be calculated separately.

9. This bill directs Wildlife Resources Commission to sell all CRFL licenses—except For Hire Blanket licenses, which would be sold through the DMF—through its existing license sale system. This system allows for licenses to be sold through WRC license agents or directly from WRC via phone or internet. License agents are allowed to retain a 6% commission on all licenses they sell. Based on WRC license sales experience, this fiscal note assumes that 93% of license sales will be through WRC license agents.

10. Even though the For Hire Blanket license is optional, a survey of for hire boat captains conducted by the DMF indicated strong support for a blanket licenses. Consequently, this fiscal note assumes that all for hire boats will purchase a blanket license.

Table 10: Estimated Revenues Generated by Sale of CRFLs Under SB 1126

	Fee	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Short-Term and Annual Licenses						
Resident						
10-day license	$5	$89,114	$254,732	$254,893	$255,092	$255,328
Annual	$15	$2,379,350	$6,801,353	$6,805,639	$6,810,955	$6,817,249
Non Resident						
10-day license	$10	$3,222,823	$9,212,414	$9,218,219	$9,225,420	$9,233,945
Annual	$30	$1,086,345	$3,105,308	$3,107,265	$3,109,692	$3,112,566
Subtotal		$6,777,633	$19,373,808	$19,386,016	$19,401,159	$19,419,088
Less 6% WRC Agent Commission		($406,658)	($1,162,428)	($1,163,161)	($1,164,070)	($1,165,145)
Subtotal		*$6,370,975*	*$18,211,379*	*$18,222,855*	*$18,237,089*	*$18,253,942*
Blanket Sales						
Vessel 18 ft or <	$150	$3,518	$10,050	$10,050	$10,050	$10,050
Vessel 18 ft - 38 ft	$250	$35,788	$102,250	$102,250	$102,250	$102,250
Vessel 38 ft - 50 ft	$350	$14,333	$40,950	$40,950	$40,950	$40,950
Vessel 50 ft or >	$450	$18,585	$53,100	$53,100	$53,100	$53,100
Subtotal		*$72,223*	*$206,350*	*$206,350*	*$206,350*	*$206,350*
Short-Term and Annual Licenses Subtotal		***$6,443,197***	***$18,417,729***	***$18,429,205***	***$18,443,439***	***$18,460,292***
Lifetime Licenses (less Discounted Unified License Sales)						
Infant	$100	$115,417	$329,920	$330,127	$330,385	$330,691
Youth	$150	$36,068	$103,100	$103,165	$103,245	$103,341
Adult						
Resident	$250	$279,887	$800,055	$800,559	$801,184	$801,925
Nonresident	$500	$17,313	$49,488	$49,519	$49,558	$49,604
Elderly	$5	$10,807	$30,891	$30,911	$30,935	$30,964
Blind/Resident Adult Care Home	$0	$0	$0	$0	$0	$0
Disabled Vet/Total Disabled	$10	$3,674	$10,503	$10,510	$10,518	$10,528
Subtotal		$463,166	$1,323,957	$1,324,791	$1,325,826	$1,327,051
Less 6% WRC Agent Commission		($27,790)	($79,437)	($79,487)	($79,550)	($79,623)
Lifetime License Subtotal		***$435,376***	***$1,244,519***	***$1,245,304***	***$1,246,276***	***$1,247,428***
Discounted Unified License Sales	**Net fee***					
Lifetime Inland/Saltwater	$100	$28,800	$28,800	$28,832	$28,864	$28,896
Infant Unified Sportsman/CRFL	$250	$72,000	$72,000	$72,080	$72,160	$72,240
Youth Unified Sportsman/CRFL	$75	$21,600	$21,600	$21,624	$21,648	$21,672
Adult Unified Sportsman/CRFL						
Resident	$100	$28,800	$28,800	$28,832	$28,864	$28,896
Nonresident	$200	$57,600	$57,600	$57,664	$57,728	$57,792
Discounted Unified License Subtotal		***$208,800***	***$208,800***	***$209,032***	***$209,264***	***$209,496***
Total		**7,087,373**	**19,871,049**	**19,883,540**	**19,898,980**	**19,917,216**

*This fiscal note assumes that the 10% discount offered on some unified licenses is not significant enough to induce additional persons to purchase an inland fishing or sportsman privilege. Rather, the unified licenses would be purchased only by those that would have intended to buy a lifetime CRFL and WRC license separately if a unified license was not offered. Consequently, the revenue generated by the WRC privilege included in the unified license would not represent additional revenue to the State. The net fee represents the total unified license fee less the cost of the Wildlife privilege had it been purchased separately.

Inland Fishing License Revenues: SB 1126 also includes changes that impact the amount of inland fishing license revenue generated. Currently, WRC offers a resident one-day inland fishing license for $5, a nonresident one-day inland fishing license for $10, and a nonresident three-day inland fishing license for $15. The bill eliminates these three licenses and replaces them with a resident 10-day license for $5 and nonresident 10-day license for $10. This fiscal note assumes that all persons currently purchasing a one- or three-day license would purchase a 10-day license under SB 1126. Since the fee structures for one-day and 10-day licenses are identical, there is no revenue impact from those no longer purchasing the one-day licenses. However, WRC will lose $5 in revenue for each three-day license no longer sold. Last fiscal year, WRC sold 17,154 of these three-day licenses. The bill also increases the license replacement fee from $2 to $5. For the past two years, WRC has replaced an average of 11,750 licenses per year.

The bill repeals the statutes that exempt persons fishing in their home county using natural bait from WRC inland fishing license requirements. There is no precise data on the number of North Carolina residents fishing under this exemption. However, a 2001 national survey estimated that 675,000 NC residents age 16 years and older fished in North Carolina during 2001. In 2001, 553,708 persons held inland fishing licenses. After accounting for these licensed anglers and the 20,000 people that WRC estimates fish in private ponds, the remaining 101,300 inland fishermen would now be required to have an inland fishing license. However, SB 1126 provides for a free Subsistence Unified Inland/Coastal Recreational Fishing Voucher for individuals who received benefits from Medicaid, Food Stamps, or Work First through the County Department of Social Services. Based on census poverty rates, this fiscal note will assume that 12.5% of residents will qualify for this free voucher, and therefore, not be subject to WRC inland fishing license fees. Table 11 summarizes the adjustments necessary to estimate the additional number of inland fishing licenses that would be sold as a result of this bill.

Table 11: Estimated Number of Additional Inland Fishing Licenses Sold Under SB 1126

Estimated total # of inland fishermen	675,000
less licensed inland fishermen	(553,700)
less anglers fishing in private ponds	(20,000)
Estimated # of inland fishermen requiring license	101,300
less those eligible for subsistence voucher	(12,663)
Additional Inland Fishing License Sales	**88,638**

WRC receives federal Wallop-Breaux monies based on the number of licensed inland fishermen. The Commission expects to receive an additional $0.50 per additional license sold as a result of the repealed natural bait exemption.

Table 12 estimates the revenue generated by these additional licenses based on the following assumptions:

1. Based on WRC assumptions, the additional inland fishing licenses purchased will be distributed per the following percentages: 50% purchase a county inland fishing license, 35% purchase the 10-day fishing license, and 15% purchase an annual inland fishing license.

2. WRC will sell replacement licenses and 10-day inland fishing licenses in lieu of the abolished three-day license at the same level as recent years.

3. This fiscal note assumes that 93% of license sales will be through WRC license agents, which retain a 6% sales commission.

Summary of Impact on Individual Funds: Current law states that all saltwater fishing license revenue shall be deposited into the Saltwater Fishing Fund. SB 1126 renames this fund the Marine Resources Fund and establishes a new Marine Resources Endowment Fund. Instead of all CRFL revenue being deposited into one fund, the bill directs short-term and annual CRFL license revenue be deposited into the Marine Resources Fund and lifetime CRFL license revenue be deposited into the Marine Resources Endowment Fund. The bill also states that $600,000 per year for five years shall be transferred from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. Table 13 summarizes the net impact of SB 1126 on each fund.

Table 13: Estimated Revenue Impact of SB 1126

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Marine Resources Fund (previously the Saltwater Fishing Fund)					
Short-term and Annual Revenues Generated Under SB 1126	$6,443,197	$18,417,729	$18,429,205	$18,443,439	$18,460,292
Less Short-term and Annual Revenues Generated Under Current Law	($3,524,055)	($10,068,729)	($10,068,729)	($10,068,729)	($10,068,729)
Less Lifetime Revenues Generated Under Current Law	($2,171,141)	($6,203,260)	($6,203,260)	($6,203,260)	($6,203,260)
Net Impact	**$748,001**	**$2,145,740**	**$2,157,216**	**$2,171,450**	**$2,188,303**
Marine Resources Endowment Fund					
Lifetime License Revenues Generated Under SB 1126	$435,376	$1,244,519	$1,245,304	$1,246,276	$1,247,428
Transfer from Wildlife Endowment Fund	$600,000	$600,000	$600,000	$600,000	$600,000
Net Impact	**$1,035,376**	**$1,844,519**	**$1,845,304**	**$1,846,276**	**$1,847,428**
Wildlife Fund					
Change in Inland Fishing License Revenues	**$744,442**	**$744,442**	**$744,442**	**$744,442**	**$744,442**
Wildlife Endowment Fund					
Transfer to Marine Resources Endowment	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**
Discounted Unified License Revenues					
Destination of revenues to be determined	**$208,800**	**$208,800**	**$209,032**	**$209,264**	**$209,496**
Total Net Impact	**$2,136,619**	**$4,343,502**	**$4,355,993**	**$4,371,433**	**$4,389,669**

Expenditures:

Wildlife Resources Commission: The bill calls for WRC to sell all individual CRFLs through its existing license sale system. To modify this system, WRC estimates that it would require approximately $500,000 for start-up costs, including $250,000 for new agent equipment and training, $100,000 for application changes, $50,000 for project management, and $100,000 for upgraded servers and hardware. Additionally, WRC expects to incur a per license transaction cost of approximately $1.50 - $2.00, depending on the volume of license sales. This per license transaction cost would apply both to the new CRFLs sold through the system and the additional inland fishing license sales expected as a result of the repeal of the natural bait exemption. Table 14 summarizes WRC's expected expenditures assuming: 1) a transaction cost of $1.75 per license and 2) CRFL sales in the initial year will only be 35% of expected annual sales due to the March 1, 2006 effective date.

Table 14: Estimated WRC Expenditures

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Start-Up Costs	$500,000				
Transaction Costs ($1.75/per license)	$1,100,717	$2,858,109	$2,859,812	$2,861,924	$2,864,426
Total WRC Costs	**$1,600,717**	**$2,858,109**	**$2,859,812**	**$2,861,924**	**$2,864,426**

Division of Marine Fisheries: The Division of Marine Fisheries will sell the For Hire Blanket CRFLs. They do not anticipate any additional significant expenditures to sell these licenses.

County Departments of Social Services: The bill also states that County Departments of Social Services shall issue a Resident Subsistence Unified Inland/Coastal Recreational Fishing Voucher to individuals who receive benefits from Medicaid, Food Stamps, or Work First. Furthermore, County Departments of Social Services shall supply WRC with the name, mailing address, and telephone number of each individual who receives a voucher. At this time, there is no estimate available on the cost of implementing this provision.

Department of Correction: The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

During FY 2003-04 there were 220 convictions for fishing license violations under Chapter 113. Because this bill would create new Class 1, 2, and 3 misdemeanor offenses and amend offenses enacted in Session Law 2004-187, which is not effective until January 1, 2006, the Sentencing Commission has no historical data from which to estimate the impact that this bill might have on prison population.

For the offense classes impacted by this bill, only Class 1 misdemeanants falling in Prior Conviction Level III are eligible for sentences longer than ninety days, and many eligible offenders receive shorter sentences. Consequently, any convictions resulting from this legislation are not expected to significantly impact prison population.

In FY 2003-04, 19 percent of Class 1, 15 percent of Class 2, and 23 percent of Class 3 misdemeanants received active sentences. DOC reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of $18 per offender per day. Sentences for Class 1 and Class 2 misdemeanors may exceed thirty days and in FY 2003-04 averaged 43 and 23 days respectively. Because Class 3 misdemeanors carry a maximum sentence of twenty days, local jails would incur the cost of housing all Class 3 misdemeanants.

In FY 2003-04, 81 percent of Class 1, 86 percent of Class 2, and 77 percent of Class 3 misdemeanants received non-active sentences. For those offenders sentenced to supervised

probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial Branch: For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because this bill would create new criminal offenses and expand the scope of existing offenses, AOC cannot estimate the number of additional Class 1, 2, and 3 misdemeanor charges that might result from this legislation. AOC estimates the cost to dispose of one misdemeanor charge by class and settlement method as shown in the table below. Based on past rates of case disposal, the majority of any new charges resulting from this bill that are not dismissed are likely to be settled by plea.

Per Charge Misdemeanor Settlement Costs

Method of Settlement:	***Trial***			***Guilty Plea***
	Court/Attorney Costs	Indigent Defense	Total	
Class 1	*$1,891*	*$1,333*	*$3,224*	*$284*
Class 2	*$1,373*	*$949*	*$2,322*	*$268*
Class 3	*$1,373*	*$949*	*$2,322*	*$272*

SOURCES OF DATA: Wildlife Resources Commission, Division of Marine Fisheries, US Census, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: This bill does not apportion the net proceeds from the sale of unified licenses; it states that this apportionment shall be jointly determined by DMF and WRC. In the event that the DMF and WRC cannot agree, the Governor is authorized to determine the apportionment. Consequently, the specific destination of the unified license fees cannot be determined.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jennifer Haygood

Official
Fiscal Research Division
Publication

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: April 6, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

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ENVIRONMENTAL DEFENSE

finding the ways that work

April 6, 2005

The Honorable Charles Albertson
NC General Assembly
525 Legislative Office Building
Raleigh, NC 27603

Re: Senate Bill 1126--Amend Fishing License Requirements

Dear Senator Albertson,

On behalf of Environmental Defense and its more than 10,000 members in North Carolina, I want to commend you on your strong leadership in securing the passage last year of a saltwater fishing license and marine resources fund. We also appreciate your current efforts to strengthen the license program established by last year's legislation by proposing amendments that would make it more efficient and cost effective.

We support SB 1126 overall, but cannot support the provision that would direct the NC Wildlife Resources Commission to disburse revenues generated by the license. ***We respectfully ask instead that the bill be amended to direct the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission to study this issue and to report back to the full General Assembly by March 2006.***

As I and others testified at last week's hearing of the Senate Committee on Agriculture and Environment, we commend the Division of Marine Fisheries (DMF) and the Wildlife Resources Commission (WRC) for joining forces on the development of a unified license program. This partnership will ensure the timely and successful development of a saltwater fishing license that ultimately will produce the data that DMF needs to develop better fishery management plans.

SB 1126 will also generate up to $20 million annually that will be dedicated to managing and protecting marine resources. We do not believe that the WRC is the best vehicle for determining how these funds are spent. The WRC is an excellent agency, but its expertise lies in managing terrestrial wildlife and freshwater fish, not saltwater fish stocks. Unlike the rest of the bill, this provision promotes neither efficiency nor cost effectiveness.

How license revenues are spent is of utmost importance and therefore we strongly encourage you to amend the bill to direct further study of this issue by the JLCSA and the ERC with the full involvement of fishermen and the public. We are certain that with more time and discussion, lawmakers and stakeholders will reach agreement on how best to disburse the license revenues.

Thank you again for your leadership and for your consideration.

Sincerely,

Daniel Whittle
Senior Attorney

cc: Senator Mark Basnight, President Pro Tem
Members of the Senate Finance Committee

Tom Bean

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 612*

Judiciary I Committee Substitute Adopted 3/31/05

PROPOSED COMMITTEE SUBSTITUTE S612-CSRUf-9 [v.14]

4/6/2005 11:27:32 AM

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LEGISLATIVE LOBBYING ACTIVITIES AND BY REQUIRING REGISTRATION AND REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH AGENCIES AND EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"**§ 120-47.1. Definitions.**

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation" and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or anything of value and any contract, agreement, promise or other obligation whether or not legally ~~enforceable, but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~enforceable.

(1a) The term "covered person" means a legislator, the Governor or the Lieutenant Governor

(1b) The term "developing legislative goodwill" means the attempt to obtain the goodwill of a covered person by communications or activities with that covered person with the intention of ultimately influencing legislative action.

(1c) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "immediate family member" means spouse, unemancipated children living in the individual's household, or persons claimed by the individual or the individual's spouse as dependents for tax purposes, living in the individual's household.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State officer or employee whose principal duties in ~~practice~~ practice, or as set forth in that person's job ~~description~~ description, involve lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action or developing legislative goodwill, through direct oral or written communication with a ~~member of the General Assembly; or~~covered person or a legislative employee.

b. Solicitation of others by lobbyists or lobbyist's principals to influence legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity~~ inperson on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"**§ 120-47.2. Registration procedure.**

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State, including electronically. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or

legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following odd-numbered year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120-47.3. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of two hundred dollars ($200.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration.

(b) A separate registration, together with a separate registration fee of two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as a legislative lobbyist.

(c) Fees so collected shall be deposited in the General Fund of the State.

(d) The Secretary of State may prescribe that fees required under this section be paid electronically.

"**§ 120-47.4. Written authority from lobbyist's principal to be filed.**

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 120-47.5. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action.~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No person shall attempt to influence the action of any member of the General Assembly by the promise of financial support of the member's candidacy, or by threat of financial contribution or expenditure in opposition to the member's candidacy in any future election.

"**§ 120-47.5A. Certain expenditures prohibited.**

(a) A lobbyist's principal and any legislative lobbyist acting on behalf of the lobbyist's principal shall not collectively spend more than one hundred dollars ($100.00) in a calendar year on lobbying expenditures specified in subsection (c) of this section for each covered person or legislative employee and that person's immediate family, collectively.

(b) A legislative lobbyist shall not spend more than one hundred dollars ($100.00) in a calendar year on items specified in subsection (c) of this section for each covered person or legislative employee and that person's immediate family, collectively, that are not paid or reimbursed by a lobbyist's principal. The limits of this subsection shall apply in addition to and regardless of the number of lobbyist's principals by whom the legislative lobbyist is compensated.

(c) Lobbying expenditures include any of the following when made directly or indirectly to support lobbying, and that benefit one covered person or legislative employee, or that person's immediate family:

(1) Gifts, meals, event tickets, transportation, speaking fees, and other expenses.

(2) Loans, other than commercially available loans made on terms not more favorable than generally available to the public in the normal course of business.

(3) Contributions, other than lawful campaign contributions.

Expenses benefiting more than one recipient shall be prorated among the recipients.

(d) The prohibitions on lobbying expenditures set forth in this section shall not apply to any of the following:

(1) Gifts from a person who is the spouse, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild of the covered person or legislative employee, or who is a member of the covered person or legislative employee's household, and dependent upon the covered person or legislative employee.

(2) The cost of attendance or participation provided by the sponsoring entity, of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, governmental, trade association, or community organization.

"§ 120-47.6. Statements of lobbyist's lobbying expenses required.

(a) Each lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ semiannual expense reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, with respect to each lobbyist's principal within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures during the prior six-month reporting period. The legislative lobbyist shall file both expense reports whether or not expenditures are made.

(b) Each expense report shall set forth the following information:

(1) ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any~~

~~fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~ The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, that benefited any covered person, legislative employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each contractual arrangement or direct business relationship between a legislative lobbyist or lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the reporting period or previous 12 months.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing.

(d) When a legislative lobbyist fails to file a lobbying expense report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 120-47.7. Statements of lobbyist's principal lobbying expenses required.**

(a) Each lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ semiannual expense reports under oath with the Secretary of State within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures made during the prior

six-month reporting period. The lobbyist's principal shall file both expense reports whether or not expenditures are made during a reporting period.

(b) Each expense report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ following information:

(1) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, which benefited any covered person, legislative employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The fair market value, date, the name and address of the person receiving value, and the type of item or activity of each contractual arrangement or direct business relationship between a legislative lobbyist or lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the period or previous 12 months.

(3) The compensation paid or promised to all legislative lobbyists based on estimated time and expense spent lobbying directly or indirectly on behalf of the lobbyist's principal, including developing goodwill with covered persons, and legislative employees. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The lobbyist's principal's expense report shall include an itemized description of all expenditures

reimbursed or paid to legislative lobbyists for direct and indirect lobbying that are not reported on the legislative lobbyists' reports.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing.

(d) When a lobbyist's principal fails to file a lobbying expense report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 120-47.7A. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

(b) The Secretary of State may petition a court of competent jurisdiction for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through the court's contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4 and shall not become public records until a determination is made by the appropriate prosecutorial authority that no criminal charges will be brought against the person against whom the complaint was filed.

"**§ 120-47.7B. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes during any biennial legislative session to which the member or former member of the General Assembly has been elected or appointed.

(b) No person serving as Governor or as a member of the Council of State, may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes during the time of the current biennial legislative session during which the person served in office.

(c) No person registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

"§ 120-47.8. Persons exempted from provisions of Article.

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as a legislative lobbyist, solely engaged in expressing a personal opinion on legislative matters to ~~his~~ the individual's own legislative delegation or other members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative ~~matter.~~action.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not otherwise, directly or indirectly, connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) Members of the General Assembly.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) An individual giving facts or recommendations pertaining to legislative ~~matters~~ actions to ~~his~~ the individual's own legislative delegation only.

(10) An employee who represents the employer's interests in legislative action for no more than 6 hours during a reporting period, provided that neither the employee nor the employer makes any expenditure directly or indirectly that would be prohibited under G.S. 120-47.5A, or any expenditure reportable under G.S. 120-47.6 or G.S. 120-47.7, if the person were not exempt under this section.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to ~~him~~ the Attorney General of violations of this Article, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"**§ 120-47.12. Limitations on agency legislative liaisons.**

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina who employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyist's principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation," and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or anything of value and any contract, agreement, promise, or other obligation whether or not legally enforceable.

(2) The term "developing executive branch goodwill" means the attempt to obtain the goodwill of an executive branch officer or employee by communications or activities with that executive branch officer or employee with the intention of ultimately influencing executive action.

(3) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney in connection with litigation or an administrative hearing under Chapter 150B of the General Statutes, involving a State official or State agency.

(4) The term "executive branch officer or employee" means the Governor, any member of the Council of State, State official, member of a State board, commission, council or authority, State employee, or any other person elected or appointed to a Council of State position prior to taking office, who participates in decision-making regarding executive action but does not include persons chiefly engaged in clerical, secretarial or ministerial duties.

(5) The term "executive lobbyist" means any lobbyist for or against executive action.

(6) The term "immediate family member" means spouse, unemancipated children living in the individual's household, or persons claimed by the individual or the individual's spouse as dependents for tax purposes, living in the household.

(7) The term "legislative lobbyist" means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(8) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action or developing executive branch goodwill through direct oral or written communication with an officer or employee of the executive branch authorized to take such action, including members of boards, commissions, councils, or other collective bodies.

b. Solicitation of others by lobbyists to influence executive action.

(9) The term "lobbyist" means an individual who:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying; or

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involves lobbying before the Executive Branch.

(10) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies.

(11) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons.

"**§ 147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying, in a manner prescribed by the Secretary of State, including electronically. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is for executive action, legislative action, or both, and a separate registration fee shall be paid for each separate type of registration..

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address, and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each executive lobbyist shall file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in the executive lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement effective on or before January 1 for the subsequent year and annually thereafter. The applicable fee shall be due and payable upon the filing of each registration statement.

"**§ 147-54.33. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of two hundred dollars ($200.00) that is due and payable by either the executive lobbyist or the lobbyist's principal at the time of registration.

(b) A separate registration, together with a separate registration fee of two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as an executive lobbyist.

(c) Fees collected under this section shall be deposited in the General Fund of the State.

(d) The Secretary of State may prescribe that fees required under this section be paid electronically.

"**§ 147-54.34. Written authority from lobbyist's principal to be filed.**

Each executive lobbyist shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent upon the result or outcome of any executive action.

(b) No person shall attempt to influence the action of an executive branch officer or employee by the promise of financial support of the executive branch officer's or employee's candidacy, or by threat of financial contribution or expenditure in opposition to the executive branch officer's or employee's candidacy in any future election.

"**§ 147-54.36. Certain expenditures prohibited.**

(a) A lobbyist's principal and any executive lobbyist acting on behalf of the principal shall not collectively spend more than one hundred dollars ($100.00) in a calendar year on lobbying expenditures specified in subsection (c) of this section for each executive branch officer or employee and that person's immediate family, collectively.

(b) An executive lobbyist shall not spend more than one hundred dollars ($100.00) in a calendar year on items specified in subsection (c) of this section for each executive branch officer or employee and that person's immediate family, collectively, that are not paid or reimbursed by a lobbyist's principal. The limits of this subsection shall apply in addition to and regardless of the number of lobbyist's principals by whom the executive lobbyist is compensated.

(c) Lobbying expenditures include any of the following when made directly or indirectly to support lobbying, and that benefit one executive branch officer or employee, or that person's immediate family:

(1) Gifts, meals, event tickets, transportation, speaking fees, and other expenses.

(2) Loans, other than commercially available loans made on terms not more favorable than generally available to the public in the normal course of business.

(3) Contributions, other than lawful campaign contributions.

Expenses benefiting more than one recipient shall be prorated among the recipients.

(d) The prohibitions on lobbying expenditures set forth in this section shall not apply to any of the following:

(1) Gifts from a person who is the spouse, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild

of the executive branch officer or employee, or who is a member of the executive branch officer or employee's household, and dependent upon the executive branch officer or employee.

(2) The cost of attendance or participation provided by the sponsoring entity, of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, governmental, trade association, or community organization.

"**§ 147-54.37. Statements of lobbyist's lobbying expenses required.**

(a) Each executive lobbyist shall file semiannual expense reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, with respect to each lobbyist's principal within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures during the prior six-month reporting period. The executive lobbyist shall file an expense report whether or not expenditures are made.

(b) Each expense report shall set forth the following information:

(1) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing executive branch goodwill, which benefited any executive branch officer or employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The fair market value, date, the name and address of the person receiving value, and the type of item or activity of each contractual arrangement or direct business relationship between an executive lobbyist or lobbyist's principal and an executive branch officer or employee, or that person's immediate family member, in effect during the period or previous 12 months.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing.

(d) When an executive lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section. Appeal of a decision by the Secretary of State shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file semiannual expense reports under oath with the Secretary of State within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures made during the prior six-month reporting period. The lobbyist's principal shall file an expense report whether or not expenditures are made during a reporting period.

(b) Each expense report shall set forth the following information:

(1) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing executive branch goodwill, which benefited any executive branch officer or employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The fair market value, date, the name and address of the person receiving payment, and the type of item or activity of each contractual arrangement or direct business relationship between an executive legislative lobbyist or lobbyist's principal and an executive branch officer or employee, or that person's immediate family member, in effect during the period or previous 12 months.

(3) The compensation paid or promised to all executive lobbyists based on estimated time and expense spent lobbying directly or indirectly on behalf of the principal, including developing goodwill with executive branch officers or employees. If an executive lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The principal's expense report shall include an itemized description of all expenditures reimbursed or paid to executive lobbyists for direct and indirect lobbying that are not reported on the executive lobbyists' reports.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing.

(d) When a lobbyist's principal fails to file a lobbying expense report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 147-54.37 and G.S. 147-54.38 on a regular basis.

(b) The Secretary of State may petition a court of competent jurisdiction for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through the court's contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4 and shall not become public records until a determination is made by the appropriate prosecutorial authority that no criminal charges will be brought against the person against whom the complaint was filed.

"**§ 147-54.40. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as an executive lobbyist, solely engaged in expressing a personal opinion on an executive action.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to his office and public duties.

(4) A person performing professional services in drafting bills, rules, regulations, executive orders, policies, resolutions, contracts, or requests for proposal, or in advising and rendering opinions to clients, or executive branch officials on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise, directly or indirectly, connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) A person responding to inquiries from an executive branch officer or employee and who engages in no further activities as an executive lobbyist in connection with that or any other executive branch matter.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure directly or indirectly that would be prohibited under G.S. 147-54.36, or any expenditure reportable under G.S. 147-54.37 or G.S. 147-54.38, if the person were not exempt under this section.

"**§ 147-54.41. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.42. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to the Attorney General of violations of this Article, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.43. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. This act becomes effective January 1, 2006.

SENATE BILL 612: Amend Lobbying Laws.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Rand
Date:	April 5, 2005	**Summary by:**	O. Walker Reagan, Staff Attorney
Version:	Proposed Committee Substitute S612-CSRUf-9		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 612 would amend the lobbying laws by restricting the amounts and quantities of gifts a lobbyist can give for legislative lobbying purposes, including goodwill lobbying, increasing the frequency and details of legislative lobbyists' and lobbyist's principals' reports, and prohibiting a legislator from lobbying during a legislative session to which the legislator was elected or appointed. The bill also creates lobbying laws governing executive branch lobbying in much the same ways that legislative lobbying is governed.***

CURRENT LAW: Under current law, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that at lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures they made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

Currently executive branch lobbying is not regulated.

BILL ANALYSIS: **Section 1** amends the legislative lobbying law in the following ways:

- Includes lobbying the Governor in relation to the Governor's veto.
- Includes goodwill lobbying under the law.
- Restricts giving gifts or expending money to influence legislative staff and employees and the immediate family of legislators, legislative staff and employees.
- Permits gifts from lobbyists to their family members who are legislators or legislative employees. Also exempts from the limits the cost of attendance or participation, lodging, food and beverages, for the attendance and participation in events sponsored by civic, charitable, governmental, trade association or community organizations.
- Limits the total annual cumulative value that a lobbyist's principal can spent on lobbying on an individual legislator or legislative employee to $100 per year. In addition it limits to a total annual cumulative value that a lobbyist can spend on lobbying from the lobbyist's own funds to $100 per legislator or legislative employee Expenditures on legislator's or legislative employee's family members counts towards the limit per legislator or legislative employee. Certain loans and contributions, other than normal commercial loans or campaign contributions, are also prohibited.

Expenditures by legislative liaison personnel and State agencies are subject to the same limitations and have to be reported the same as expenditures by other lobbyists.

- Increases the details of lobbying expense reports to include the fair market value, person receiving payment, type of expenditure, and beneficiary of every lobbying expenditure. The report also includes the fair market value, date and type of payment of each contractual arrangement or direct business relationship between a lobbyist or the lobbyist's principal, and the legislator, legislative employee, or the person's immediate family member. The lobbyist principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid to each lobbyist.
- Prohibits a legislator or former legislator from being employed as a legislative or executive branch lobbyist during any biennial legislative session to which the legislator was elected or appointed.
- Prohibits a lobbyist from serving as a campaign manager or campaign treasurer for a legislative campaign.
- An additional exception to this law is made for an employee who represents an employer's interest before the General Assembly for no more than 6 hours in a reporting period, and who does not spend money on a legislator, legislative employee or an immediate family member that would otherwise be required to be reported by a registered lobbyist.

Section 2 creates a new article to regulate executive branch lobbying much the same as legislative lobbying is regulated with the following differences:

- Lobbying is defined as the influencing of "executive action" which is defined as being the consideration of a rule, regulation, executive order, policy, resolution, contract, request for proposal, nomination or appointment by the Governor, member of the Council of State, State official, member of a State board, commission, council or authority, or State employee who participates in decision-making regarding the executive action. It does not include persons chiefly engaged in clerical, secretarial or ministerial duties. Executive branch lobbying does not include action by an attorney in connection with litigation involving a State agency or official, or an administrative hearing under the Administrative Procedures Act, or the appearance before an executive branch agency or department on an individual application for a license or permit, or a disciplinary action on a license or permit.
- Lobbyist and lobbyist's principals' reports are due every 6 months.
- Prohibits the Governor or a member of the Council of State from acting as a legislative or executive branch lobbyist during the time of the biennial legislative session in which the person served in office.

EFFECTIVE DATE: The bill would become effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 612*

Judiciary I Committee Substitute Adopted 3/31/05

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REGISTRATION AND REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH AGENCIES AND EMPLOYEES, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"§ 120-47.1. Definitions.

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation" and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or anything of value and any contract, agreement, promise or other obligation whether or not legally ~~enforceable, but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~enforceable.

(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the

legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto.

(4a) The term "legislative employee" means a legislative employee as the term is defined in G.S. 120-129(2).

(4b) The term "legislative liaison personnel" means any State officer or employee whose principal duties in ~~practice~~ practice, or as set forth in that person's job ~~description~~ description, involve lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action or developing legislative goodwill through direct oral or written communication with a member of the General ~~Assembly; or~~Assembly, a person elected or appointed a legislator prior to taking office, or a legislative staff person or a legislative employee.

b. Solicitation of others by lobbyists to influence legislative action.

(6) The term "lobbyist" means an individual who:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying; or

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the entity in whose behalf the legislative lobbyist influences or attempts to influence legislative action.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, or any other organization or group of persons.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"§ 120-47.2. Registration procedure.

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State, including electronically. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as an executive lobbyist, legislative lobbyist, or both.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following odd-numbered year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of two hundred dollars ($200.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration.

(b) A separate registration, together with a separate registration fee of two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as a legislative lobbyist.

(c) Fees so collected shall be deposited in the General Fund of the State.

(d) The Secretary of State may prescribe that fees required under this section be paid electronically.

"§ 120-47.4. Written authority from lobbyist's principal to be filed.

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a legislative lobbyist for compensation that is dependent in any manner upon any legislative action.~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No person shall attempt to influence the action of any member of the General Assembly by the promise of financial support of the member's candidacy, or by threat of financial contribution or expenditure in opposition to the member's candidacy in any future election.

"§ 120-47.5A. Certain expenditures prohibited.

No legislative lobbyist, lobbyist's principal, legislative liaison personnel, or the Governor, a member of the Council of State, appointed heads of State departments, agencies, and institutions who employs the legislative liaison personnel, shall give to, or pay for any of the following for, any legislator, legislative staff person, legislative employee, any other person elected or appointed a legislator prior to taking office, or the immediate family of any of these listed individuals:

(1) Gifts, meals, event tickets, transportation, speaking fees, and other expenses made directly or indirectly to support lobbying, including developing legislative goodwill, having a cumulative value in excess of one hundred dollars ($100.00) in a calendar year that benefits one legislator, legislative staff person, legislative employee, or any person elected or appointed a legislator prior to taking office. Expenses benefiting more than one recipient shall be prorated among the recipients. Expenses benefiting a family member count toward the limit of expenses for the legislator, legislative staff, or legislative employee. Expenses paid by a legislative lobbyist count toward the limit of the lobbyist's principal.

(2) Loans, other than commercially available loans made on terms not more favorable than generally available to the public in the normal course of business.

(3) Contributions, other than lawful campaign contributions.

"§ 120-47.6. Statements of lobbyist's lobbying expenses required.

(a) Each legislative lobbyist shall file an expense report under oath with the Secretary of ~~State~~ State, in a manner prescribed by the Secretary of State including electronically, with respect to each principal within 60 days after the last day of ~~the~~ each annual regular session. This expense report shall include all expenditures made between January 1 and the last day of ~~the~~ each annual regular session. The legislative lobbyist shall file a supplemental report including all expenditures made after the last day of ~~the~~ each annual regular session, but during the calendar year, by February 28 of the

following year. The legislative lobbyist shall file both expense reports whether or not expenditures are made.

(b) Each expense report shall set forth the following information:

(1) ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~ The amount, date, the name and address of the beneficiary, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing legislative goodwill, that benefited any legislator, legislative staff person, legislative employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The date, the name and address of the beneficiary, and the type of item or activity of each contractual arrangement or direct business relationship between a legislative lobbyist or lobbyist's principal and a legislator, legislative staff person, legislative employee, or that person's immediate family member, in effect during the reporting period or previous 12 months.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing.

(d) When a legislative lobbyist fails to file a lobbying expense report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully

complied with this section. Appeal of a decision by the Secretary of State shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(f) The oath required under this section shall attest to the truthfulness and completeness of the report.

"§ 120-47.7. Statements of lobbyist's principal lobbying expenses required.

(a) Each lobbyist's principal shall file an expense report under oath with the Secretary of ~~State~~ State, in a manner prescribed by the Secretary of State including electronically, within 60 days after the last day of ~~the~~ each annual regular session. This expense report shall include all expenditures made between January 1 and the last day of ~~the~~ each annual regular session. The lobbyist's principal shall file a supplemental expense report, including all expenditures made after the last day of ~~the~~ each annual regular session, but during the calendar year, by February 28 of the following year. The lobbyist's principal shall file both expense reports whether or not expenditures are made during a reporting period.

(b) Each expense report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ following information:

(1) The amount, date, the name and address of the beneficiary, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing legislative goodwill, which benefited any legislator, legislative staff person, legislative employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The date, the name and address of the beneficiary, and the type of item or activity of each contractual arrangement or direct business

relationship between a legislative lobbyist or lobbyist's principal and a legislator, legislative staff person, legislative employee, or that person's immediate family member, in effect during the period or previous 12 months.

(3) The compensation paid or promised to all legislative lobbyists based on estimated time and expense spent lobbying directly or indirectly on behalf of the lobbyist's principal, including developing goodwill with legislators, legislative staff persons, and legislative employees. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The lobbyist's principal's expense report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for direct and indirect lobbying that are not reported on the legislative lobbyists' reports.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection.

(d) When a lobbyist's principal fails to file a lobbying expense report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section.

(f) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 120-47.7A. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

(b) The Secretary of State may petition a court of competent jurisdiction for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through the court's contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4 and shall not become public records until a determination is made by the appropriate prosecutorial authority that no criminal charges will be brought against the person against whom the complaint was filed.

"**§ 120-47.7B. Prohibitions.**

(a) No legislator or former legislator may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes during any biennial legislative session to which the legislator has been elected or appointed.

(b) Elected executive branch officer, as defined in G.S. 147-54.31(3), may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes during the time of the current biennial legislative session during which the person served in office.

(c) No person registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

"**§ 120-47.8. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as a legislative lobbyist, solely engaged in expressing a personal opinion on legislative matters to ~~his~~ the individual's own legislative delegation or other members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative ~~matter.~~action.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to legislators on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not otherwise, directly or indirectly, connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.
(7) Members of the General Assembly.
(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative matter.
(9) An individual giving facts or recommendations pertaining to legislative ~~matters~~ actions to ~~his~~ the individual's own legislative delegation only.
(10) An employee who represents the employer's interests in legislative action for no more than 12 hours during a 12-month reporting period, provided that neither the employee nor the employer makes any expenditure directly or indirectly that would be prohibited under G.S. 120-47.5A, or any expenditure reportable under G.S. 120-47.6 or G.S. 120-47.7, if the person were not exempt under this section.

"§ 120-47.9. Punishment for violation.

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"§ 120-47.10. Enforcement of Article by Attorney General.

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to ~~him~~ the Attorney General of violations of this Article, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"§ 120-47.11. Rules and forms.

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"§ 120-47.12. Limitations on agency legislative liaisons.

(a) No principal State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each principal State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the principal State department or constituent institution of The University of North Carolina who employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyist's principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation," and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or anything of value and any contract, agreement, promise, or other obligation whether or not legally enforceable.

(2) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney in connection with litigation or an administrative hearing under Chapter 150B of the General Statutes, involving a State official or State agency.

(3) The term "executive branch officer or employee" means the Governor, any member of the Council of State, State official, member of a State board, commission, council or authority, State employee, or any other person elected or appointed to a Council of State position prior to taking office.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "legislative lobbyist" means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(5) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action or developing executive branch goodwill through direct oral or written communication with an officer or employee of the executive branch authorized to take such action, including members of boards, commissions, councils, or other collective bodies.

b. Solicitation of others by lobbyists to influence executive action.

(6) The term "lobbyist" means an individual who:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying; or

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involves lobbying before the Executive Branch.

(7) The terms "lobbyist's principal" and "principal" mean the entity in whose behalf the executive lobbyist influences or attempts to influence executive action.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, or any other organization or group of persons.

"**§ 147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying, in a manner prescribed by the Secretary of State, including electronically. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is for executive action, legislative action, or both.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address, and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each executive lobbyist shall file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in the executive lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement effective on or before January 1 for the subsequent year and annually thereafter. The applicable fee shall be due and payable upon the filing of each registration statement.

"**§ 147-54.33. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of two hundred dollars ($200.00) that is due and payable by either the executive lobbyist or the lobbyist's principal at the time of registration.

(b) A separate registration, together with a separate registration fee of two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as an executive lobbyist.

(c) Fees collected under this section shall be deposited in the General Fund of the State.

(d) The Secretary of State may prescribe that fees required under this section be paid electronically.

"**§ 147-54.34. Written authority from lobbyist's principal to be filed.**

Each executive lobbyist shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent in any manner upon any executive action.

(b) No person shall attempt to influence the action of an executive branch officer or employee by the promise of financial support of the executive branch officer's or employee's candidacy, or by threat of financial contribution or expenditure in opposition to the executive branch officer's or employee's candidacy in any future election.

"**§ 147-54.36. Certain expenditures prohibited.**

No executive lobbyist or lobbyist's principal shall give to, or pay for any of the following for, any executive branch officer or employee, or the immediate family of any executive branch officer or employee:

(1) Gifts, meals, event tickets, transportation, speaking fees, and other expenses made directly or indirectly to support lobbying, including developing executive branch goodwill, having a cumulative value in excess of one hundred dollars ($100.00) in a calendar year that benefit one executive branch officer or employee. Expenses benefiting more than one recipient shall be prorated among the recipients. Expenses benefiting a family member count toward the limit of expenses for the executive branch officer or employee. Expenses paid by a lobbyist count toward the limit of the lobbyist's principal.

(2) Loans, other than commercially available loans made on terms not more favorable than generally available to the public in the normal course of business.

(3) Contributions, other than lawful campaign contributions.

"**§ 147-54.37. Statements of lobbyist's lobbying expenses required.**

(a) Each executive lobbyist shall file semiannual expense reports with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, with respect to each lobbyist's principal within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures during the prior six-month reporting period. The executive lobbyist shall file an expense report whether or not expenditures are made.

(b) Each expense report shall set forth the following information:

(1) The amount, date, the name and address of the beneficiary, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing executive branch goodwill, which benefited any executive branch officer or employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The date, the name and address of the beneficiary, and the type of item or activity of each contractual arrangement or direct business relationship between an executive lobbyist or lobbyist's principal and an executive branch officer or employee, or that person's immediate family member, in effect during the period or previous 12 months.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing.

(d) When an executive lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section. Appeal of a decision by the Secretary of State shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(f) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file semiannual expense reports with the Secretary of State within 45 days after the end of the reporting periods ending on June 30 and December 31 of each year. The expense report shall include all expenditures made during the prior six-month reporting period. The lobbyist's principal shall file an expense report whether or not expenditures are made during a reporting period.

(b) Each expense report shall set forth the following information:

(1) The amount, date, the name and address of the beneficiary, and the type of item or activity of each expenditure made directly or indirectly to support lobbying, including developing executive branch goodwill, which benefited any executive branch officer or employee, or that person's immediate family member, and the name of each such person who benefited.

(2) The date, the name and address of the beneficiary, and the type of item or activity of each contractual arrangement or direct business relationship between an executive legislative lobbyist or lobbyist's principal and an executive branch officer or employee, or that person's immediate family member, in effect during the period or previous 12 months.

(3) The compensation paid or promised to all executive lobbyists based on estimated time and expense spent lobbying directly or indirectly on

behalf of the principal, including developing goodwill with executive branch officers or employees. If an executive lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The principal's expense report shall include an itemized description of all expenditures reimbursed or paid to executive lobbyists for direct and indirect lobbying that are not reported on the executive lobbyists' reports.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection.

(d) When a lobbyist's principal fails to file a lobbying expense report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section.

(f) The oath required under this section shall attest to the truthfulness and completeness of the report.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 147-54.37 and G.S. 147-54.38 on a regular basis.

(b) The Secretary of State may petition a court of competent jurisdiction for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through the court's contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4 and shall not become public records until a determination is made by the appropriate prosecutorial authority that no criminal charges will be brought against the person against whom the complaint was filed.

"**§ 147-54.40. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as an executive lobbyist, solely engaged in expressing a personal opinion on an executive action.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to his office and public duties.

(4) A person performing professional services in drafting bills, rules, regulations, executive orders, policies, resolutions, contracts, or requests for proposal, or in advising and rendering opinions to clients, or executive branch officials on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise, directly or indirectly, connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) A person responding to inquiries from an executive branch officer or employee and who engages in no further activities as an executive lobbyist in connection with that or any other executive branch matter.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure directly or indirectly that would be prohibited under G.S. 147-54.36, or any expenditure reportable under G.S. 147-54.37 or G.S. 147-54.38, if the person were not exempt under this section.

"**§ 147-54.41. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.42. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to the Attorney General of violations of this Article, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.43. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. This act becomes effective January 1, 2006.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/6/05

S. B. No. 612 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) _____

1 moves to amend the bill on page 9, line 1

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the word "person" and substituting

4 the word "individual".

5

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19

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/6/05

S. B. No. 612 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Hagan

1 moves to amend the bill on page 5, line 13

2 ( ) WHICH CHANGES THE TITLE

3 by inserting between "spouse," and "parent" the

4 words "child, stepchild,".

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12

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16

17

18

19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE FINANCE COMMITTEE
Wednesday, April 13, 2005 at five minutes prior to session
In the Senate Chamber

MINUTES

The Senate Finance Committee met five minutes prior to session on April 13, 2005, in the Senate Chamber. Thirty members of the committee were present. Senator David Hoyle presided.

HB 446 – Roanoke Rapids Annexation/ETJ/Weldon Annex.

Senator Holloman was recognized to explain the bill. Senator Jenkins moved to approve the bill and the motion carried. A copy of the bill and explanation are attached.

The meeting adjourned at 3:40 pm.

Senator David W. Hoyle, Presiding

John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Wednesday, April 13, 2005

Senator HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **446** Roanoke Rapids Annexation/ETJ/Weldon Annex.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 446

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

March 2, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. L .Allen and Hall
Date:	April 13, 2005	**Summary by:**	Trina Griffin*
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 446 does three things:

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

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

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

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

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

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

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

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

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

**Martha Walston, counsel to House Finance, substantially contributed to this summary.*

SENATE FINANCE COMMITTEE
Tuesday, April 19, 2005 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on April 19, 2005, in Room 544 of the Legislative Office Building. Twenty members of the committee were present. Senator John Kerr, III, presided. Kendle McKnight and Jalessa Thomas of Wake County, and Brittany Pence of Johnston County served as pages.

HB 631 – Maggie Valley Satellite Annexations.

Representative Haire was recognized to explain the bill. Mike Mehaffey, Director of Public Works for the Town of Maggie Valley, was recognized to answer questions. Paul Tucker and Rick Bernard were recognized to speak in opposition of the bill. Anita Watkins, League of Municipalities, was recognized to answer any questions. Senator Presnell was recognized to discuss the bill. Senator Hoyle motioned for a favorable report and the motioned passed.

SB 356 – Fuel Tax Refund for Pumpers.

Senator Hoyle was recognized to explain the proposed committee substitute. Donna Alderman from the Motor Vehicle Tax Division was recognized to answer questions. Senator Apodaca moved for a favorable report and the motion carried.

The meeting adjourned at 2:03 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Tuesday, April 19, 2005, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 138	Archdale Extraterritorial Jurisdiction.	Sen. Tillman
SB 356	Fuel Tax Refund for Off-Road Use by Pumpers.	Sen. Hoyle
SB 407	Cabarrus Municipal Vehicle Registration.	Sen. Hartsell
SB 466	Burlington/Gibsonville Boundary.	Sen. Berger
SB 551	Present-Use Value Buyout Credits.	Sen. East
HB 631	Maggie Valley Satellite Annexations.	Rep. Haire

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

April 19, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	Bonn & Assoc.
Butch Gunnells	NCSDA
Stephanie Dorko	Charlotte Chamber
Brian Lewis	Covenant w/ NC's Children
~~CASSANDRA~~ Shannon	NCAPS
David Baker	NCDOR
Kathy Hawkins	Progress Energy
Michael Shannon	Corillard
	WCSR
Kevin Leonard	JCSR

one on other page →

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rick Bernard	HB 631
Jim Blackburn	N.C. Association of County Commissioners
[illegible] Suddath	PBR
Zebulon Alley	Alley Assoc
Doug [illegible]	NCSTA
Doug Howey	NC PMA
Steve Woodson	NC Farm Bureau
Paula G. Page	NC Farm Bureau
Joyce Peters	HP Assoc
Roger Bona	Bona Assoc
Gary Harris	NC PMA
Alla Pursuse	Greensboro CoC

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Miller	CUCA
Tripp Melton	Sen. Stevens office
Donna Alderman	DOR
Joe McClees	McClees Consulting
Ned Carpenter	PORTA-JA
Erin Kinney	NC Conservation Network
Michael Melott Jr.	Town of Maggie Valley
Jane Onehoffer	"
Ken Melton	D.O.R.
Dave Ingram	WSJ
Paul Tucker	HB 631

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Anita Watkins	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 356
PROPOSED COMMITTEE SUBSTITUTE S356-CSSV-11 [v.2]

4/19/2005 10:58:09 AM

Short Title: Fuel Tax Refund for Pumpers and Sweepers. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW A FUEL TAX REFUND FOR OFF-ROAD FUEL USE BY PUMPER TRUCKS AND SWEEPERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.107(b) reads as rewritten:

"(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.

(2) A solid waste compacting vehicle.

(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.

(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.

(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.

(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.

(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect

during that year, less the amount of sales and use tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle."

SECTION 2. This act is effective when it becomes law and applies to motor fuel and alternative fuel consumed on or after January 1, 2006.

SENATE BILL 356:
Fuel Tax Refund for Off-Road Use by Pumpers

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	April 19, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel
	S356-CSSV-11		

SUMMARY: ***Senate Bill 356 would allow an annual motor fuel tax refund for a commercial vehicle that uses a power takeoff to remove and dispose of septage. The PCS incorporates SB 101, sponsored by Sen. Albertson, which authorizes a similar refund for sweepers. It also changes the effective date from January 1, 2005 to January 1, 2006.***

CURRENT LAW: G.S. 105-449.107 of the Revenue Laws allows annual refunds of motor fuel and alternative fuel taxes for off-highway use and for certain vehicles with power attachments. Subsection (b) of this statute lists the following vehicles that are allowed an annual refund of the motor fuel and alternative fuel taxes paid on fuel consumed by the vehicles:

1. A concrete mixing vehicle.
2. A solid waste compacting vehicle.
3. A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the lime or fertilizer.
4. A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizers.
5. A tank wagon that delivers alternative fuel or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
6. A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.

The annual refund of the fuel taxes is based on 33 1/3% of fuel consumed by the vehicle. This is the amount of fuel that is considered to be consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle on the roads. The amount of sales tax due on the fuel is deducted from the tax refund.

BILL ANALYSIS: Senate Bill 356 would add to the list of vehicles eligible for a motor fuel tax refund, commercial vehicles that use a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources (DENR) under G.S. 130A-291.1. DENR is responsible for administering a septage management program, including establishing standards for the transportation, storage, treatment, and disposal of septage; operator registration and training; the issuance, suspension, and revocation of permits, and procedures for the payment of annual fees. A septage management firm that operates one pumper truck pays an annual fee of $550.00 and a firm that operates two or more pumper trucks pays an annual fee of $800.00.

PROPOSED COMMITTEE SUBSTITUTE: The proposed committee substitute makes the following three changes:

- It clarifies that, in order to issue a refund, the Department of Revenue is not required to verify the payment of the permit fee required by G.S. 130A-291.1. However, if the Department discovers

through its auditing or investigatory procedures that those permit fees have not been paid, it may refuse to issue a refund or seek a return of the refund.

- It adds sweepers to the list of vehicles eligible for the motor fuel tax refund. Sweepers are vehicles that vacuum up and haul away litter in parking lots. A sweeper vehicle has an auxiliary engine that runs only when the vehicle is performing its sweeping function, and a factory-installed meter gauges how much fuel is being used for that function.
- It changes the effective date from January 1, 2005 to January 1, 2006 so as to avoid the administrative burden associated with making the refund retroactive.

S0356e1-SMSV-CSSV-11

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: April 18, 2005

TO: Senate Finance Committee

FROM: Linda Struyk Millsaps and Bob Weiss
Fiscal Research Division

RE: Senate Bill 356 PCS – Sales Tax Refund for Pumpers and Sweepers

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES: General Fund		136,211	131,243	125,303	122,953
Highway Fund		(512,812)	(512,878)	(511,213)	(514,383)
Highway Trust Fund		(170,937)	(170,959)	(170,404)	(171,461)
Local Government		85,132	82,027	78,314	76,845

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

EFFECTIVE DATE: January 1, 2006.

BILL SUMMARY: The legislation makes two changes to the existing motor fuel refund provisions. First, it adds a new GS 105-449.107(b)(7) to allow fuel tax refund for commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required by the Department of Environment and Natural Resources under GS 130A-291.1. It also creates a refund for sweepers. In both cases, the refund is equal to the motor fuel tax paid on 33 1/3% of the motor fuel consumed by the vehicle. Motor fuel not taxed by the motor fuels tax is

subject to the 6.5% state and local sales tax. The motor fuels tax refund to the commercial vehicle owner is net of the sales tax payment.

ASSUMPTIONS AND METHODOLOGY: Under G.S. 105-449.107(b) owners of a number of vehicles are allowed an annual refund of a portion of the motor fuels tax paid when fuel was purchased for the vehicle. Generally, the vehicles are those that require the vehicle to run in place a large portion of the time to conduct their work. Examples include concrete mixing vehicles, tank wagons that deliver fuel, and blower trucks.

Pumpers: This portion of the legislation adds a new group of vehicles to the refund provision – those that are permitted by the Department of Environment and Natural Resources (DENR) under G.S. 130A-291.1. This statute requires the annual permitting of septage management firms, which includes portable toilet companies, septic tank service companies, and organizations that clean grease traps. The Department also charges a fee based on the number of pumper trucks employed by the organization.

Data from DENR suggest that there are approximately 480 businesses in North Carolina that are permitted under the program. Approximately 40.2% of those businesses operate a single truck, with the balance operating more than one truck. Based on the Department's database, it is assumed there are approximately 1175 pumper trucks permitted in the state. An annual growth rate of 2.0% is assumed in the number of truck. Industry representatives indicate average annual usage of 5733 gallons per truck. .

The refund is the tax paid on one third of the motor fuel used, minus the sales tax on the average wholesale price of fuel. The Office of State Budget, Planning and Management and other sources provided the projections for average wholesale price of fuel and the average motor fuels tax used in the chart below. The sales tax rate charged on fuel exempt from fuel tax is 6.5% beginning July 1, 2006.

	Trucks	Gallons	Refund on 1/3 of Gallons	Motor Fuels Tax	Average Wholesale Price of Fuel	Motor Fuels Tax Refund	Sales Tax Charge	Net Refund
FY 2005-06	1,175	6,736,275	2,245,425	$0.2720	$1.39	$610,755.60	$202,249	$408,507
FY 2006-07	1,199	6,871,001	2,290,334	$0.2682	$1.34	$614,267.44	$198,850	$415,417
FY 2007-08	1,222	7,008,421	2,336,140	$0.2635	$1.26	$615,572.93	$191,981	$423,592
FY 2008-09	1,247	7,148,589	2,382,863	$0.2580	$1.19	$614,778.65	$183,651	$431,128
FY 2009-10	1,272	7,291,561	2,430,520	$0.2550	$1.14	$619,782.66	$180,553	$439,230

The refund of motor fuel tax will produce a loss in the Highway Fund and the Highway Trust Fund. The Highway Fund receives 75% of the motor fuels tax and the Highway Trust Fund receives the remaining 25% of the tax. The loss to each fund due to the legislation is shown below.

	Motor Fuels Tax Refund	Highway Fund 75%	Highway Trust Fund 25%
FY 2005-06	$610,755.60	458,067	152,689
FY 2006-07	$614,267.44	460,701	153,567
FY 2007-08	$615,572.93	461,680	153,893
FY 2008-09	$614,778.65	461,084	153,695
FY 2009-10	$619,782.66	464,837	154,946

The sales tax deducted from the motor fuel tax refunds will be deposited into the General Fund and distributed to local governments as shown below.

	Sales Tax Charge	General Fund	Local Government
FY 2005-06	$202,249	$124,461	$77,788
FY 2006-07	$198,850	$122,369	$76,481
FY 2007-08	$191,981	$118,142	$73,839
FY 2008-09	$183,651	$113,016	$70,635
FY 2009-10	$180,553	$111,109	$69,443

Sweepers: The legislation also authorizes a refund for sweepers. Schwarze Industries, Inc., one of the major manufacturers of power sweepers, provided Fiscal Research with a list of their clients and potential clients in North Carolina. Fiscal Research, in turn, faxed, mailed, and e-mailed a survey in May 2004 to 187 companies, private universities, and individual contractors who appeared on Schwarze's list. The survey asked the number of power sweepers operated off highway, the gallons of fuel used off highway, and the purposes of off-highway use. Only 22 of the 187 surveys were returned or approximately 12.8%. (Eight of the surveys could not be delivered by the US Postal Service). Of the 22 respondents, the median number of power sweepers used in off highway work by each company was two, and the median amount of fuel consumed off highway was 2,000 gallons per vehicle. The primary off highway use is sweeping parking lots.

Based on the survey results and the assumptions made about companies owning power sweepers, it is estimated that there are 371 sweeper trucks in the state that use 777,200 gallons of fuel each year. The bill refunds the tax on one-third of the gallons used in these sweepers or 259,041 gallons each year. No growth in sweepers is built into the estimate due to a lack of data on the industry. The Office of State Budget, Planning and Management and other sources provided the projections for average wholesale price of fuel and the average motor fuels tax used in the chart below. The sales tax rate charged on fuel exempt from fuel tax is 6.5% beginning July 1, 2006.

	Gallons	Refund on 1/3 of Gallons	Motor Fuels Tax	Average Wholesale Price of Fuel	Motor Fuels Tax Refund	Sales Tax Charge	Net Refund

FY 2005-06	777,200	259,067	$0.2720	$1.39	$70,466	$23,335	$47,132
FY 2006-07	777,200	259,067	$0.2682	$1.34	$69,482	$22,493	$46,989
FY 2007-08	777,200	259,067	$0.2635	$1.26	$68,264	$21,290	$46,974
FY 2008-09	777,200	259,067	$0.2580	$1.19	$66,839	$19,967	$46,873
FY 2009-10	777,200	259,067	$0.2550	$1.14	$66,062	$19,245	$46,817

The refund of motor fuel tax will produce a loss in the Highway Fund and the Highway Trust Fund. The Highway Fund receives 75% of the motor fuels tax and the Highway Trust Fund receives the remaining 25% of the tax. The loss to each fund due to the legislation is shown below.

	Motor Fuels Tax Refund	Highway Fund 75%	Highway Trust Fund 25%
FY 2005-06	70,466	52,850	17,617
FY 2006-07	69,482	52,111	17,370
FY 2007-08	68,264	51,198	17,066
FY 2008-09	66,839	50,129	16,710
FY 2009-10	66,062	49,547	16,516

The sales tax deducted from the motor fuel tax refunds will be deposited into the General Fund and distributed to local governments as shown below. This represents a gain to these organizations.

	Sales Tax Charge	General Fund	Local Government
FY 2005-06	$23,335	$14,360	$8,975
FY 2006-07	$22,493	$13,842	$8,651
FY 2007-08	$21,290	$13,101	$8,188
FY 2008-09	$19,967	$12,287	$7,679
FY 2009-10	$19,245	$11,843	$7,402

The combined cost of the refunds for both pumpers and sweepers are shown in the fiscal impact box , with an adjustment for the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 356

Short Title:	Fuel Tax Refund for Off-Road Use by Pumpers.	(Public)
Sponsors:	Senators Hoyle and Hartsell.	
Referred to:	Finance.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW A FUEL TAX REFUND FOR OFF-ROAD FUEL USE BY PUMPER TRUCKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.107(b) reads as rewritten:

"(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.

(2) A solid waste compacting vehicle.

(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.

(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.

(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.

(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its

mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle."

SECTION 2. This act is effective when it becomes law and applies to motor fuel and alternative fuel consumed on or after January 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 631
Committee Substitute Favorable 3/29/05

Short Title: Maggie Valley Satellite Annexations. (Local)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

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

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

HOUSE BILL 631:
Maggie Valley Satellite Annexations

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Haire
Date:	April 19, 2005	**Summary by:**	Cindy Avrette
Version:	2nd Edition		Committee Counsel

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

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

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

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

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 631 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Stevens

moves to amend the bill on page 1, line 26

( ) WHICH CHANGES THE TITLE

by deleting the word "section" and substituting the word "act".

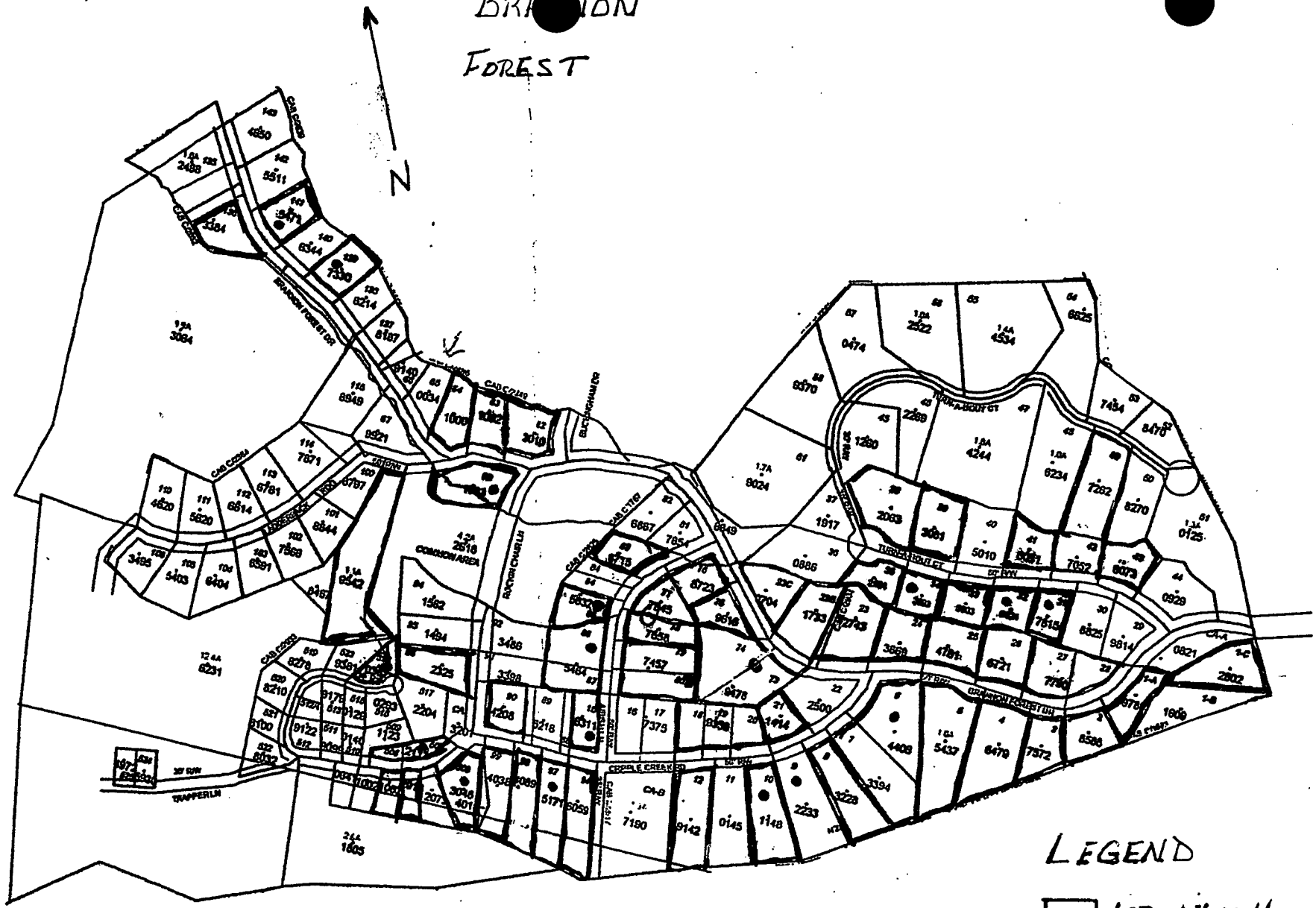
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ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

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FOREST



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

Tuesday, April 19, 2005

Senator KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **356** Fuel Tax Refund for Off-Road Use by Pumpers.

Draft Number:	65303
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE FINANCE COMMITTEE
Thursday, April 21, 2005 during recess
In the Senate Chamber

MINUTES

The Senate Finance Committee met during recess on April 21, 2005, in the Senate Chamber. Thirty members of the committee were present. Senator David Hoyle presided.

HB 351 – Modify Pasquotank/Eliz. City Occupancy Tax.

Senator Hoyle explained the bill. Senator Kerr moved to approve the bill and the motion carried. A copy of the bill, fiscal note, and explanation are attached.

HB 399 – Unified Government.

Senator Hoyle explained the proposed committee substitute. Senator Kerr moved to approve the proposed committee substitute and the motion carried. A copy of the proposed committee substitute, fiscal note, and explanation are attached.

The meeting adjourned at 11:20 am.

Senator David W. Hoyle, Presiding

John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

Thursday, April 21, 2005

Senator HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **351** Modify Pasquotank/Eliz. City Occupancy Tax.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **399** Unified Government.
Draft Number: 30259
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 351
Committee Substitute Favorable 4/5/05

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

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 30, 2005

TO: House Finance Subcommittee on Occupancy Tax

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 351 (Unknown Edition)

FISCAL IMPACT

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

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

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

EFFECTIVE DATE: Becomes effective when law.

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

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

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

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

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

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

Year	Amount	Each 1%
2005-06	254,635	84,878
2006-07	264,820	88,273
2007-08	275,413	91,804
2008-09	286,429	95,476
2009-10	297,886	99,295

SOURCES OF DATA: NC Department of Revenue, NC Department of State Treasurer

TECHNICAL CONSIDERATIONS: None

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

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Owens
Date:	April 20, 2005	**Summary by:**	Trina Griffin
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 351 does the following:

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

The bill becomes effective when it becomes law.

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

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

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

- 50% to promote travel and tourism.
- 25% for tourism-related expenditures recommended by the Elizabeth City Council and approved by the TDA.
- 25% for tourism-related expenditures recommended by the Pasquotank County Board of Commissioners and approved by the Authority.

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 399
Committee Substitute Favorable 3/16/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H399-PCS30259-ST-22

Short Title: Unified Government. (Public)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"Article 24.

"Unified Government.

"**§ 153A-471. Unified government.**

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

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

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

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

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

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

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

(6) G.S. 153A-340(b) (Zoning of Bona Fide Farms) shall apply to all areas within the county boundaries.

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

(c) The board of commissioners may by ordinance provide that this Article does not confer the power, duty, function, right, privilege, or immunity of a city upon the county as to a specific power, duty, function, right, privilege, or immunity, and as to such specified power, duty, function, right, privilege, or immunity it shall not be considered as a city.

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

"**§ 153A-472. Definitions.**

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

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

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

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

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

"**§ 153A-473. Applicability.**

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

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE BILL 399:
Unified Government.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Owens
Date:	April 21, 2005	**Summary by:**	R. Erika Churchill
Version:	H399-PCS30259-ST-22		Staff Counsel

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

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

BILL ANALYSIS:

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

1. The ability to exercise any municipal power outside the corporate boundaries of the county. (This would prevent the ability to exercise extraterritorial jurisdiction authority over lands outside the county.)
2. Annexation authority.
3. Form of Government and Administrative Offices. (The county would remain organized as a county.)
4. Law Enforcement.
5. The ability to zone bona fide farms, except as provided in G.S. 153A-340(b).
6. Municipal elections, except to the extent those generally applicable laws currently apply to counties.

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 399
Committee Substitute Favorable 3/16/05

Short Title: Unified Government. (Public)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"Article 24.

"Unified Government.

"**§ 153A-471. Unified government.**

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

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

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

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

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

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

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

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

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

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

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

"**§ 153A-472. Definitions.**

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

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"**§ 153A-473. Applicability.**

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

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

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

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

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

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

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

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

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

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

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

SENATE FINANCE COMMITTEE
Tuesday, May 3, 2005 at 7:00 PM
Room 1027, Legislative Building

MINUTES

The Senate Finance Committee met at 7:00 PM on May 3, 2005, in Room 1027 of the Legislative Building. Thirty members of the committee were present. Senators David Hoyle and John Kerr, III, presided.

SB 622 – 2005 Appropriations Act.

Cindy Avrette, staff attorney with the Research Division, was recognized to explain the bill. Senator Thomas introduced an amendment to correct language pertaining to the Police Information Network. Senator Jenkins moved for adoption and the motion carried. Senator Kerr introduced an amendment to create an annual cap for distributors of other tobacco products. Senator Rand moved for adoption and motion carried. Senator Rand moved for a favorable report as amended and the motion carried. Amendments, bill summaries and a committee report are attached.

The meeting adjourned at 7:30 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

Tuesday, May 3, 2005

Senators HOYLE and KERR,
submit the following with recommendations as to passage:

FAVORABLE AS AMENDED

S.B. (C.S.#1) **622** 2005 Appropriations Act.

Recommended Referral: Pensions, Retirement & Aging

TOTAL REPORTED: 1

Committee Clerk Comments:

Convened 9:10
Sen. Kerr & Sen. Holye
Cindy was recognized
Linda Millsaps was recognized
to explain

Senate Finance Committee
Tuesday, May 03, 2005
544 LOB

AGENDA Sen. Thomas introd amend
Sen. Jenkins moved

Welcome and Opening Remarks

Bill

Sen. Kerr introd amend
Sen Rand moved for

SB 622 2005 Appropriations Act. Senators Garrou, Dalton, and Hagan

favorable report as amended

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCHFA
[signature] Horne	NCNS
[signature]	NCAHCF
[signature]	JD, M, PA
Steve Keene	NC Medical Society
[signature]	Smith Anderson
[signature]	NC B+TC
Andy Ellen	NCRMA
R. Paul Williams	NCHBA
Ron Aycock	County Com. Assoc
[signature]	NCACDS

Intern — NCDOC

[signature] Capitol Press

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Stevens	
Ryan Fox	TWC
Ed TURLINGTON	BROOKS PIERCE
Stana McKenney	NC DHHS
Molly Ryan	NCSBA
Katherine Joyce	NCASA
Mark Lanier	UNCW
Mary Mumford	Poyner Spruill
Andy Romanet	NCLM
John Phelps	NCLM
Alison Roach	NCDOT/DMV

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	NCICU
	McClees Consult
	Agriculture
	NCDA&CS
	ICCLH
	NCDOC
	NCFB
	Poyner Spruill

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 3, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Teresa Cone	DMV
Portia Marks	NCDOT / DMV
Hope McLamb	DOT/DMV
Ben Smith	Freedom Newspapers
Dave Lane	SA
Amy Hobbs	Hobbs & Co
Becky Brown	NC DOL
Art Briet	L

RULES FOR SENATE FINANCE

If amendments are offered, then the following rules must be met in order to make the amendment eligible for consideration:

1. Amendments that cause the budget to be unbalanced are not allowed.

2. Amendments are not allowed where funding comes from the unappropriated balance in either fiscal year as per the Availability Statement.

3. Amendments to the Appropriations Section are not allowed.

Senate Revenue

Bill Part	Proposal	Effective Date	2005-06	2006-07
	Increases			
32	Streamline Sales Tax	7/1/2005 & 10/1/2005	72.2	87.8
33	Tax Service Contracts/Warranties	10/1/2005	9.1	16.8
33	Tax Candy (now exempt)	9/1/2005	11.0	15.8
33	Make 1/2 Cent Sales Tax Permanent	7/1/2005	413.4	458.7
36	Reduce the highest marginal rate to 7.75% over two years	1/1/2006	20.1	24.6
38	Corporate rate reduction - from 6.9% to 6.4%*	1/1/2007		(39.0)
38	Corporate Tax "Throwout" Rule	1/1/2005	9.8	10.3
34	Increase tax on cigarettes by 35 cents, OTP from 2% to 4%**	7/1/2005	201.3	229.9
35	IRC Update - Partial Conformance	1/1/2005	(8.0)	(10.7)
37	Estate tax - continue & conform to feds	7/1/2005	30.7	121.6
32	Use tax line on income tax return (collecting tax already owed)	1/1/2005	3.2	3.2
39	Film incentives	1/1/2005	(4.8)	(4.8)
33	Exempt potting soil for farmers	10/1/2005	(0.2)	(0.3)
	Fees - General Fund Related			
44	DOT Fees (transfer to General Fund)		20.0	30.0
43	JPS Fees		20.4	20.4
	TOTAL		798.2	964.3

* Offset by approximately the same amount of budget savings by reducing the current earmarking for school facilities.

** Also caps the cigarette distributor discount at $125,000.

Senate Revenue

Part	Proposal	Revenue ($Mill.) 2005-06	2006-07
40	Insurance Regulatory Fee - Set at 5.5% (increase of 0.5%)	22.9 (2.0 increase)	22.9
40	Public Utility Regulatory Fee - Set at current rate of 0.12% of revenues & $200,000 for EMC.	no change	
41	Newborn Screening Fee - Increase from $10 to $14, makes program receipt supported.	0.37	0.37
42	Increase various agricultural fees.	0.61	0.61
42	Impose a $1,230 fee for mine inspections. Makes program receipt supported.	0.54	0.54
43	Increases criminal & civil court fees by $10.*	15.29	15.29
43	Increases cap of probate fees by $1000.*	1.60	1.60
43	Increase seat belt fee from $50 to $75.*	3.40	3.40
43	Charge actual cost of appellate bound volumes ($14 to $28).	0.12	0.12
43	Increases Butner property taxes by 5 cents.	0.16	0.16
43	Increase expunction fee.	0.25	0.25
43	New $90 fee for offenders on electronic monitoring.	0.12	0.12
43	Codifies current fee for Police Info. Network & increases monthly terminal fee.	0.33	0.65
44	Highway Fund Related Fees (see chart)	141.00	141.00
44	Highway Trust Fund Related Fees (see chart)	17.80	17.80
45	Industrial Commisson Fees - new fee for reviewing Form 21	0.80	0.80

* Included in the overall availability total on other page.

** A portion of these numbers are included in the availability total.

PCS FOR SB 622:

FINANCE AND TAX PROVISIONS

Part 32: Streamlined Sales Tax Changes

- The Streamlined Sales & Use Tax Agreement contains the uniformity and simplification provisions developed by the SSTP. The Agreement becomes effective when at least 10 states representing 20% of the population of all states with a sales tax are in compliance with the provisions of the Agreement. As of the end of April, 14 states representing 24% of the population have petitioned for membership. NC is one of those states. For NC to remain in compliance with the Agreement, it must make the changes recommended in this part of the bill.
- Eliminates caps and thresholds and imposes a uniform State rate. To conform to this requirement, the bill eliminates the 1% and the 1%, $80 tax rate by exempting some items from tax and fully taxing others. It also provides that the combined general rate of tax applies to telecommunications, satellite TV, and spirituous liquor. These items are currently taxed at 5% or 6%, as opposed to the combined general rate of 7%. The rate changes for telecommunications and satellite TV become effective July 1, 2005; the remaining changes become effective October 1, 2005.
- Adopts the Agreement's uniform definitions, clarifies the effective dates for rate increases and decreases, and conforms to the amnesty requirements of the Agreement.
- Retains the use tax line item on the individual income tax return for an additional five years. Effective July 1, 2005.

Part 33: Sales Tax Changes

- Makes the additional ½ cent State sales tax rate permanent at 4.5%, effective when it becomes law.
- The remaining sales tax changes become effective October 1, 2005:
  - Taxes cable television at the same rate as satellite television, with a credit allowed for any local franchise taxes paid.
  - Taxes satellite radio the same as satellite television.
  - Imposes the State and local sales tax on candy and on service contracts in which the seller agrees to maintain or repair tangible personal property.
  - Provides that voice mail is included as part of the gross receipts of telecommunication services.
  - Exempts potting soil sold to a farmer for use in planting crops from the sales and use tax.

Part 34: Tobacco Tax Rate Changes

- Increases the tax on cigarettes by 35 cents for a total tax of 40 cents, effective July 1, 2005.
- Increases the tax on OTP from 2% of cost price to 4% of cost price, effective July 1, 2005.
- Caps the 2% discount allowed to distributors for their expenses incurred in preparing records and reports at $125,000 annually.

Part 35: IRC Update

- Conforms State income tax law to recent federal changes, with the following exceptions:
  - Does not create a tonnage tax in lieu of an income tax on qualifying shipping activities.
  - Does not create a deduction for income attributable to domestic production activities.
  - Does not allow the deduction for sales and use tax paid in lieu of state income tax paid.

Part 36: Individual Income Tax Changes

- Phases out the 8.25% individual income tax rate over two years:
  - Effective January 1, 2006: 8%
  - Effective January 1, 2007: 7.75%

Part 37: Conform Estate Tax to Federal Sunset

- Ties the repeal of the State estate tax to the repeal of the federal estate tax, scheduled to become effective in 2010. The State also continues to conform to the increased exclusion amounts.
- The amount of the State estate tax remains as the amount of the state death tax credit allowed under the Code in 2001.

Part 38: Corporate Income Tax Changes

- Effective January 1, 2007, reduces the corporate income tax rate from 6.9% to 6.4%.
- Effective January 1, 2005, makes two changes in the way North Carolina apportions multistate income:
  - Amends the property factor so that outer-jurisdictional property is excluded from the numerator and denominator of the property factor. Outer-jurisdictional property is defined as "tangible personal property that is not physically located in any state." Examples of "outer-jurisdictional property" include orbiting satellites and undersea transmission cables.
  - Applies the throwout rule to the sales factor of the apportionment formula by removing from the denominator of the sales factor sales attributable to a state in which the taxpayer does not have nexus.

Part 39: Film Industry Incentives

- Effective January 1, 2005, provides a refundable income tax credit equal to 15% of the qualifying expenses totaling at least $1,000,000 spent by a production company in connection with a production that is NOT commercial or political advertising, is NOT a news program or sporting event, and does NOT contain obscene material. The incentive is targeted at feature films and TV episodes.
- The credit sunsets January 1, 2010.

Part 40: Set Rates for Insurance Regulatory Charge and Public Utilities Fees

- Sets insurance regulatory charge at 5.5%, an increase of .5%.
- Retains the current rate for the public utility regulatory fee of 0.12% for each public utility's jurisdictional revenues and $200,000 for the electric membership corporation.

Part 41: Newborn Screening Fee

- Sets the newborn screening fee at $14. The current fee amount is $10. The increased fee amount will allow the program to become receipt-supported.

Part 42: NER Fees

- Increases various agricultural fees.
- Imposes a $1,230 fee on operators of mines subject to inspection by the Department of Labor. This fee will make this program receipt-supported, like the elevator and boiler inspection programs.

Part 43: Justice and Public Safety Fees

- Increases the criminal and civil court of justice fees by $10; increases the cap on probate fees from $3,000 to $4,000; and increases the court cost for a seat belt violation from $50 to $75.
- Imposes a $90 fee on electronic monitoring devices used for house arrests.
- Increases the property tax rate for Butner from 20 cents to 25 cents.
- Codifies the current fee schedule for participation in the Police Information Network and, effective January 1, 2006, increases the monthly fee assessed for mobile terminals from $6 to $12.

Part 44: DOT Fee Increases

- Increases various fees payable to the Department of Transportation.

Part 45: Industrial Commission Fees

- Authorizes the Industrial Commission to adopt a fee for reviewing Form 21 agreements

May 1, 2005

Major DOT Fee Changes in SB622

The DOT fee changes in SB622 would raise revenues to the Highway Fund and Highway Trust Fund, on an annual basis, as follows:

Highway Fund	$141.0 million
Highway Trust Fund	$ 17.8 million

(The revenues shown on this page are annualized. The revenues in FY06 would actually be lower by 25% than those shown as the increases would not be implemented until October 1, 2005.)

Major Changes in Fees Going to the Highway Fund (Annual Basis)

Driver License Fees

Copies of Driver License Records — $23.7 million
Increases about 60%; last fee change1991

Operator Licenses – Class C *(most common)* — $ 5.1
Increase 31% to $4 per year; last fee change 2004

Restoration Fee *(after license revocation)* — $ 3.0
Increase 100% from $25 to $50; last fee change 1981

Commercial Operators Licenses and Endorsements — $ 2.8
Increase from $10 to $15/year for license; $1.25 to $3/year for endorsements; last fee change 1995

Staggered Registration — $63.0
Mostly automobiles and light trucks; automobile registration (tag) fees would go from $20 to $28, or 40%; last increase 1983

Truck Licenses — $22.0
Property-hauling vehicles; fees are based on weight; Increases of about 26-38%; last (significant) increase 1981

International Registration Plan — $15.8
Generally trucks used in interstate commerce; fees are apportioned among the member states; same increases as for truck licenses

Major Changes in Fees Going to the Highway Trust Fund (Annual Basis)

Certificate of Title — $11.7
Increase to $40; fee set at $35 in 1989 and increased By $1 in 2004

Registration Fees — $ 5.0
Miscellaneous fees set in 1989 at $10 are increased to $15; instant title fee increased from $50 to $75

DOT Fee Changes in SB622

Description	G.S. Ref.	Last Fee Change	Fee Amount		% Increase	New Fee Amount		% Increase	Revenues FY04	Annual Increase
Driver's License Fees										
Chauffeurs License-Class A&B	20-7 (l)	11/2004	$4.30	per year	-7%	$ 4.00			$ 129,004	$ (9,000)
Operators License-Class C	20-7 (l)	11/2004	$3.05	per year	31%	$ 4.00			$ 16,291,746	$ 5,074,478
Duplicate License	20-14	11/2004	$10.05		0%	$ 10.00			$ 5,735,130	$ (28,533)
Learners Permit (Incl CDL Permit)	20-7(l) & 20-37.13	8/1/1991	$10.00		50%	$ 15.00			$ 1,796,750	$ 898,375
Restoration Fee (inc 1/2 of DWI)	20-7(i1)	7/1/1981	$25.00		100%	$ 50.00			$ 3,031,478	$ 3,031,478
Special ID Card (same as duplicate)	20-14 20-37.7(d)	8/1/1991	$10.00		50%	$ 15.00			$ 2,284,250	$ 1,142,125
Record Fee (MVR)	20-26(c)	8/1/1991	$5/$7		60%	$8/$11			$ 39,467,378	$ 23,680,427
Drivers Improvement Clinic	20-16(e)	10/1/1982	$25		100%	$ 50.00			$ 86,678	$ 86,678
Commercial Application	20-37.15(a1)	9/1/1990	$20		50%	$ 30.00			$ 706,743	$ 353,372
Commercial License, Class A, B, C	20-37.16(d)	1/1/1995	$10/year		50%	$ 15.00			$ 2,963,866	$ 1,481,933
Commercial Endorsement	20-37.16(d)	1/1/1995	$1.25/year		140%	$ 3.00			$ 960,707	$ 1,344,990
Provisional License (Limited)	20-11(j)		$10		50%	$ 15.00			$ 1,148,184	$ 574,092
Staggered Registration									$ 157,378,509	**$ 62,951,404**
Automobile	20-87	9/1/1983	$20.00		40%	$ 28.00				
Trucks 4,000 lbs. & less	20-88(b)(1)	9/1/1983	$21.50		30%	$ 28.00				
Motorcycle	20-87(6)	9/1/1983	$9.00		67%	$ 15.00				
Trailer-Boat-Utility-Semi	20-88(c)	9/1/1983	$10.00		90%	$ 19.00				
Trailer-House	20-87(9)	10/1/1989	$7.00		57%	$ 11.00				
Temporary Plate (10 day)	20.50 (b)	10/1/1989	$3.00		67%	$ 5.00				
U-Drive It - 15 Passengers or fewer	20-87(1)	9/1/1983	$41.00		24%	$ 51.00				
Buses		9/1/1983	$23.00		43%	$ 33.00				
Misc. Registration Fees									$ 2,787,378	**$ 1,839,669**
Salvage Titles	20-85 (a)	8/15/1989	$10		50%	$ 15.00				
Late Penalty Fee	20-73©	8/1/1991	$10		50%	$ 15.00				
Certification Fee	20-42(b)	8/1/1991	$5		100%	$ 10.00				
Truck License	20-88	7/1/1981							$ 66,816,761	**$ 22,049,531**
			Farmer	Other	%Inc. Fmr	Farmer	Other	%Inc. Other		
4,000 lbs. and less			$0.23	$0.46	26%	$ 0.29	$ 0.59	28%		
4,001 - 9,000 lbs.		10/1/1993	$0.29	$0.63	38%	$ 0.40	$ 0.81	29%		
9,001 - 13,000 lbs.		10/1/1993	$0.37	$0.78	35%	$ 0.50	$ 1.00	28%		
13,001 - 17,000 lbs.		10/1/1993	$0.51	$1.06	33%	$ 0.68	$ 1.36	28%		
Over 17,000 lbs.		10/1/1993	$0.58	$1.20	33%	$ 0.77	$ 1.54	28%		
Lien Recording Fee (License & Theft)	20-77	7/1/1991	$10		50%	$ 15.00			$ 228,420	$ 114,210

DOT Fee Changes in SB622

Description	G.S. Ref.	Last Fee Change	Fee Amount		% Increase	New Fee Amount		% Increase	Revenues FY04	Annual Increase
International Registration Plan	20-86.1	7/1/1981	Farmer	Other	%Inc. Fmr	Farmer	Other	%Inc. Other	$ 47,623,500	$ 15,715,755
			$0.23	$0.46	26%	$ 0.29	$ 0.59	28%		
			$0.29	$0.63	38%	$ 0.40	$ 0.81	29%		
			$0.37	$0.78	35%	$ 0.50	$ 1.00	28%		
			$0.51	$1.06	33%	$ 0.68	$ 1.36	28%		
			$0.58	$1.20	33%	$ 0.77	$ 1.54	28%		
Dealer and Manufacturers License Fees	20-289								$ 1,071,555	$ 478,985
Distributors		7/1/1992	$50		40%	$ 70.00				
Wholesalers		7/1/1992	$50		40%	$ 70.00				
Manufacturers		7/1/1992	$100		50%	$ 150.00				
Factory Branch		7/1/1992	$70		43%	$ 100.00				
Factory and Distributor Rep		7/1/1992	$10		50%	$ 15.00				
Salesman		7/1/1992	$10		50%	$ 15.00				
Dealers		7/1/1992	$50		40%	$ 70.00				
Motor Carrier Fees	20-385	10/10/1983								
Registration of Exempt Operations			$25		80%	$ 45.00			$ 418,144	**$ 167,258**
Certificate of Exemption			$25		80%	$ 45.00				
Emergency Permit			$10		80%	$ 18.00				
Title Fees (Highway Trust Fund)										
Certificate of Title	*20-85*	*8/15/1989*	*$35*		*14%*	*$ 40.00*			*$ 83,715,429*	*$ 11,720,160*
Lien Recording or Removal Fee (HTF)	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*			*$ 2,141,361*	*$ 1,070,681*
Registration Fees (Highway Trust Fund)									*$ 10,067,099*	*$ 5,033,549*
Duplicate/Corrected Title	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Repossessor Title	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Transfer of Registration Plate	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Replacement of Registration Plate	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Duplicate Registration Card	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Manufacturer of Dealer Title	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Instant Title	*20-85.1(b)*	*8/15/1989*	*$50*		*50%*	*$ 75.00*				
Special Identification Card (11-15)	20-37.7	8/1/1991	$10		50%	$ 15.00			$ 137,790	$ 68,895
Sale of Collision Reports	20-42	7/1/1981	$4		25%	$ 5.00			$ 18,195	$ 4,549
									$ 447,006,055	$ 158,845,060

Note: Fees that go to the Highway Trust Fund are shown in italics.

Highway Fund	**$ 351,082,166**	**$ 141,020,670**
Highway Trust Fund	***$ 95,923,889***	***$ 17,824,390***

Note: Fee changes would be effective 10/1/05. The Annual Increase for FY06 would be 75% of the totals shown.

PCS for SB 622

DETAILED SUMMARY OF THE TAX PROVISIONS

Part 32, page 240
Streamlined Sales Tax Changes

The Streamlined Sales Tax Project is an effort by states, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project began in March 2000 and has the goal of achieving sufficient simplification and uniformity to encourage sellers without nexus in states to voluntarily collect use tax in participating states. In November 2002, the implementing states approved the Streamlined Sales and Use Tax Agreement. The Agreement contains the uniformity and simplification provisions developed by the Project. The Agreement becomes effective when at least 10 states representing 20% of the population of all states with a sales tax are in compliance with the provisions of the Agreement. As of April, 14 states representing 24% of the population have petitioned for membership, signifying that their individual state laws conform to the uniform provisions of the Agreement. North Carolina is one of those states.

Over the past several years, the Revenue Laws Study Committee has recommended, and the General Assembly has enacted, changes to North Carolina's sales tax laws to bring it into compliance with the Agreement. This part of the bill contains the changes North Carolina needs to make this year to remain in compliance with the agreement. The Governor also recommended conformity to the Streamlined Sales Tax Agreement.

Subsections (a) through (m) make the necessary changes to the sales and use tax laws to conform them to the Streamlined Sales and Use Tax Agreement. The remaining subsections make the necessary conforming changes.

Subsection	Explanation
(a)	Technical change.
(b)	Defines the term 'combined general rate' to be the State's general rate of tax plus the sum of the rates of the local sales and use taxes. Defines the term 'Streamlined Agreement.' Effective July 1, 2005.
(b), (q) (s)-(x)	Conforms the definition of food to the Streamlined Agreement by removing 'alcoholic beverage' from the definition of food; makes a conforming change to the exemption of food from the State sales tax base; makes conforming changes to the local meals tax statutes. These changes become effective October 1, 2005.
(b), (f)	States may allow sales tax holidays, but the items included in the holiday must be defined terms under the Streamlined Agreement. Subsection (b)

	defines the terms 'computer supplies' and 'school supplies' to conform to the defined terms in the Streamlined Agreement. The proposal defines the term 'school supplies' to mean the all-inclusive list of items defined as 'school supplies', 'school art supplies', and 'school instructional material' under the Streamlined Agreement. It also defines the term 'Streamlined Agreement' as the Streamlined Sales and Use Tax Agreement, adopted November 12, 2002, as amended November 16, 2003, and November 19, 2004. Subsection (f) amends the sales tax holiday statute to include the defined terms. The primary difference between the current law and the proposed law is the inclusion of computer supplies in the sales tax holiday. Computer supplies include computer storage media, printers, printer supplies, hand-held electronic schedulers, and personal digital assistants. The State's sales tax holiday included most of these items prior to August of 2004. The General Assembly changed the law in 2003 to except these items from the holiday in 2004, in conformity with the Streamlined Agreement. This subsection, based upon amendments to the Streamlined Agreement in November of 2004, expands the holiday to include these items once again so long as the sales price does not exceed $250 per item. These changes become effective October 1, 2005.
(c)-(e) (g), (k) (l), (n) (o), (p)	To conform to the Agreement, states must have one rate with no caps or thresholds. Subsection (c) revises the taxation of those items that had a lower rate, a cap, or a threshold by either exempting the item from tax or taxing the item at the combined general rate of tax. A detailed chart showing the changes is attached. Generally, the section makes the following changes: • Taxes telecommunications service at the combined general rate (7%) – current rate is 6%. Effective July 1, 2005. • Taxes satellite television at the combined general rate – currently taxed at 5%. Effective July 1,2005. • Taxes spirituous liquor at the combined general rate – currently taxed at 6%. Effective October 1, 2005. • Exempts items sold to farmers for use by the farmer; central office equipment sold to telephone companies; broadcasting equipment sold to radio or television stations; sales of fuel and machinery sold to commercial laundries; and certain sales to an interstate air courier for use at it hub. Effective October 1, 2005. • Taxes railway cars and locomotives, but allows refunds Effective October 1, 2005. • Imposes a privilege tax of 1% on manufacturing fuel and recycling equipment. Effective October 1, 2005. • Exempts funeral services and taxes tangible personal property. Effective October 1, 2005.
(h)	Conforms the statutory language to the information actually requested on

	a certificate of resale. Effective October 1, 2005.
(i)	Clarifies the effective dates for rate increases and decreases. Effective July 1, 2005.
(j)	Provides an amnesty provision, as required by the Agreement, for sellers who register with the State within 12 months after the State becomes a member of the Agreement. Effective October 1, 2005.
(m)	Retains the use tax line item on the individual income tax return for an additional five years. The law would otherwise sunset for the 2005 taxable year. The use tax is owed by the consumer and unlike sales tax, it must be remitted to the State by the consumer. To simplify use tax collection, the General Assembly established an annual filing period in 1997 for the payment of use taxes owed by consumers on mail-order and other out-of-state purchases. In 1999, it simplified use tax collection by providing that the use tax will be paid on taxpayers' income tax returns. In 2000, the General Assembly sunset this provision in anticipation that use tax collection would be handled by retailers by 2003 as a result of the Streamlined Sales Tax Agreement. The 2003 sunset date was overly optimistic. The General Assembly extended the sunset to 2005 in S.L. 2003-284. This subsection extends it for five more years. Effective when it becomes law.

Part 33, page 250
Sales Tax Changes

Part 33 makes the following changes to the State's sales and use tax laws:

- Makes the additional ½¢ State sales tax rate permanent at 4.5%, effective when it becomes law. The General Assembly increased the State sales tax rate by ½ % in S.L. 2001-424 from 4% to 4.5%. This increase was to sunset July 1, 2003. S.L. 2003-284 extended the sunset for two years, July 1, 2005. This section would repeal the sunset. Before 2001, the State sales tax rate had last been increased in 1991 from 3% to 4%. The Governor also recommended the removal of the sunset on the ½% additional State sales tax.
- Conforms the sales tax treatment of cable service and satellite digital audio radio service to the sales tax treatment of direct to home satellite service. Direct to home satellite service is subject to a combined general rate of tax, 7%. Cable service is currently subject to a 5% local franchise tax[1]. Subsection (h) of this section provides a credit for a cable service retailer equal to the local cable television franchise taxes paid. Effective October 1, 2005. The Governor also recommended taxing cable and satellite television services the same.
- It imposes the State and local sales and use taxes on candy and on service contracts in which the seller agrees to maintain or repair tangible personal property. The Governor Commission to Modernize State Finances recommended that the State begin taxing

[1] G.S. 160A-214; G.S. 153A-154.

services. Prior to 2003, candy was subject to State and local sales tax. S.L. 2003-284 taxed soft drinks but exempted candy from sales tax. This section would tax candy as well as soft drinks. Effective October 1, 2005. The Governor recommended taxing candy at the combined general rate of tax.

- Provides that voicemail is included as part of the gross receipts of telecommunications service. Effective October 1, 2005.
- Exempts potting soil sold to farmers for use in planting crops from the sales and use tax. Effective October 1, 2005.

Part 34, page 252
Tobacco Tax Rate Changes

Part 34 does three things:

- It increases the tax on cigarettes from 5¢ a pack to 40¢ a pack, effective July 1, 2005. The General Assembly last increased the cigarette tax in 1991 from 2¢ a pack to 5¢ a pack. The Governor recommended increasing the tax on cigarettes over a two-year period from 5¢ a pack to 45¢ a pack.
- It caps the discount allowed to cigarette distributors at $125,000, effective for the 12-month period beginning July 1st. The discount is equal to 2% of the tax payment. Its purpose is to cover the distributor's expenses related to tax records and reporting. This amount is larger than the annual discount currently claimed by any taxpayer. The cap applies separately to each licensed location. It is not uncommon for a single distributor to have more than one location.
- It increases the tax on 'other tobacco products' such as snuff and cigars, from 2% of the cost price of the product to 4%, effective July 1, 2005. The General Assembly first imposed a tax on OTP in 1991 at the rate of 2%. The Governor also recommended a proportionate increase in the OTP tax rate.

Part 35, page 252
IRC Update

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code, by reference to the Code.[2] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[3] 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

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[2] 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.

[3] 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."

changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made. Under current North Carolina law, the reference date to the Code is May 1, 2004.

Part 35 of the bill would change the reference date to January 1, 2005. Changing the reference date to January 1, 2005, would incorporate federal changes made in the Working Families Tax Relief Act of 2004 (P.L. 108-311) and the American Jobs Creation Act of 2004 (P.L. 108-357). In addition, in early 2005 Congress enacted an act to enhance the tax benefit for certain charitable contributions made in January 2005 for tsunami relief (P.L. 109-1). That act did not amend the Code, but rather used uncodified language to bring about that result. This bill would conform to that legislation as well. A detailed summary of these federal tax law changes is attached.

The bill does not conform to three aspects of the federal tax law changes:

- It does not create a tonnage tax in lieu of an income tax on qualifying shipping activities. – The AJCA provides that a corporation can elect to be subject to a tonnage tax rather than an income tax on its qualified shipping activities. The tonnage tax is based on the taxpayer's "notional shipping income." Notional shipping income is determined by reference to a monetary rate per ton shipped. The rate is 40 cents per 100 tons per day for the first 25,000 tons shipped per vessel and 20 cents per 100 tons per day for the amount shipped in excess of 25,000 tons per vessel. Once notional shipping income has been determined, tax is computed on that amount at the rate of 35%. In exchange for electing to be subject to the tonnage tax, the taxpayer may exclude from its gross income any amount resulting from its qualifying shipping activities. Conforming to this exclusion would result in income from shipping activities being excluded from taxation in North Carolina. In effect, it would result in a loss of tax revenues at the State level without a corresponding loss at the federal level. In order to maintain this revenue source, this bill requires the taxpayer to add back the amounts deducted from gross income because of this new provision.

- It does not create a deduction for income attributable to domestic production activities. The AJCA phases out the exclusion for extraterritorial income: 20% in 2005, 40% in 2006; eliminated in 2007. Congress created a new deduction for domestic production activities to replace the ETI. "Domestic production activities" is defined fairly broadly. For taxable years beginning in 2009, the amount of the deduction is equal to nine percent (9%) of the lesser of the domestic production activities income of the taxpayer or taxable income without regard to the deduction. This deduction will be phased in over several years beginning in 2005. For the 2005 and 2006 taxable years the deduction will be limited to three percent (3%): this amount will grow to six percent (6%) for the 2007 and 2008 taxable years. In order to maintain this revenue source, this bill require the taxpayer to add back the amounts deducted from gross income because of this new provision.

- It does not allow a deduction of state and local sales taxes in lieu of a deduction for state income taxes. The AJCA allows taxpayers to deduct state and local sales taxes in lieu of deducting state and local income taxes. This federal provision is of particular benefit to taxpayers who reside in states that do not impose a personal

income tax. For most North Carolina taxpayers, the greater benefit would come from deducting state income taxes rather than from deducting state and local sales taxes.

The Governor recommended conforming to the federal tax law changes, with the exception of these three items.

Part 36, page 253
Individual Income Tax Changes

Part 36 of the bill phases out the 8.25% upper-income individual income tax rate: it reduces the rate to 8% for taxable years beginning on or after January 1, 2006 and eliminates the bracket for taxable years beginning on or after January 1, 2007. The Governor recommended phasing this tax rate down over a two-year period.

In 2001, the General Assembly added a new tax bracket that imposed an additional one-half percent income tax (a total rate of 8.25%) on certain North Carolina taxable income for three years. The change was estimated to affect approximately 2% of North Carolina taxpayers. In 2003, the General Assembly extended the tax rate for two more years. This bill retains the upper bracket for one additional year, but reduces the rate from 8.5% to 8%. The bracket would be eliminated in 2007.

Under prior North Carolina law, tax was imposed at the following rates on individuals' North Carolina taxable income:

Tax Rate	Married filing jointly	Heads of household	Single filers	Married filing separately
6.0%	Up to $21,250	Up to $17,000	Up to $12,750	Up to $10,625
7.0%	Over $21,250 and up to $100,000	Over $17,000 and up to $80,000	Over $12,750 and up to $60,000	Over $10,625 and up to $50,000
7.75%	Over $100,000	Over $80,000	Over $60,000	Over $50,000

The 2001 law created a fourth tax bracket for North Carolina taxable income as follows. This bill would reduce the rate to 8% for taxable years beginning on or after January 1, 2006, and it would repeal the fourth tax bracket for taxable years beginning on or after January 1, 2007.

Tax Rate	Married filing jointly	Heads of household	Single filers	Married filing separately
8.25%	Over $200,000	Over $160,000	Over $120,000	Over $100,000

Part 37, page 255

Conform Estate Tax to Federal Sunset

Part 37 ties the repeal of the State estate tax to the repeal of the federal estate tax, scheduled to become effective for deaths occurring on or after January 1, 2010. The State continues to conform to the increasing federal exclusion amounts.[4] The amount of the State estate tax remains at the amount of the state death tax credit allowed under the Code in 2001. The Governor also recommended continuing the State estate tax.

North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999. It replaced the inheritance tax with an estate tax that was equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of state estate tax was known as a "pick-up" tax because it picked up for the state the amount of federal estate tax that would otherwise be paid to the federal government. In 2001, Congress increased the exclusion amount for the federal estate tax and phased out the state death tax credit over four years by reducing it 25% in 2002, 50% in 2003, and 75% in 2004, and by repealing it entirely in 2005.

In 2002, the General Assembly enacted legislation not to conform to the phase-out of the state death tax credit. In other words, North Carolina began tying the amount of the State estate tax owed to the federal credit as it existed in 2001 rather than as it currently exists. The 2002 legislation was set to sunset for estates of decedents dying on or after January 1, 2004. S.L. 2003-284 extended the sunset to July 1, 2005, meaning that the estate tax would continue to be based on the federal credit as it existed in 2001. This bill would remove the sunset. The result of the removal of the sunset is that so long as there is a federal estate tax, there will be a North Carolina estate tax. The amount of the State estate tax will be equal to the amount of the federal state death tax credit, as it existed in 2001.

Part 38, page 255
Corporate Income Tax Changes

Part 38 reduces the corporate income tax rate from 6.9% to 6.4%, effective for taxable years beginning on or after January 1, 2007. It also makes two changes in the way the State apportions multistate income, effective for taxable years beginning on or after January 1, 2005.

Reduction of corporate income tax rate. – In 1987, the General Assembly repealed the property tax on inventories of manufacturers, retailers, and wholesalers; increased the corporate income tax rate from 6% to 7%; and earmarked a portion of the corporate income tax collections to the Public School Building Capital Fund. In 1991, the General Assembly increased the corporate income tax rate from 7% to 7¾% and enacted a temporary surtax on corporate income. In 1996, the General Assembly began phasing down the corporate income tax rate over a four-year period. The corporate income tax rate has been 6.9% since 2000. This section would repeal the earmarking of a percentage

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[4] North Carolina conforms to the federal exemption amounts: 100% exemption for property passing to surviving spouse; $1.5 million exemption for other estates. Under current federal law, this exemption amount rises to $2 million in 2006, $3.5 million by 2009, and the tax is fully repealed in 2010.

of the corporate income tax collections to the Public School Building Capital Fund[5] and reduce the corporate income tax rate by a corresponding percentage.

Changes to the corporate apportionment formula – Section 38.2 makes two changes to the way North Carolina apportions multistate income:

- It amends the property factor so that outer-jurisdictional property is excluded from the numerator and denominator of the property factor. Outer-jurisdictional property is defined as "tangible personal property that is not physically located in any state." Examples of "outer-jurisdictional property" include orbiting satellites and undersea transmission cables.
- It applies the throwout rule to the sales factor of the apportionment formula by removing from the denominator of the sales factor sales attributable to a state in which the taxpayer does not have nexus.

When a state seeks to impose an income tax on a multi-state corporation, the due process clause imposes two restrictions. First, the state may tax only those corporations whose income-producing activities have some minimal connection with the taxing state. This restriction is known as the nexus requirement. Second, the state may tax only that income that is rationally related to values connected with the taxing state. The portion of total income that is rationally related to a state is determined under apportionment and allocation rules. Ideally, each state's law for determining the portion of income taxable by it would be such that, if adopted by all states, every corporation would be taxable on 100% of its income and none of its income would be taxed by more than one state.

Income includes both business and non-business income. Business income includes income from the day-to-day regular operations of the corporation. States apportion business income based on formulas that measure the percentage of certain business activities of the corporation conducted in the state compared to the total amount conducted both in and outside of the state. The business activities most often considered are ownership or use of property, sales, and payment of compensation. Non-business income generally arises from activities outside a corporation's regular course of business, such as income from property not used for or related to the corporation's business activities. States usually allocate non-business income based on its geographical source, if any; otherwise, it is allocated based on the corporation's commercial domicile. A corporation's commercial domicile is the principal place from which the business is directed or managed.

Although the use of a formula to apportion business income to a state does not produce a figure that reflects precisely the income attributable to the state, it does provide a rough approximation of the amount of income that is reasonably related to business activities conducted in the state. The United States Supreme Court has found that the requirements of due process are satisfied by the use of such formulas, and a state's formula will be upheld unless the taxpayer shows that it is arbitrary or produces a result that is out of proportion to the amount of business transacted in the State. Moorman Manufacturing Co. v. Bair, 437 U.S. 267, 274, 98 S.Ct. 2340, 2345, 57 L.Ed.2d 197 (1978); Hans Rees' Sons v. North Carolina, 283 U.S. 123, 135, 51 S.Ct. 385, 389, 75 L.Ed. 879 (1931).

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[5] Section 31.1(t) provides that a portion of the net lottery revenues will be credited to the Public School Building and Technology Fund.

Although there is a risk of double taxation when a corporation is taxable by states using different apportionment formulas, the United States Supreme Court has found that the constitution does not require a uniform apportionment formula for all states.

G.S. 105-130.4 provides for the allocation and apportionment of income for multistate corporations doing business in North Carolina. For most corporations[6], business income is apportioned by multiplying the total income of the corporation by an apportionment fraction. The numerator of this fraction is the sum of the property factor, the payroll factor and twice the sales factor. The denominator of this fraction is four. The property factor, payroll factor and sales factor are determined as follows:

- The property factor represents the percentage of the corporation's real or tangible personal property that is owned or rented and used in this State during the taxable year.
- The payroll factor represents the percentage of the corporation's compensation that is paid within this State during the taxable year.
- The sales factor represents the percentage of the corporation's sales that are attributable to this State during the taxable year.

Outer Jurisdictional Property: Subsections (a) and (b) of this section change the way in which the property factor is computed by excluding outer-jurisdictional property from both its numerator and denominator. Outer-jurisdictional property is tangible personal property that is not physically located in any state. Examples of 'outer-jurisdictional property' include orbiting satellites and undersea transmission cables. The Revenue Laws Study Committee recommended this change in 2003.

Throwout rule: Subsection (c) of this section makes changes to the way in which the sales factor is computed. Under current North Carolina law, the denominator of the sales factor includes all sales made by the corporation during the taxable year. The numerator includes only the sales attributable to this State. If every state apportioned income this way, some of the corporation's income could escape taxation because the corporation might not be taxable in every State. This subsection would remove from the denominator sales that are not either 1) made to the US government[7] or 2) attributable to a state in which the taxpayer is taxable. It is important to note the distinction here between "taxable" and "taxed." In this context, "taxable" refers to the authority of the state to levy a tax on the corporation, whether or not the state actually does levy the tax. This provision is generally referred to as the throwout rule because sales that are not attributable to another state in which the taxpayer is taxable are "thrown out" of the denominator of the sales factor. Currently, West Virginia and New Jersey are the only states that use the throwout rule.

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[6] The formula for apportioning business income to North Carolina does not apply to public utilities and excluded corporations. Excluded corporations are building and construction contractors, securities dealers, loan companies, and corporations that receive more than 50% of their ordinary gross income from intangible property.

[7] Sales to the US government receive special treatment because it is not always possible to determine to which market the sale of the property is attributable. This different treatment may also be justified if the sales are of defense or war materials because it may not be possible to determine where those materials were delivered because of coded delivery instructions.

Part 39, page 257
Film Industry Jobs Incentives

Part 39 provides a refundable income tax credit equal to 15% of the qualifying expenses that equal or exceed $1,000,000 spent by a production company in connection with a production. The credit is effective for taxable years beginning on or after January 1, 2005, and expires January 1, 2010. The Governor recommended some incentive for sales tax paid on movie equipment purchases.

Part 39.1 replaces the current film industry development grant program[8] with a refundable income tax credit equal to 15% of the qualifying expenses of a production company. The incentive is targeted at feature films and episodic television series. The credit is effective for taxable years beginning on or after January 1, 2005, and it expires for qualifying expenses occurring on or after January 1, 2010.

A production company is a person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or education purposes. However, for the purposes of this credit, the production may not be commercial or political advertising, it may not be a television production of a news program or sporting event, and it may not contain material that is obscene.[9]

To receive the credit, a taxpayer must submit a detail accounting of its qualifying expenses to the North Carolina Film Office of the Department of Commerce. The Film Office, with the assistance of the regional film commission for the location of the production, must certify the amount of the qualifying expenses.[10] Qualifying expenses are the total amount spent in North Carolina for:

- Goods and services purchased by a production company in connection with a production.
- Compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. Any amounts paid to an individual in excess of $1,000,000 with respect to a single production cannot be included as a qualifying expense.

In the case of an episodic television series, an entire season of episodes is considered one production. The taxpayer must maintain and make available for inspection any information or records required by the Secretary of Revenue r the regional film commissions. The taxpayer has the burden of proving eligibility for the credit and the amount of the credit.

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[8] Section 39.1(d) repeals G.S. 143B-434.4. The General Assembly has not appropriated money to this account for the past couple of years.

[9] 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.

[10] Subsection 39.1(c) amends the tax secrecy statutes to allow the exchange of information concerning the credit with the NC Film Office of the Department of Commerce and the regional film commissions.

The amount of the credit is 15% of the production company's qualifying expenses. The credit may be claimed for the taxable year in which the production activities are completed. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. If the credit exceeds the amount of tax imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. A pass-through entity is considered a taxpayer for purposes of claiming this credit; therefore, it does not distribute the credit among its owners.

The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding April 1:

- The location of the sites used in a production for which a credit was claimed.
- The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation.
- The number of people employed in the State with respect to the credits claimed.
- The total cost to the General Fund of the credits claimed.

Explanation of Federal Tax Law Changes made in the:

Working Families Tax Relief Act of 2004 (P.L. 108-311)
American Jobs Creation Act of 2004 (P.L. 108-357
An act to enhance the tax benefit for certain charitable contributions made in January 2005 for tsunami relief (P.L. 109-1).

Working Families Tax Relief Act (WFTRA) of 2004 (P.L. 108-311)

The Working Families Tax Relief Act of 2004 was signed into law by President Bush on October 4, 2004. Despite its title, the act provides tax benefits for businesses as well as individuals and families. The following features of the act are important for State tax purposes:

- *Creation of a more uniform definition of "child" throughout the Code starting with the 2005 taxable year.* At the federal level, the definition of "child" is important in five areas: the dependency exemption, the child credit, the earned income credit, the dependent care credit, and head of household filing status. WFTRA creates a uniform definition of "child" that applies to each of these areas. Under the new definition, a child is a qualifying child if the child satisfies three separate conditions. First, the child must have the same principal place of abode as the taxpayer for more than one half the tax year (residency test). Temporary absences due to special circumstances are not included. Second, the child must be the child, stepchild, sibling, stepsibling, or a descendant of any of these relations of the taxpayer (relationship test). Third, the child must satisfy an age condition to be deemed a qualifying child. In general, a child must be under age 19, or under age 24 if a full-time student, to be a qualifying child. However, lower age limits were retained for the dependent care credit (under 13 years of age unless disabled) and the child tax credit (under 17 years of age). For State tax purposes, the changes are important in so far as they relate to the dependency exemption, the child tax credit, and head of household filing status. The new definition of qualifying child for the dependency exemption may result in a change of status of some children – where the new law has a residency test, the old law had a support test (the one claiming the child had to provide at least 50% of the child's support). For the federal child tax credit, some taxpayers may become eligible to claim the credit due to the elimination of some restrictions related to foster children. This is important because eligibility for the State child tax credit is dependent on the taxpayer's eligibility for the federal credit. In general, the uniform definition should not affect head of household filing status.
- *Extension of the above-the-line deduction for educators.* Under previous law, an eligible educator was allowed an above-the-line deduction of up to $250 for amounts paid by the teacher for books or supplies used in the classroom. This provision was set to expire with the 2003 taxable year. WFTRA extended this provision for the 2004 and 2005 taxable years.

- *Extension of elective expensing of qualified environmental remediation expenditures.* Under previous law, a taxpayer could elect to treat qualified environmental remediation expenditures that would normally be charged to a capital account and depreciated over time as deductible in the current year. To be deductible currently, the expenditure must be paid or incurred with the abatement or control of hazardous substances at a qualified contaminated site. This provision would have expired with the 2003 tax year. WFTRA extended this provision for the 2004 and 2005 taxable years.
- *Extension of enhanced deduction for qualified computer contributions.* Under previous law, corporations were allowed an enhanced charitable contribution deduction for contributions of computer technology or equipment to schools or public libraries that would use the computer equipment for educational purposes. This provision would have expired with the 2003 tax year. WFTRA extended this provision for the 2004 and 2005 taxable years.
- *Elimination of the phase down of the deduction for qualified clean fuel property.* Under previous law, a taxpayer was allowed a specified deduction for clean fuel vehicles or refueling property placed into service before January 1, 2007. The amount of that deduction was to be reduced by 25% in 2004, 50% in 2005, and 75% in 2006, and was to be completely phased out in 2007. WFTRA eliminated the phase down in the 2004 and 2005 taxable years. Without further action, the phase down will resume at 75% in 2006.
- *Extension of Archer Medical Savings Accounts (MSAs).* Archer MSAs were designed to give small employers, their employees, and self-employed individuals a way of creating tax-deferred savings to offset qualifying medical expenses. The program was designed to be limited in scope: no new Archer MSAs could be set up after a certain threshold had been met or after the end of 2003. WFTRA extends the period in which new Archer MSAs may be created until the end of 2005.

American Jobs Creation Act (AJCA) of 2004 (P.L. 108-357)

The American Jobs Creation Act of 2004 was signed into law by President Bush on October 22, 2004. The bill makes many substantial changes in many different areas of tax law. The more significant changes for State tax purposes are listed below.

- *Repeal of the exclusion for extraterritorial income (ETI)/deduction for qualified domestic production income.* Under previous law, U.S. exporters were eligible for an exclusion from gross income for qualifying extraterritorial income. In 2000, the World Trade Organization declared this exclusion an illegal trade subsidy. Congress did not take action regarding this finding until the European Union began placing sanctions on U.S. exports. At the time Congress acted those sanctions were at 12% and were rising by one percentage point per month. This exclusion will be phased out over several years. The ETI exclusion will be reduced by 20% in 2005 and by 40% in 2006. The ETI exclusion will be eliminated altogether beginning in 2007. Based on Congress's enactment of this law, the EU has indicated it will drop sanctions on U.S. imports beginning January 1, 2005.

In part to replace the ETI exclusion, Congress created a new deduction for domestic production activities. "Domestic production activities" is defined fairly broadly and includes a) the sale, lease, or license of property manufactured or produced by the taxpayer in significant part in the United States, b) the sale, lease, or license of United States produced motion pictures and video tapes, c) the sale of electricity, natural gas, or potable water within the United States, d) construction activities performed in the United States, e) engineering or architectural services performed in the United States for construction projects occurring in the United States. For taxable years beginning in 2009, the amount of the deduction is equal to nine percent (9%) of the lesser of the domestic production activities income of the taxpayer or taxable income without regard to the deduction. This deduction will be phased in over several years beginning in 2005. For the 2005 and 2006 taxable years the deduction will be limited to three percent (3%): this amount will grow to six percent (6%) for the 2007 and 2008 taxable years.

- *Extension of 179 expensing limit increase/revisions regarding SUVs.* Section 179 of the Code allows a taxpayer to treat the cost of certain property as an expense which is not chargeable to a capital account. This allows the taxpayer to take a deduction for the property in the year in which it is placed into service rather than depreciating the property over a number of years. In 2003, Congress increased the amount that could be expensed under Section 179 of the Code from twenty-five thousand dollars ($25,000) to one hundred thousand dollars ($100,000).[11] The federal change was originally set to expire after the 2005 taxable year. The AJCA extends this provision through the 2007 taxable year.

  One frequent complaint about the federal provision was that it allowed expensing of costs associated with the purchase of a sports utility vehicle by a small business. General rules relating to the depreciation of motor vehicles did not apply to many large SUVs because those rules applied only to vehicles weighing 6,000 pounds or less. The effect of this provision was to allow an immediate write-off for the purchase price of a large SUV, but to require more gradual depreciation for the purchase of most other passenger vehicles. Taxpayers thus had a greater incentive to purchase a large SUV. The AJCA limits the amount of that may be expensed under Section 179 with respect to a vehicle weighing less than 14,000 pounds to twenty-five thousand dollars ($25,000)[12]. The federal legislation made this change effective when it become law, October 22, 2004.

- *Establishment of 15-year straight line cost recovery for qualified leasehold improvements and qualified restaurant property..* The AJCA provides for 15-year straight-line depreciation for qualified leasehold improvements to nonresidential real property placed into service after the date of enactment (October 22, 2004) and prior to January 1, 2006. A qualified leasehold improvement is an improvement made to

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[11] The General Assembly conformed to this federal change as part of the 2003 Budget Act (S.L. 2003-284).

[12] There are some exceptions to this rule for certain vehicles. These exceptions were put in place to ensure that the legislation would apply only to SUV and not other types of heavy motor vehicles (such as delivery trucks) that have a weight greater than 6,000 pounds but less than 14,000 pounds.

the interior of a building by either the lessor or lessee and placed in service more than three years after the building is placed in service. Under prior law, a qualified leasehold improvement was depreciated using straight-line depreciation over a 39-year period – the same period as for depreciation of nonresidential property in general.

A similar depreciation schedule is put into place for qualified restaurant property placed into service after the date of enactment (October 22, 2004) and prior to January 1, 2006. In order to qualify as "qualified restaurant property", the property must be a building improvement placed in service more than three years after the building is placed in service and the restaurant must use more than half of the square footage of the building.

If the leasehold improvement or restaurant property contains tangible personal property that may be segregated from the cost of other improvements and that tangible personal property has a shorter depreciation period, then the taxpayer may depreciate that property separately using the shorter period.

- *Modification of deduction for charitable contribution of used motor vehicles.* The AJCA limits the amount of the deduction for contributions of motor vehicles to charity. Vehicle donation programs have become popular in recent years. Generally, the taxpayer who has donated the motor vehicle has claimed a deduction for the full "blue book" value of the vehicle. The new law will limit the amount of the deduction based on how the donee organization uses the vehicle. If the charitable organization sells the vehicle without using it in any significant way, the amount of the deduction cannot exceed the gross proceeds of the sale. If the charity retains the vehicle for its own use, the taxpayer must receive an acknowledgment from the charity as to the value of the vehicle. The deduction may not exceed the acknowledged value of the vehicle to the charity. These changes become effective with the 2005 taxable year.

- *Establishment of an above-the-line deduction for certain attorney fees and court costs.* The AJCA allows an individual taxpayer an above-the-line deduction (i.e. from gross income) for attorney fees and court costs associated with certain civil rights actions, claims against the government, and Medicare fraud claims. Under previous law, these costs were deductible only as an itemized deduction, meaning that they were deductible only if the taxpayer itemized deductions and only to the extent aggregate itemized deductions exceeded 2% of the taxpayer's adjusted gross income. This provision became effective when the legislation became law, October 22, 2004.

- *Modification of deduction for automobile expenses of United States Postal Service employees.* The AJCA allows United States Postal Service employees who deliver and collect mail on rural routes and receive qualified reimbursements of automobile expenses involving these duties to deduct their actual automobile expenses that exceed the reimbursement amount. This is an itemized deduction and therefore may be claimed only to the extent aggregate deductions exceed 2% of the taxpayer's adjusted gross income. Under previous law, the deduction could not exceed the amount of the qualified reimbursements, regardless of actual expenditures. As under previous law, reimbursements in excess of the amount of actual expenditures do not have to be included in gross income.

- *Exclusion of National Health Service Corps Loan Program repayments from gross income and from employment taxes.* The National Health Service Corps is an agency housed within the U.S. Department of Health and Human Services and has as its mission improving the health of the nation's underserved populations. Under the National Health Service Corps Loan Repayment Program, participants in the program may receive up to $25,000 per year for two years to pay off qualified educational loans. The loan repayment is in addition to any salary the participant receives from the employing community site. Under previous law, the amount of loan repayment was included in taxable income and was also subject to employment taxes (i.e. FICA). Under the AJCA, these loan repayments are to be excluded from both gross income and from employment taxes. This provision became effective with the 2004 taxable year.

- *Creation of a deduction for start-up costs and amendments to the expensing schedule for such costs.* Under the AJCA, a taxpayer may take a deduction of up to $5,000 for start-up and organization expenses. However, the amount of the deduction is reduced by the amount by which those expenses exceed $50,000. Any expenses in excess of $5,000 must be amortized over a 15-year period. Under previous law, no current expensing was allowed, the full amount of the start-up and organizational expenses would be amortized over 5 years. This provision is effective for expenses that occur on or after the date the legislation became effective, October 22, 2004.

- *Modification regarding the treatment of gain on the sale of a principal residence when the residence was acquired in a like-kind exchange.* Under current law, a taxpayer is allowed to exclude up to $250,000 of gain from the sale of a residence ($500,000 if a married couple filing jointly) if the taxpayer owned and used the residence as a principal residence for at least 2 of the last 5 years. The AJCA makes a change to this provision when the home was acquired as part of a like-kind exchange.[13] Under the AJCA, a residence received in a like-kind exchange must be owned by the taxpayer for at least five years and must be used as a principal residence of the taxpayer for at least two of the last five years in order to qualify for the exclusion from gross income of the gain on the sale of the residence. This provision became effective for residences sold on or after the date the legislation was enacted, October 22, 2004.

- *Establishment of deduction of State sales and use taxes in lieu of deduction for State income taxes.* The AJCA allows taxpayers to deduct state and local sales taxes in lieu of deducting state and local income taxes. This provision became effective with the 2004 taxable year and is set to expire for taxes beginning in 2006 and thereafter. Taxpayers that elect to deduct state and local sales taxes instead of state and local income taxes will have two options for determining the deductible amount: a) they may accumulate receipts for the actual amount of sales and use tax paid, or b) they may refer to tables prepared by the Secretary of the Treasury which estimate the amount of taxes paid based on average consumption and other factors.

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13 A like-kind exchange is an exchange of property held for productive use in a trade or business or for investment for similar property. Unless cash is received as part of the trade, the exchange is not a taxable event.

This federal provision is of particular benefit to taxpayers who reside in states that do not impose a personal income tax. For most North Carolina taxpayers, the greater benefit would come from deducting state income taxes rather than from deducting state and local sales taxes. Some exceptions to this general statement would include the following:

- Nonresidents or part-year residents who reside in a state that does not impose an income tax and who have relatively low income tax liability in North Carolina or other states.
- Taxpayers who may have a low tax liability due to eligibility for a significant amount of tax credits.
- North Carolina residents for whom a large portion of income is not subject to taxation. This class of taxpayers would include many government retirees whose government pensions are not subject to State income tax under the decisions in *Bailey* and the related cases and whose Social Security payments are not subject to State income tax under G.S. 105-134.6.

North Carolina law currently requires taxpayers to add back the amount of the deduction allowed under the Code for state, local, and foreign income taxes. In order to treat the deduction for state and local sales taxes equivalent to the deduction for state, local, and foreign income taxes, the General Assembly should require the add back of the deduction for state and local sales taxes if it decides to conform to the federal change. This is problematic, however, given that the federal legislation is effective for the 2004 taxable year and the General Assembly cannot conform to the federal legislation and require the add back unless it acts before the end of the year. Although the practical effect of conforming to the change and requiring the add back is the same as not conforming to the change at all, a court could find that requiring an add back would in effect be a retroactive tax increase. Therefore, this bill does not conform to the change allowing a deduction of state and local sales taxes in the 2004 taxable year, but does conform to that change and require an add back beginning with the 2005 taxable year. This can be seen in subsections (a), (d), and (e) of this Part.

<u>An Act to accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami (P.L. 109-1).</u>

On December 26, 2004, a large earthquake centered in the Indian Ocean unleashed a catastrophic tsunami that resulted in widespread devastation in 11 countries in South Asia, Southeast Asia, and Africa. The disaster is estimated to have caused billions of dollars in damages and produced a death toll in excess of 160,000.

On January 6, 2005, the first act of the 109 Congress was to approve accelerated tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami. President Bush signed the act into law the following day. The act allows a taxpayer to treat a cash contribution for tsunami relief efforts made in January 2005 to be treated as if it were made on December 31, 2004. Thus, the taxpayer would be able to take a deduction in the 2004 taxable year rather than the 2005 taxable year. In order to qualify for the accelerated benefit, the contribution must be cash. Donations of property or cash substitutes, such as

marketable securities, are not eligible for the accelerated benefits. In addition, the contribution must be specifically designated to be for tsunami relief. A contribution that is made to charitable organization that is assisting in relief efforts but that is not specifically designated to relief efforts is not eligible for the accelerated benefits. For example, a donation to the Red Cross would be eligible for the accelerated benefit only if the donation were specifically designated for tsunami relief efforts; a general donation to the Red Cross would not be eligible for the accelerated benefit. Subsection (e) of this part contains special language to ensure that North Carolina conforms to this federal act.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 622

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

S622-ARBf-9 [v.1]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
~~First Edition~~ PCS 20503-LT-6

Senator Thomas

moves to amend the bill on page 267, line 17, by rewriting the line to read:
"person's driving record or criminal history.";

and on page 267, lines 18 through 47, by rewriting the lines to read:

"(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

(1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For every desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the additional monthly fee is six dollars ($6.00) per device.

(2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly

fee is twenty-five dollars ($25.00) per device. For a mobile device, the fee is six dollars ($6.00) per device.'

SECTION #.(b) G.S. 114-10.1(d), as enacted by this section, reads as rewritten:

'(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

(1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For a desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the additional monthly fee is ~~six dollars ($6.00)~~ twelve dollars ($12.00) per device.

(2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the fee is ~~six dollars ($6.00)~~ twelve dollars ($12.00) per device.'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 622

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

S622-ARBf-9 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 622

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

S622-ALYx-9 [v.3]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
S622-PCS20503-LT-6

Senator Kerr

moves to amend the bill on page 252, lines 25-33, by rewriting those lines to read:

"**SECTION 34.1.(c)** G.S. 105-113.21(a1) reads as rewritten:

'(a1) Discount. – A distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). The discount a distributor deducts on all reports filed under this Part for a 12-month period beginning July 1 may not exceed a maximum of one hundred twenty-five thousand dollars ($125,000). This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.'

SECTION 34.1.(d) G.S. 105-113.39 reads as rewritten:

'**§ 105-113.39. Discount.**

A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this Part, who files a timely report under G.S. 105-113.37, and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). The discount a distributor deducts on all reports filed under this Part for a 12-month period beginning July 1 may not exceed a



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 622

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

S622-ALYx-9 [v.3]

maximum of twelve thousand five hundred dollars ($12,500). This discount covers losses due to damage to tobacco products, expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.'

SECTION 34.1.(e) This section becomes effective July 1, 2005.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 622
PROPOSED COMMITTEE SUBSTITUTE S622-PCS20503-LT-6

Short Title: 2005 Appropriations Act. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

Requested by: Senators Garrou, Dalton, Hagan

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the Executive Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

Requested by: Senators Garrou, Dalton, Hagan

TITLE OF ACT

SECTION 1.2. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2005."

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the biennium ending June 30, 2007, according to the following schedule:

Current Operations – General Fund	**2005-2006**	**2006-2007**

EDUCATION

Community Colleges System Office	$ 792,784,715	$ 746,844,357
Department of Public Instruction	6,686,828,445	6,694,525,352
University of North Carolina – Board of Governors		
Appalachian State University	97,985,189	98,017,482
East Carolina University		
Academic Affairs	163,117,460	165,825,346
Health Affairs	45,236,835	45,199,318
Elizabeth City State University	27,836,223	27,945,857
Fayetteville State University	42,457,022	42,888,221
NC Agricultural and Technical University	76,760,995	77,033,079
North Carolina Central University	58,670,213	58,651,761
North Carolina School of the Arts	19,903,778	19,887,953
North Carolina State University		
Academic Affairs	298,649,068	303,604,023
Agricultural Extension	35,806,488	35,806,688
Agricultural Research	45,270,285	45,549,731
University of North Carolina at Asheville	28,616,607	29,645,303
University of North Carolina at Chapel Hill		
Academic Affairs	212,811,809	221,386,937
Health Affairs	163,536,496	165,717,793
Area Health Education Centers	44,519,506	44,519,506
University of North Carolina at Charlotte	125,946,379	132,426,616
University of North Carolina at Greensboro	112,494,664	113,358,313
University of North Carolina at Pembroke	40,978,831	41,646,390
University of North Carolina at Wilmington	74,233,617	76,212,723
Western Carolina University	71,221,796	71,938,286
Winston-Salem State University	48,827,490	48,923,209
General Administration	47,357,834	47,356,334
University Institutional Programs	24,985,466	28,970,466
Related Educational Programs	112,128,293	113,991,033
North Carolina School of Science and Mathematics	13,840,377	13,840,377
UNC Hospitals at Chapel Hill	39,231,482	39,231,482
Total University of North Carolina – Board of Governors	2,072,424,203	2,109,574,227

HEALTH AND HUMAN SERVICES

Department of Health and Human Services		
Office of the Secretary	114,180,919	130,744,045
Division of Aging	29,495,139	29,495,139
Division of Blind Services/Deaf/HH	9,636,797	9,681,220
Division of Child Development	264,750,017	267,356,799
Division of Education Services	33,852,267	34,281,895
Division of Facility Services	16,045,403	17,795,105
Division of Medical Assistance	2,461,281,279	2,606,201,525
Division of Mental Health	600,373,655	602,298,655
NC Health Choice	62,035,981	62,035,981
Division of Public Health	139,796,232	141,314,496
Division of Social Services	185,339,061	186,973,442
Division of Vocation Rehabilitation	41,755,526	42,142,193
Total Health and Human Services	$ 3,958,542,276	$ 4,130,320,495

NATURAL AND ECONOMIC RESOURCES

Department of Agriculture and Consumer Services	49,829,113	49,456,901
Department of Commerce		
Commerce	44,407,935	36,759,201
Commerce State-Aid	11,222,085	11,222,085
NC Biotechnology Center	12,083,395	10,583,395
Rural Economic Development Center	24,802,607	24,802,607
Department of Environment and Natural Resources	171,187,401	163,712,105
Department of Labor	14,154,785	14,169,511
JUSTICE AND PUBLIC SAFETY		
Department of Correction	$ 1,023,193,451	$ 1,041,825,169
Department of Crime Control and Public Safety	33,509,206	33,899,206
Judicial Department	338,914,267	341,627,255
Judicial Department – Indigent Defense	90,879,188	85,879,188
Department of Justice	76,555,200	77,190,756
Department of Juvenile Justice and Delinquency Prevention	135,174,503	135,774,503
GENERAL GOVERNMENT		
Department of Administration	62,419,016	58,783,228
Office of Administrative Hearings	2,987,410	2,969,712
Department of State Auditor	10,850,737	10,840,918
Office of State Controller	10,043,268	10,044,511
Department of Cultural Resources		
Cultural Resources	63,541,449	61,950,582
Roanoke Island Commission	1,783,374	1,783,374
State Board of Elections	5,067,543	5,069,307
General Assembly	42,984,588	46,965,432
Office of the Governor		
Office of the Governor	5,324,590	5,344,528
Office of State Budget and Management	5,019,735	5,021,795
OSBM – Reserve for Special Appropriations	4,430,000	4,180,000
Housing Finance Agency	5,750,945	4,750,945
Department of Insurance		
Insurance	28,088,214	28,110,582
Insurance – Volunteer Safety Workers' Compensation	2,500,000	4,500,000

Office of Lieutenant Governor	754,737	753,037
Department of Revenue	78,238,895	77,858,775
Department of Secretary of State	8,657,943	8,638,857
Department of State Treasurer		
State Treasurer	8,690,595	8,295,843
State Treasurer – Retirement for Fire and Rescue Squad Workers	8,551,457	8,551,457
TRANSPORTATION		
Department of Transportation	0	0
RESERVES, ADJUSTMENTS AND DEBT SERVICE		
Reserve for Compensation Increases	192,876,000	499,876,000
Salary Adjustment Fund: 2005-2007 Biennium	4,500,000	4,500,000
Salary Adjustment Fund: 2004-2005 Fiscal Year	4,500,000	4,500,000
Reserve for Teachers' and State Employees' Retirement Contribution	14,617,000	14,617,000
Reserve for Retirement System Payback	25,000,000	0
Reserve for Death Benefit Trust	12,899,200	12,899,200
Reserve for Disability Income Plan	6,586,500	6,586,500
Reserve for State Health Plan	125,000,000	167,000,000
Contingency and Emergency Fund	5,000,000	5,000,000
Reserve for Information Technology Rate Adjustments	(2,300,000)	(2,300,000)
Information Technology Fund	24,375,000	8,025,000
MH/DD/SAS Trust Fund	5,000,000	0
Health and Wellness Trust Fund	10,000,000	0
Reserve for Job Development Investment Grants (JDIG)	8,000,000	12,400,000
Reserve for Healthy NC	2,000,000	0
Reserve for Increased Fuel Costs	3,000,000	0
Debt Service		
General Debt Service	489,544,211	619,291,140
Federal Reimbursement	1,616,380	1,616,380

TOTAL CURRENT OPERATIONS – GENERAL FUND	**$ 16,824,391,562**	**$ 17,416,590,416**

Requested by: Senators Garrou, Dalton, Hagan

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) The General Fund availability used in developing the 2005-2007 biennial budget is shown below:

	FY 2005-2006	FY 2006-2007
Unappropriated Balance Remaining from Previous Year	$ 0	$ 247,722,490
Projected Over Collections FY 2004-2005	428,400,000	0
Projected Reversions FY 2004-2005	75,000,000	0
Less Earmarkings of Year End Credit Balance	0	0
Savings Reserve Account	(125,850,000)	0
Repairs and Renovations	(50,000,000)	0
Beginning Unreserved Credit Balance	**$ 327,550,000**	**$ 247,722,490**
Revenues Based on Existing Tax Structure	**$ 15,250,100,000**	**$ 15,903,000,000**
Nontax Revenues		
Investment Income	75,300,000	78,500,000
Judicial Fees	142,200,000	147,900,000
Disproportionate Share	100,000,000	100,000,000
Insurance	56,600,000	58,800,000
Other Nontax Revenues	150,400,000	161,800,000
Highway Trust Fund/Use Tax Reimbursement Transfer	252,558,117	252,663,009
Highway Fund Transfer	16,200,000	16,200,000
Subtotal Nontax Revenues	**793,258,117**	**815,863,009**
Total General Fund Availability	**$ 16,370,908,117**	**$ 16,966,585,499**
Adjustments to Availability: 2005 Session		
Streamlined Sales Tax Changes	72,200,000	87,800,000
Maintain 4.5% Sales Tax Rate	413,400,000	458,700,000
Other Sales Tax Changes		
Apply Sales Tax to Service Contracts and Warranties	9,100,000	16,800,000
Apply Sales Tax to Candy	11,000,000	15,800,000
Exempt Potting Soil for Farmers	(200,000)	(300,000)
Tobacco Tax Rate Changes	201,300,000	229,900,000
Reduce Highest Marginal Individual Income Tax Rate to 7.75% Over Two Years	20,100,000	24,600,000
Continue Use Tax Line on Individual Returns	3,200,000	3,200,000
Conform Estate Tax to Federal Sunset	30,700,000	121,600,000
Reduce Corporate Income Tax Rate	0	0
Corporate Tax "Throwout" Rule	9,800,000	10,300,000
Film Industry Jobs Incentives	(4,800,000)	(4,800,000)
IRC Update – Partial Conformance	(8,000,000)	(10,700,000)
Increase Earmarking for NC Grape Growers Council	(150,000)	(150,000)
Justice and Public Safety Fees	20,428,271	20,428,271
Transfer from Tobacco Trust Fund	34,000,000	30,000,000
Transfers from Special Revenue and Other Funds	8,953,950	0

Reimburse Debt Service for Certain Capital Facilities and Land Acquisition per SL 2004-179	5,958,723	21,060,827
Adjust Transfer from Insurance Regulatory Fund	256,513	243,813
Adjust Transfer from Treasurer's Office	68,478	67,478
Subtotal Adjustments to Availability: 2005 Session	**$ 827,315,935**	**$ 1,024,550,389**
Revised General Fund Availability	**$ 17,198,224,052**	**$ 17,991,135,888**
Less: General Fund Appropriations		
SB 622 (2005 Appropriations Act)	(16,850,501,562)	(17,416,590,416)
G.S. 143-15.3B: Clean Water Management Trust Fund	(100,000,000)	(100,000,000)
Total General Fund Appropriations 2005-2007 Biennium	**($16,950,501,562)**	**($17,516,590,416)**
Unappropriated Balance Remaining	**$ 247,722,490**	**$ 474,545,472**

SECTION 2.2.(b) Notwithstanding G.S. 143-16.4(a2), of the funds credited to the Tobacco Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2005-2007 fiscal biennium, the sum of thirty-four million dollars ($34,000,000) for the 2005-2006 fiscal year and the sum of thirty million dollars ($30,000,000) for the 2006-2007 fiscal year shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund) to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2005-2006 and 2006-2007 fiscal years.

SECTION 2.2.(c) G.S. 143-15.3 is amended by adding a new subsection to read:

"(a2) The transfer of funds to the Savings Reserve Account in accordance with this section or any other provision of law is not an "appropriation made by law", as that phrase is used in Article V, Section 7(1) of the North Carolina Constitution."

This subsection becomes effective June 30, 2005.

SECTION 2.2.(d) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer one hundred million dollars ($100,000,000) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2005. Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2005-2006 fiscal year to be used in accordance with G.S. 143-15.3A. This subsection becomes effective June 30, 2005.

SECTION 2.2.(e) When the Highway Trust Fund was created in 1989, the revenue from the sales tax on motor vehicles was transferred from the General Fund to the Highway Trust Fund. To offset this loss of revenue from the General Fund, the Highway Trust Fund was required to transfer one hundred seventy million dollars ($170,000,000) to the General Fund each year, an amount equal to the revenue in 1989 from the sales tax on motor vehicles. This transfer did not, however, make the General Fund whole after the transfer of the sales tax revenue because no provision has been made to adjust the amount for the increased volume of transactions and increased vehicle prices. The additional eighty million dollars ($80,000,000) transferred from the Highway Trust Fund to the General Fund by this act is an effort to recover a portion of the sales tax revenues that would have gone to the General Fund over the last 16 years.

SECTION 2.2.(f) Notwithstanding G.S. 105-187.9(b)(1), the sum to be transferred under that subdivision for the 2005-2006 fiscal year and for the 2006-2007 fiscal year is two hundred fifty million dollars ($250,000,000).

SECTION 2.2.(g) Section 2.2(g) of S.L. 2002-126 is repealed.

SECTION 2.2.(h) Notwithstanding any other provision of law to the contrary, effective July 1, 2005, cash balances remaining in special funds on June 30, 2005, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) according to the schedule that follows. These funds shall be used to support General Fund appropriations for the 2005-2006 fiscal year.

Fund	**Amount Transferred**
Department of Environment and Natural Resources	
Budget Code 24300, Fund Code 2338 (DAQ-Inspections and Maintenance – Air Pollution)	$ 300,000
Budget Code 24300, Fund Code 2106 (DEH – Sleep Products)	200,000
Budget Code 24300, Fund Code 2735 (DLR – Sedimentation Fees)	200,000
Budget Code 24306, Fund Code 2127 (DWQ – Clean-Up Dry Cleaning Solvent)	3,000,000
Budget Code 24300, Fund Code 2130 (DWQ – Well Construction Fund)	100,000
Budget Code 24300, Fund Code 2335 (DWQ – Lab Certification Fees)	100,000
Budget Code 24300, Fund Code 2341 (DWQ – Water Permits)	500,000
Budget Code 64306, Fund Code 6341 (DWQ – WW Treatment Maintenance and Repair)	100,000
Budget Code 24304, Fund Code 2982 (DWQ – Riparian Buffer Restoration)	2,000,000
Department of Commerce	
Budget Code 24600, Fund Code 2711 (Industrial Development Fund)	500,000
Department of Corrections	
Budget Code 24502, (Inmate Canteen/Welfare Fund)	440,000
Judicial Department	
Budget Code 22005, Fund Code 2263 (Worthless Check Fund)	100,000
Department of Administration	
Budget Code 24160, Fund Code 2000 (NC Flex)	913,950

SECTION 2.2.(i) The transfer of cash from Department of Correction, Budget Code 74500, Fund Code 7100 (Prison Enterprises) to Nontax Budget Code 19978 (Intrastate Transfers) shall be increased by five hundred thousand dollars ($500,000), effective July 1, 2005, for the 2005-2006 fiscal year.

PART III. CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

SECTION 3.1. Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated, are made for the biennium ending June 30, 2007, according to the following schedule:

Current Operations – Highway Fund	**2005-2006**	**2006-2007**
Department of Transportation		
Administration	$ 93,888,317	$ 95,100,980
Division of Highways		
Administration	30,621,612	30,632,164

Construction	140,470,000	143,080,000
Maintenance	715,895,029	665,722,211
Planning and Research	4,280,000	4,280,000
OSHA Program	425,000	425,000
Ferry Operations	21,264,811	21,264,811
State Aid		
Municipalities	93,370,000	95,980,000
Public Transportation	66,466,447	89,866,447
Railroads	16,531,153	15,531,153
Governor's Highway Safety	293,118	293,118
Division of Motor Vehicles	95,447,914	95,268,137
Other State Agencies	237,392,745	230,530,729
Reserves and Transfers	20,798,052	36,958,052
TOTAL	**$1,537,144,198**	**$ 1,524,932,802**

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

HIGHWAY FUND AVAILABILITY STATEMENT

SECTION 3.2. The Highway Fund availability used in developing the 2005-2007 biennial budget is shown below:

Highway Fund Availability Statement	**2005-2006**	**2006-2007**
Beginning Credit Balance	-	-
Estimated Revenue	$ 1,631,640,000	$ 1,661,240,000
Estimated Reversions	-	-
Total Highway Fund Availability	**$ 1,631,640,000**	**$ 1,661,240,000**

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 4.1. Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated, are made for the biennium ending June 30, 2007 according to the following schedule:

Current Operations – Highway Trust Fund	**2005-2006**	**2006-2007**
Intrastate System	$469,925,196	$486,590,730
Urban Loops	190,018,179	196,757,026
Aid to Municipalities	49,306,114	51,054,717
Secondary Roads	86,596,114	89,274,717
Program Administration	41,156,280	42,259,800
Transfer to General Fund	252,558,117	252,663,009
GRAND TOTAL CURRENT OPERATIONS AND EXPANSION	**$1,089,560,000**	**$1,118,600,000**

PART V. BLOCK GRANTS

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

DHHS BLOCK GRANTS

SECTION 5.1.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2006, according to the following schedule:

COMMUNITY SERVICES BLOCK GRANT		
01.	Community Action Agencies	$ 15,071,666
02.	Limited Purpose Agencies	837,315
03.	Department of Health and Human Services to administer and monitor the activities of the Community Services Block Grant	837,315
TOTAL COMMUNITY SERVICES BLOCK GRANT		$ 16,746,296
SOCIAL SERVICES BLOCK GRANT		
01.	County departments of social services (Transfer from TANF – $4,500,000)	$ 28,868,189
02.	Allocation for in-home services provided by county departments of social services	2,101,113
03.	Adult day care services	2,155,301
04.	Child Protective Services/CPS Investigative Services/Child Medical Evaluation Program	238,321
05.	Foster Care Services – CCIS	1,500,000
06.	Division of Aging and Adult Services – Home and Community Care Block Grant	1,834,077
07.	UNC-CH CARES Program for training and consultation services	247,920
08.	Mental Health Services Program	422,003
09.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services – Developmentally Disabled Services Program	5,000,000
10.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	3,234,601
11.	Division of Services for the Blind – Independent Living Program	3,182,987

12.	Division of Vocational Rehabilitation Services – Easter Seals Society/UCP	188,263
13.	Office of the Secretary – Office of Economic Opportunity for N.C. Senior Citizens' Federation for outreach services to low-income elderly persons	41,302
14.	Child Care Subsidies	3,356,063
15.	Division of Facility Services – Adult Care Licensure Program	411,897
16.	Division of Facility Services – Mental Health Licensure	205,668
17.	State administration	1,706,017
18.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services – Administration	18,098
19.	Division of Facility Services	37,204
20.	Office of the Secretary – NC Interagency Council for Coordinating Homeless Programs	250,000
21.	Department of Administration for the N.C. State Commission of Indian Affairs In-Home Services Program for the Elderly	203,198
22.	Transfer to Preventative Health Services Block Grant for HIV/AIDS education, counseling, and testing	145,819
TOTAL SOCIAL SERVICES BLOCK GRANT		$ 55,348,041
LOW-INCOME ENERGY BLOCK GRANT		
01.	Energy Assistance Programs	$ 13,208,740
02.	Crisis Intervention	9,592,387
03.	Administration County DSS $1,930,734 Division of Social Services $300,000 Division of Mental Health, Developmental Disabilities, and Substance Abuse Services $7,146 Local Residential Energy Efficiency Service Providers $353,820 Office of the Secretary $594,558	3,186,258
04.	Weatherization Program	4,343,072

05.	Department of Administration – N.C. State Commission of Indian Affairs	54,840
06.	Heating Air Repair and Replacement Program	2,025,687
TOTAL LOW-INCOME ENERGY BLOCK GRANT		$ 32,410,984
MENTAL HEALTH SERVICES BLOCK GRANT		
01.	Provision of community-based services for severe and persistently mentally ill adults	$ 6,983,202
02.	Provision of community-based services to children	3,921,991
03.	Comprehensive Treatment Services Program for Children	1,500,000
04.	Administration	568,911
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT		$ 12,974,104
SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		
01.	Provision of community-based alcohol and drug abuse services, tuberculosis services, and services provided by the Alcohol and Drug Abuse Treatment Centers	$ 20,441,082
02.	Continuation of services for pregnant women and women with dependent children	8,069,524
03.	Continuation of services to IV drug abusers and others at risk for HIV diseases	4,816,378
04.	Child Substance Abuse Prevention	5,835,701
05.	Provision of services to children and adolescents	4,940,500
06.	Juvenile Services – Family Focus	851,156
07.	Allocation to the Division of Public Health for HIV/STD Risk Reduction Projects	383,980
08.	Allocation to the Division of Public Health for HIV/STD Prevention by County Health Departments	209,576
09.	Allocation to the Division of Public Health	

	for the Maternal and Child Health Hotline	37,779
10.	Administration	2,596,307
TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		$ 48,181,983
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		
01.	Child care subsidies	$158,708,393
02.	Quality and availability initiatives	33,059,644
03.	Administrative expenses	7,163,654
04.	Transfer from TANF Block Grant for child care subsidies	81,292,880
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		$280,224,571
TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT		
01.	Work First Cash Assistance	$107,794,365
02.	Work First County Block Grants	94,653,315
03.	Child Protective Services – Child Welfare Workers for local DSS	12,452,391
04.	Support Our Students – Department of Juvenile Justice and Delinquency Prevention	2,749,642
05.	Family Violence Prevention	1,200,000
06.	Work First – After-School Services for At-Risk Children	2,249,642
07.	Division of Social Services – Administration	356,291
08.	Office of the Secretary – Administration	60,249
09.	Child Welfare Training	2,550,000
10.	Boys and Girls Clubs	1,000,000
11.	Work Central Career Advancement Center	550,000
12.	Special Children's Adoption Fund	3,000,000
13.	Maternity Homes	838,000

14.	After-School Programs for At-Risk Youth in Middle Schools	500,000
15.	Teen Pregnancy Prevention Initiatives	2,500,000
16.	Subsidized Child Care Program	36,601,205
17.	TANF Automation Projects	592,500
18.	NC FAST Implementation	1,447,640
19.	Transfer to the Child Care and Development Fund Block Grant for child care subsidies	81,292,880
20.	Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,500,000
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT		$356,888,120

MATERNAL AND CHILD HEALTH BLOCK GRANT

01.	Healthy Mothers/Healthy Children Block Grants to Aid-to-County	9,359,236
02.	Children's Health Services Aid-to-County	7,364,216
03.	Healthy Beginnings Aid-to-County	404,559
04.	Maternal Health Aid-to-County	397,761
05.	Children's Health Services	2,878,883
06.	Office of Women's Health and Maternal Health Activities	114,063
07.	State Center for Health Statistics	28,874
08.	Local Technical Assistance & Training	46,866
09.	Injury and Violence Prevention	149,438
10.	Office of Minority Health	99,352
11.	Special Supplemental Nutrition Program for Women, Infants and Children (WIC)	25,713
12.	Immunization Program – Vaccine Distribution	819,997
13.	Administration	518,137
TOTAL MATERNAL AND CHILD		

HEALTH BLOCK GRANT		$ 22,207,095
PREVENTIVE HEALTH SERVICES BLOCK GRANT		
01.	Statewide Health Promotion Programs	$3,637,771
02.	Rape Crisis/Victims' Services Program – Council for Women	197,112
03.	Transfer from Social Services Block Grant – HIV/AIDS education, counseling, and testing	145,819
04.	Adolescent Pregnancy Prevention Coalition of NC	150,000
05.	Administration and Program Support	121,271
06.	Osteoporosis Task Force Operating Costs	150,000
TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT		$4,401,973

GENERAL PROVISIONS

SECTION 5.1.(b) Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

(1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.
(2) A delineation of the proposed State and local administrative expenditures.
(3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.
(4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.
(5) A projection of current year expenditures by program or activity.
(6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

SECTION 5.1.(c) Changes in Federal Fund Availability. – If the United States Congress reduces or increases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase or decrease proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating a decrease in federal fund availability, the Department shall not eliminate the funding for a program or activity appropriated in this section. In allocating an increase in federal fund availability, the Department shall not propose funding for new programs or activities not appropriated in this section or increase administrative expenditures.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Committee on Governmental Operations, the House of Representatives Appropriations Subcommittee

on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 5.1.(d) All changes to the budgeted allocations to the Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and a report shall be submitted to the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. All changes to the budgeted allocations to the Block Grant shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 5.1.(e) The Department of Health and Human Services shall develop a monitoring and oversight plan for all recipients, both public and private, and subrecipients of the federal Block Grant funding. The plan shall be modeled after the Department's performance contracting initiative and include the following:

(1) Performance standards for recipients.
(2) Financial audit standards for non-State entities equivalent to the requirements in G.S. 143-6.1 for non-State entities receiving State funds.
(3) Means for collecting performance data from recipients.
(4) Any other information necessary for monitoring and overseeing the use of Block Grant funding.

The Department shall provide the plan to the Fiscal Research Division by January 1, 2006.

SECTION 5.1.(f) The Department of Health and Human Services shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on positions funded from federal Block Grants. The report shall include the following for each Block Grant:

(1) All State positions currently funded through the Block Grant, including permanent, temporary, and time-limited positions.
(2) Budgeted salary and fringe benefits for each position.
(3) Identify the percentage of Block Grant funds used to fund each position.

The report shall be submitted no later than December 1, 2005.

SOCIAL SERVICES BLOCK GRANT

SECTION 5.1.(g) Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for Coordinating Homeless Program are exempt from the provisions of 10A NCAC 71R.0201(3).

LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

SECTION 5.1.(h) Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

MENTAL HEALTH BLOCK GRANT

SECTION 5.1.(i) The sum of one million five hundred thousand dollars ($1,500,000) appropriated in this section in the Mental Health Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2005-2006 fiscal year, and the sum of four hundred twenty-two thousand three dollars ($422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human

Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to continue a Comprehensive Treatment Services Program for Children in accordance with Section 10.25 of this act.

SECTION 5.1.(j) The Department of Health and Human Services shall contract with the University of North Carolina at Chapel Hill for the purpose of providing psychology student stipends in the amount of fifty thousand dollars ($50,000) for the 2005-2006 fiscal year. Twenty-five thousand dollars ($25,000) of this contract shall be paid from the Mental Health Block Grant.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 5.1.(k) The sum of four hundred thousand dollars ($400,000) appropriated in this section to the Department of Health and Human Services in the Child Care and Development Fund Block Grant shall be used for the operations of the Medical Child Care Pilot.

SECTION 5.1.(l) Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development and School Readiness for the subsidized child care program.

SECTION 5.1.(m) If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT (TANF)

SECTION 5.1.(n) The sum of four hundred sixteen thousand five hundred forty dollars ($416,540) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 5.1.(o) The sum of two million seven hundred forty-nine thousand six hundred forty-two dollars ($2,749,642) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services and transferred to the Department of Juvenile Justice and Delinquency Prevention for the 2005-2006 fiscal year shall be used to support the existing Support Our Students Program and to expand the Program statewide, focusing on low-income communities in unserved areas. These funds shall not be used for administration of the Program.

SECTION 5.1.(p) The sum of one million two hundred thousand dollars ($1,200,000) appropriated under this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars ($75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall jointly develop a plan for utilizing these funds. The plan shall include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2005. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars ($5,000); and (ii) each county shall receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2005, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2005. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

The Department of Health and Human Services shall report on the uses of these funds no later than March 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 5.1.(q) The sum of two million two hundred forty-nine thousand six hundred forty-two dollars ($2,249,642) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, shall be used to expand after-school programs and services for at-risk children. The Department shall develop and implement a grant program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy and school dropout. The Department shall award grants to community-based organizations that demonstrate the ability to develop and implement linkages with local departments of social services, area mental health programs, schools, and other human services programs in order to provide support services and assistance to the child and family. These funds may be used to fund one position within the Division of Social Services to coordinate at-risk after-school programs and shall not be used for other State administration. The Department shall report no later than March 1, 2006, on its progress in complying with this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 5.1.(r) The sum of twelve million four hundred fifty-two thousand three hundred ninety-one dollars ($12,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2005-2006 fiscal year for Child Welfare Improvements, shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and post-adoption services for eligible families.

SECTION 5.1.(s) The sum of two million five hundred fifty thousand dollars ($2,550,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for fiscal year 2005-2006 shall be used to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.
(2) Support the Masters Degree in Social Work/Baccalaureate Degree in Social Work Collaborative.
(3) Provide training for residential child care facilities.
(4) Provide for various other child welfare training initiatives.

SECTION 5.1.(t) The sum of eight hundred thirty-eight thousand dollars ($838,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services shall be used to purchase services at maternity homes throughout the State.

SECTION 5.1.(u) The sum of three million dollars ($3,000,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Special Children Adoption Fund, for the 2005-2006 fiscal year shall be used to implement this subsection. The Division of Social Services, in consultation

with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

SECTION 5.1.(v) The sum of one million five hundred thousand dollars ($1,500,000) appropriated in this section in the TANF Block Grant and transferred to the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for child caring agencies for the 2005-2006 fiscal year shall be allocated to the State Private Child Caring Agencies Fund.

SECTION 5.1.(w) The sum of one million dollars ($1,000,000) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant for Boys and Girls Clubs shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of TANF Block Grant funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce school dropout and teen pregnancy rates. The Department shall encourage and facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs to submit joint applications for the funds if appropriate.

SECTION 5.1.(x) The sum of five hundred fifty thousand dollars ($550,000) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant shall be transferred to Work Central, Inc. Work Central, Inc. shall report on the number of people served and the services received as a result of the receipt of funds. The report shall contain expenditure data, including the amount of funds used for administration and direct training. The report shall also include the number of people who have been employed as a direct result of services provided by Work Central, Inc., including the length of employment in the new position. The Department of Health and Human Services shall evaluate the program and ensure that services provided are not duplicative of local employment security commissions in the nine counties served by Work Central, Inc. The evaluation report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than May 1, 2006.

SECTION 5.1.(y) The sum of one million four hundred forty-seven thousand six hundred forty dollars ($1,447,640) in this section appropriated to the Department of Health and Human Services in the TANF Block Grant shall be used to implement the component of N.C. FAST that specifically deals with the creation and implementation of a statewide automated child welfare information system. The statewide system shall be implemented in compliance with federal regulations in order to avoid any potential payback of funds due to noncompliance. The Department of Health and Human Services shall report on its compliance with this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than January 1, 2006.

SECTION 5.1.(z) The sum of five hundred thousand dollars ($500,000) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant shall be used to expand after-school programs for at-risk children attending middle school. The Department shall develop and implement a grant program to award funds to community-based programs demonstrating the capacity to reach children at risk of teen pregnancy and school dropout. These funds shall not be used for training or administration at the State level.

All funds shall be distributed to community-based programs, focusing on those communities where similar programs do not exist in middle schools. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on its progress in complying with this subsection no later than May 1, 2006.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 5.1.(aa) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2005-2006 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an Abstinence Until Marriage Education Program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

SECTION 5.1.(bb) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

SECTION 5.1.(cc) Of the funds budgeted in the Maternal and Child Health Block Grant, three million two hundred fifty thousand dollars ($3,250,000) shall be used for a school nurse funding initiative for the 2005-2006 fiscal year. The Department of Health and Human Services, Division of Public Health, in conjunction with the Department of Public Instruction, shall provide funds to communities to hire school nurses. The program will fund approximately 65 time-limited nurses. The criteria shall include determining the areas in the greatest need for school nurses with the greatest inability to pay for these nurses. Among other criteria, consideration shall also be given to (i) the current nurse-to-student ratio; (ii) the economic status of the community; and (iii) the health needs of area children.

There shall be no supplanting of local or Title I funds with these block grant funds. Communities shall maintain their current level of effort and funding for school nurses. No block grant funds shall be used for funding nurses for State agencies. All funding shall be used for direct services.

The Department of Health and Human Services shall report on the use of funds allocated under this section by December 1, 2005, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

NER BLOCK GRANTS

SECTION 5.2.(a) Appropriations from federal block grant funds are made for fiscal year ending June 30, 2006, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT

01.	State Administration	$ 1,000,000
02.	Urgent Needs and Contingency	1,000,000
03.	Scattered Site Housing	13,200,000
04.	Economic Development	8,710,000
05.	Community Revitalization	13,500,000

06.	State Technical Assistance	450,000
07.	Housing Development	2,000,000
08.	Infrastructure	5,140,000
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT – 2006 Program Year		$ 45,000,000

SECTION 5.2.(b) Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

SECTION 5.2.(c) Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

SECTION 5.2.(d) Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars ($1,000,000) may be used for State Administration; not less than one million dollars ($1,000,000) may be used for Urgent Needs and Contingency; up to thirteen million two hundred thousand dollars ($13,200,000) may be used for Scattered Site Housing; up to eight million seven hundred ten thousand dollars ($8,710,000) may be used for Economic Development, including Urban Redevelopment Grants and Small Business or Entrepreneurial Assistance; not less than thirteen million five hundred thousand dollars ($13,500,000) shall be used for Community Revitalization; up to four hundred fifty thousand dollars ($450,000) may be used for State Technical Assistance; up to two million dollars ($2,000,000) may be used for Housing Development; up to five million one hundred forty thousand dollars ($5,140,000) may be used for Infrastructure. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

SECTION 5.2.(e) Increase Capacity for Nonprofit Organizations. – Assistance to nonprofit organizations to increase their capacity to carry out CDBG-eligible activities in partnership with units of local government is an eligible activity under any program category in accordance with federal regulations. Capacity building grants may be made from funds available within program categories, program income, or unobligated funds.

SECTION 5.2.(f) Department of Commerce Demonstration Grants in Partnership with Rural Economic Development Center, Inc. – The Department of Commerce, in partnership with the Rural Economic Development Center, Inc., shall award up to two million two hundred fifty thousand dollars ($2,250,000) in demonstration grants to local governments in very distressed rural areas of the State. These grants shall be used to address critical infrastructure and entrepreneurial needs and to provide small business assistance.

SECTION 5.2.(g) The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

(1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the

Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(2) The State will lose federal block grant funds or receive less federal block grant funds in the next fiscal year unless a reallocation is made, the Department of Commerce shall provide a written report to the Commission on the proposed reallocation and shall identify the reason that failure to take action will result in the loss of federal funds. If the Commission does not hear the issue within 30 days of receipt of the report, the Department may take the action without consulting the Commission.

PART VI. GENERAL PROVISIONS

Requested by: Senators Garrou, Dalton, Hagan

APPROPRIATION OF CASH BALANCES AND RECEIPTS

SECTION 6.1.(a) Expenditures of cash balances, federal funds, departmental receipts, grants, and gifts from the various General Fund, Special Revenue Fund, Enterprise Fund, Internal Service Fund, and Trust and Agency Fund budget codes are appropriated and authorized for the 2005-2007 fiscal biennium as follows:

(1) For all budget codes listed in "State of North Carolina, Recommended Continuation Budget 2005-2007, Volumes 1 through 6", cash balances and receipts are appropriated up to the amounts specified in Volumes 1 through 6, as adjusted by the General Assembly, for the 2005-2006 fiscal year and the 2006-2007 fiscal year. Funds may be expended only for the programs and purposes and objects and line items specified in Volumes 1 through 6, or otherwise authorized by the General Assembly.

(2) For all budget codes that are not listed in "State of North Carolina, Recommended Continuation Budget 2005-2007, Volumes 1 through 6", cash balances and receipts are appropriated for each year of the 2005-2007 fiscal biennium up to the level of actual expenditures for the 2004-2005 fiscal year, unless otherwise provided by law. Funds may be expended only for the programs and purposes and objects and line items authorized for the 2004-2005 fiscal year.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2005-2006 fiscal year and the 2006-2007 fiscal year and shall be used only to pay debt service requirements.

(4) Notwithstanding subdivisions (1) and (2) of this subsection, cash balances and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund, are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2005-2006 fiscal year and the 2006-2007 fiscal year.

All these cash balances, federal funds, departmental receipts, grants, and gifts shall be expended and reported in accordance with the provisions of the Executive Budget Act, except as otherwise provided by law and this section.

SECTION 6.1.(b) Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the

expenditure of over-realized receipts in the fiscal year in which the receipts were collected is authorized by the Executive Budget Act.

Over-realized receipts are appropriated up to the amounts necessary to implement this subsection.

In addition to the consultation and reporting requirements set out in G.S. 143-23 and G.S. 143-27, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on any over-realized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount over-realized, the amount authorized for expenditure, and the rationale for expenditure.

SECTION 6.1.(c) Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

SECTION 6.1.(d) Notwithstanding subsections (a) and (b) of this section, if Senate Bill 1126, 2005 Session, or substantially similar legislation revising the Coastal Recreational Fishing License program or establishing a unified fishing license for hunting and fishing in coastal, joint, and inland waters, becomes law, any receipts from license revenues generated pursuant to such legislation are hereby appropriated for the 2005-2006 fiscal year and the 2006-2007 fiscal year for programs and purposes authorized by law.

SECTION 6.1.(e) Notwithstanding subsections (a)(2) and (b) of this section, the cash balances and receipts of any occupational licensing board, as defined in G.S. 93B-1, that are not included in the budget codes listed in "State of North Carolina, Recommended Continuation Budget 2005-2007, Volumes 1 through 6," are hereby appropriated for the 2005-2006 fiscal year and the 2006-2007 fiscal year and may be expended for programs and purposes authorized by law.

Requested by: Senators Garrou, Dalton, Hagan

CONTINGENCY AND EMERGENCY FUND ALLOCATIONS

SECTION 6.2. Funds in the amount of five million dollars ($5,000,000) for the 2005-2006 fiscal year and five million dollars ($5,000,000) for the 2006-2007 fiscal year are appropriated in this act to the Contingency and Emergency Fund. Of these funds:

(1) Up to two million dollars ($2,000,000) for the 2005-2006 fiscal year may be used for purposes related to the Base Realignment and Closure Act (BRAC); and

(2) Up to five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year and up to five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year may be expended for purposes other than those set out in G.S.143-23(a1)(2) or in subdivision (1) of this section.

The remainder of these funds shall be expended for purposes outlined in G.S. 143-23(a1)(2).

Requested by: Senators Garrou, Dalton, Hagan

EXPENDITURES OF FUNDS IN RESERVES LIMITED

SECTION 6.3. All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

Requested by: Senators Garrou, Dalton, Hagan

BUDGET REPORTS ACCURATELY REFLECT PROJECTED RECEIPTS, EXPENDITURES, FUND BALANCES, AND ACTUAL COLLECTIONS

SECTION 6.4. G.S. 143-11(a) reads as rewritten:

"§ 143-11. Survey of ~~departments.~~ departments and recommended budget report.

(a) On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each line item of the proposed expenditures, the budget shall show in separate parallel columns:

(1) Proposed expenditures and receipts for each fiscal year of the biennium;
(2) The certified budget for the preceding fiscal year;
(3) The currently authorized budget for the preceding fiscal year;
(4) Actual expenditures and receipts for the most recent fiscal year for which actual expenditure information is available; and
(5) Proposed increases and decreases.

Revenue and expenditure information shall be no less specific than the two-digit level in the State Accounting System Chart of Accounts as prescribed by the State Controller. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital improvements. The budget report shall include accurate projections of receipts, expenditures, and fund balances for all budget codes, funds, and accounts. Estimated receipts, including tuition collected by university or community college institutions, shall be adjusted to reflect actual collections from the previous fiscal year, unless the Director either (i) recommends a change that will result in collections in the budget year that differ from the actual collections of the prior year or (ii) otherwise determines there is a more reasonable basis upon which to accurately project receipts."

Requested by: Senators Garrou, Dalton, Hagan

AUTHORIZATION TO ESTABLISH RECEIPT-SUPPORTED POSITIONS

SECTION 6.5. Notwithstanding G.S. 143-34.1(a1), a department, institution, or other agency of State government may establish receipt-supported positions authorized in this act upon approval by the Director of the Budget. The Director, if necessary, may establish a receipt-supported position pursuant to this section at an annual salary amount different from the salary amount set out in this act if (i) funds are available from the proposed funding source and (ii) the alternative salary amount remains within the established salary range grade identified for the job classification of the affected receipt-supported position established in this act. The Director shall not change the job classifications or increase the number of

receipt-supported positions specified in this act without prior consultation with the Joint Legislative Commission on Governmental Operations.

Requested by: Senators Garrou, Dalton, Hagan

OVERHEAD COST RECOVERY

SECTION 6.6.(a) The General Assembly finds that the General Fund supports many state agencies that provide services and administer programs that impact all of State government. These agencies include the Office of the Governor, the Office of State Controller, the Department of Administration, including the Office of State Personnel, State Property Office, Office of State Construction, and the Division of Purchase and Contract, the Secretary of State, the Office of State Treasurer, and the Office of State Auditor. The General Assembly also finds that the General Fund supports the departmental administrative overhead costs for many receipt-supported programs, activities, boards, and commissions. The General Assembly further finds that only federally funded programs routinely reimburse the State for such administrative overhead activities through an indirect cost allocation method. The General Assembly finds that an indirect cost allocation program should be established to recover overhead and indirect costs from all receipt-supported programs, activities, boards, and commissions.

SECTION 6.6.(b) The Office of State Budget and Management shall study the collection of overhead receipts and develop an overhead cost recovery program. In implementing this section, the Office of State Budget and Management shall do the following:

(1) For each receipt, determine the authority and requirements for the allocation of overhead costs and collection of overhead receipts.

(2) For each receipt for which the State currently redirects a portion for overhead costs, ensure that all future receipts revert to the General Fund in accordance with the State Budget Manual, except as otherwise required by law.

(3) For each receipt for which the State does not currently redirect a portion for overhead costs, establish an indirect cost allocation methodology and redirect a portion of future receipts for overhead costs to the General Fund, except as otherwise required by law.

(5) Estimate the anticipated reimbursement to the General Fund for the 2006-2007 fiscal year.

(6) Effective with the 2006-2007 fiscal year, the Office of State Budget and Management shall implement the overhead cost recovery program to maximize reimbursement of statewide indirect costs supported by the General Fund.

SECTION 6.6.(c) The Office of State Budget and Management shall report on its progress in implementing this section to the Chairs of the Senate Committee on Appropriations/Base Budget, the Chairs of the House of Representatives Committee on Appropriations, and the Fiscal Research Division by April 1, 2006. The report shall recommend any statutory changes required to implement the requirements of this section.

SECTION 6.6.(d) This section does not apply to overhead cost reimbursements collected under any grant agreement by The University of North Carolina or any of its affiliated institutions.

SECTION 6.6.(e) The requirements of this section shall apply to all receipts credited to a State agency, special revenue fund, enterprise fund, internal service fund or trust fund, except as otherwise provided by law and subsection (d) of this section.

Requested by: Senators Garrou, Dalton, Hagan

PRIOR CONSULTATION WITH THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS

SECTION 6.7.(a) The last paragraph of G.S. 120-76(8) is recodified as G.S. 120-76.1 and reads as rewritten:

"**§ 120-76.1. Prior consultation with the Commission.**

(a) Notwithstanding the provisions of ~~this subdivision~~ G.S. 120-76(8) or any other provision of law requiring prior consultation by the Governor with the Commission, whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event, such as a hurricane or a flood, or an accident, such as an explosion or a wreck, the Governor may take action ~~under this subsection~~ without consulting the Commission if the action is determined by the Governor to be related to the emergency. The Governor shall report to the Commission on any expenditures made under this ~~paragraph~~ subsection no later than 30 days after making the expenditure and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(b) Any agency, board, commission, or other entity required under G.S. 120-76(8) or any other provision of law to consult with the Commission prior to taking an action shall submit a detailed report of the action under consideration to the Chairs of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly. If the Commission does not hold a meeting to hear the consultation within 60 days of receiving the submission of the detailed report, the consultation requirement is satisfied."

SECTION 6.7.(b) G.S. 143-23(a1) reads as rewritten:

"(a1) Notwithstanding the provisions of subsection (a) of this section, a department, institution, or other spending agency may, with approval of the Director of the Budget, spend more than was appropriated for:

(1) An object or line item within a purpose or program so long as the total amount expended for the purpose or program is no more than was appropriated from all sources for the purpose or program for the fiscal period;

(2) A purpose or program, without consultation with the Joint Legislative Commission on Governmental Operations, if the overexpenditure of the purpose or program is:

a. Required by a court, Industrial Commission, or administrative hearing officer's order;

b. Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or

c. Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations on any overexpenditures under this subdivision; or

(3) A purpose or program, after consultation with the Joint Legislative Commission on Governmental Operations in accordance with G.S. 120-76(8), and only if: (i) the overexpenditure is required to continue the purpose or programs due to complications or changes in circumstances that could not have been foreseen when the budget for the fiscal period was enacted and (ii) the scope of the purpose or program is not increased. The consultation is required as follows:

a. For a purpose or program with a certified budget of up to five million dollars ($5,000,000), consultation is required when the authorization for the overexpenditure exceeds ten percent (10%) of the certified budget;

b. For a purpose or program with a certified budget of from five million dollars ($5,000,000) up to twenty million dollars ($20,000,000), consultation is required when the authorization for the overexpenditure exceeds five hundred thousand dollars

($500,000) or seven and one-half percent (7.5%) of the certified budget, whichever is greater;

c. For a purpose or program with a certified budget of twenty million dollars ($20,000,000) or more, consultation is required when the authorization for the overexpenditure exceeds one million five hundred thousand dollars ($1,500,000) or five percent (5%) of the certified budget, whichever is greater;

d. For a purpose or program supported by federal funds or when expenditures are required for the reasons set out in subdivision (2) of this subsection, no consultation is required.

~~If the Joint Legislative Commission on Governmental Operations does not meet for more than 30 days, the Director of the Budget may satisfy the requirements of the subsection to report to or consult with the Commission by reporting to or consulting with a joint meeting of the Chairs of the Appropriations Committees of the Senate and the House of Representatives.~~"

Requested by: Senators Garrou, Dalton, Hagan

CONSULTATION NOT REQUIRED PRIOR TO ESTABLISHING OR INCREASING FEES IN ACCORDANCE WITH BUDGET ACT

SECTION 6.8.(a) Notwithstanding G.S. 12-3.1(a), an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in the Current Operations and Capital Improvements Appropriations Act of 2005 or the Senate Appropriations Committee Report on the Continuation, Expansion and Capital Budgets, which was distributed in the Senate and the House of Representatives and used to explain this act.

SECTION 6.8.(b) This section expires June 30, 2007.

Requested by: Senators Garrou, Dalton, Hagan

STATE MONEY RECIPIENTS/CONFLICT OF INTEREST POLICY

SECTION 6.9.(a) G.S. 143-6.2 is amended by adding a new subsection to read:

"(a1) Every non-State entity that receives, uses, or expends State funds, either by General Assembly appropriation, or by grant, loan, or other allocation from a State agency shall file with the State department or agency disbursing funds to the entity a copy of that entity's policy addressing conflicts of interest that may arise involving the entity's management employees and the members of its board of directors or other governing body before funds may be disbursed to the entity. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the entity's employees or members of the board or other governing body, from the entity's disbursing of State funds, and shall include actions to be taken by the entity or the individual, or both, to avoid conflicts of interest and the appearance of impropriety."

SECTION 6.9.(b) G.S. 143-6.2(d) is amended by adding a new subdivision to read:

"(13) Require grantees to report their policies addressing conflicts of interest that may arise involving the entity's management employees and the members of its board of directors or other governing body before funds may be disbursed to the entity."

SECTION 6.9.(c) This section applies to non-State entities that receive State funds on or after July 1, 2005, and State funds shall not be disbursed to those entities on or after July 1, 2005, until the entity files the policy required by this section with the disbursing agency or department.

Requested by: Senators Garrou, Dalton, Hagan

NON-STATE ENTITIES SHALL NOT HAVE OUTSTANDING TAX ASSESSMENTS/APPLICABILITY OF REPORTING REQUIREMENTS

SECTION 6.10.(a) G.S. 143-6.2 is amended by adding a new subsection to read:

"(c1) No Overdue Tax Debts. – No grantee or subgrantee shall receive a grant of State funds from a State agency, department, or institution if the grantee or subgrantee has any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level."

SECTION 6.10.(b) This section shall apply to all State grant funds appropriated or awarded on or after July 1, 2005. Grants awarded prior to July 1, 2005, shall be subject to the reporting requirements in effect at the time the grant was made.

Requested by: Senators Garrou, Dalton, Hagan, Kerr, Hoyle

RESERVE FOR SMALL EMPLOYER HEALTH INSURANCE

SECTION 6.11.(a) It is the intent of the General Assembly to establish Healthy NC, a program to assist small employers in purchasing affordable health insurance coverage for their employees. It is further the intent of the General Assembly that Healthy NC will be modeled after the Healthy NY program operating successfully in that state since 2001. Healthy NC will be designed to encourage small employers with 50 or fewer employees to offer health insurance coverage to their employees and dependents and other qualified individuals. Uninsured sole proprietors and workers whose employers do not provide health insurance may also purchase coverage directly from insurers participating in Healthy NC. Coverage under Healthy NC will be streamlined, yet comprehensive. Benefits available will include inpatient and outpatient hospital services, physician services, maternity care, preventive health services, diagnostic and X-ray services, and emergency services. Employers may select a benefit package that offers limited prescription drug coverage, or one that does not include coverage for prescription drugs. A feature of Healthy NC that will enable premiums to be set at affordable rates is the availability of stop-loss coverage to protect insurers from excessive claims. Stop-loss coverage is an insurance policy or other arrangement whereby stop-loss funds are used to pay claims or indemnify the health plan insurer for losses incurred under the health plan in excess of specified loss limits for individual claims or for all claims combined. It is anticipated that successes of Healthy NC will be marked by, among other things, affordable premiums and an increase in the number of small employers and their employees that have health care coverage.

SECTION 6.11.(b) There is created in the Office of State Budget and Management a nonreverting Reserve for Healthy NC. Funds appropriated in this act to the Reserve for Healthy NC shall be allocated by the Commissioner of Insurance exclusively for the purpose of reimbursing insurers providing health insurance to small employers under Part 5A of Article 50 of Chapter 58 of the General Statutes, Healthy NC Program, if enacted by the 2005 General Assembly.

SECTION 6.11.(c) Subsection (b) of this section becomes effective only if the 2005 General Assembly enacts the Healthy NC program and appropriates funds to the Reserve for Healthy NC.

Requested by: Senators Garrou, Dalton, Hagan

AMEND THE TOBACCO RESERVE FUND TO PROMOTE THE HEALTH AND WELLNESS OF THE STATE'S CITIZENS AND ECONOMIC DEVELOPMENT

SECTION 6.12.(a) G.S. 66-291(b)(2) reads as rewritten:

"(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than ~~the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in~~

~~section IX(i)(3) of that Agreement other than the Inflation Adjustment)~~the Master Settlement Agreement payments, as determined pursuant to Section IX(i) of that agreement, including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or".

SECTION 6.12.(b) If this section, or any portion of the amendment made to G.S. 66-291(b)(2) by this section, is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. 66-291(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this section shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this section. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes or the application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect.

SECTION 6.12.(c) This section becomes effective October 1, 2005.

Requested by: Senators Garrou, Dalton, Hagan

STATEWIDE INFORMATION TECHNOLOGY PROJECTS

SECTION 6.13.(a) There is appropriated from the Information Technology Fund established in G.S. 147-33.72H to the Office of Information Technology Services the sum of five million one hundred thousand dollars ($5,100,000) for the 2005-2006 fiscal year and the sum of three million three hundred thousand dollars ($3,300,000) for the 2006-2007 fiscal year to continue existing Information Technology Fund activities including project management assistance, security assessment remedial actions, asset management, related legal support, and legacy system assessment.

SECTION 6.13.(b) There is appropriated from the Information Technology Fund established in G.S. 147-33.72H to the Office of Information Technology Services the sum of one million six hundred thousand dollars ($1,600,000) for the 2005-2006 fiscal year and the sum of one million four hundred thousand dollars ($1,400,000) for the 2006-2007 fiscal year to establish two project management assistant positions and one enterprise licensing position and to purchase and maintain asset management software and enterprise licenses.

SECTION 6.13.(c) There is appropriated from the Information Technology Fund established in G.S. 147-33.72H to the Office of Information Technology Services the sum of six million three hundred thousand dollars ($6,300,000) for the 2005-2006 fiscal year and the sum of five million eight hundred thousand dollars ($5,800,000) for the 2006-2007 fiscal year to provide services previously supported by cross-subsidies in the information technology rate structure, including: (i) the operation of Enterprise Technology Services within the Office of Information Technology Services, (ii) security services, (iii) State portal maintenance, (iv) enterprise identity management, and (v) the operations of the Office of the State Chief Information Officer.

SECTION 6.13.(d) There is appropriated from the Information Technology Fund established in G.S. 147-33.72H to the Office of Information Technology Services the sum of five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year to facilitate consolidation of information technology activities in State agencies.

Requested by: Senators Garrou, Dalton, Hagan

STATE BUSINESS INFRASTRUCTURE PROGRAM

SECTION 6.14.(a) According to a study conducted by the Office of State Controller, the State's personnel and payroll information systems are at risk of failure within five years. This would result in delayed payments to over 80,000 state

employees. The current personnel and payroll information systems were designed and supported by agency staff, and staff members familiar with these information systems are near retirement from State government service. Through the State Business Infrastructure Program, the State Controller identified the personnel and payroll information systems as priorities for replacement.

SECTION 6.14.(b) There is appropriated from the Information Technology Fund established in G.S.147-33.72H to the Office of State Controller the sum of twenty million eight hundred seventy-five thousand dollars ($20,875,000) for the 2005-2006 fiscal year and two million five hundred twenty-five thousand dollars ($2,525,000) for the 2006-2007 fiscal year to initiate the replacement of the State's personnel and payroll information systems. These funds shall be used to procure software, hardware, integration services, project management, implementation activities, software license maintenance, hardware maintenance, contract support, and Information Technology Services Data Center activities.

SECTION 6.14.(c) Funds appropriated under this section are subject to the reporting requirement set out in G.S. 147-33.72H.

Requested by: Senators Garrou, Dalton, Hagan

INFORMATION TECHNOLOGY FUND

SECTION 6.15.(a) Of the funds collected by the Office of Information Technology Services from the information technology enterprise fee approved by the Office of State Budget and Management pursuant to G.S. 147-33.82, the Office shall deposit the sum of five million dollars ($5,000,000) for the 2005-2006 fiscal year and for the 2006-2007 fiscal year in the Information Technology Fund established in G.S. 147-33.72H.

SECTION 6.15.(b) Effective July 1, 2005, the State Controller shall transfer to the Information Technology Fund established in G.S. 147-33.72H the sum of five million dollars ($5,000,000) from the cash balance remaining in the Office of Information Technology Services Internal Service Fund on June 30, 2005. These funds shall be used to support statewide information technology initiatives.

PART VII. PUBLIC SCHOOLS

Requested by: Senator Lucas, Swindell, Garrou, Dalton, Hagan

TEACHER SALARY SCHEDULES

SECTION 7.1.(a) Effective for the 2005-2006 school year and for the 2006-2007 school year, the Director of the Budget shall transfer from the Reserve for Experience Step Salary Increase for Teachers and Principals in Public Schools funds necessary to implement the teacher salary schedules set out in subsection (b) of this section and for longevity in accordance with subsection (d) of this section, including funds for the employer's retirement and social security contributions for all teachers whose salaries are supported from the State's General Fund.

These funds shall be allocated to individuals according to rules adopted by the State Board of Education.

SECTION 7.1.(b) The following monthly salary schedules shall apply for the 2005-2006 and the 2006-2007 fiscal years to certified personnel of the public schools who are classified as teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

2005-2006 Monthly Salary Schedule
"A" Teachers

Years of Experience	"A" Teachers	NBPTS Certification
0	$2,545	N/A

1	$2,587	N/A
2	$2,631	N/A
3	$2,786	$3,120
4	$2,926	$3,278
5	$3,059	$3,427
6	$3,189	$3,571
7	$3,292	$3,687
8	$3,340	$3,740
9	$3,389	$3,795
10	$3,439	$3,851
11	$3,488	$3,906
12	$3,539	$3,963
13	$3,589	$4,019
14	$3,642	$4,079
15	$3,696	$4,140
16	$3,751	$4,202
17	$3,806	$4,263
18	$3,864	$4,328
19	$3,922	$4,393
20	$3,980	$4,458
21	$4,042	$4,528
22	$4,104	$4,596
23	$4,169	$4,669
24	$4,233	$4,740
25	$4,298	$4,813
26	$4,364	$4,887
27	$4,432	$4,963
28	$4,502	$5,043
29	$4,573	$5,122

2005-2006 Monthly Salary Schedule
"M" Teachers

Years of Experience	"M" Teachers	NBPTS Certification
0	$2,800	N/A
1	$2,846	N/A
2	$2,894	N/A
3	$3,063	$3,431
4	$3,219	$3,605
5	$3,366	$3,769
6	$3,507	$3,927
7	$3,621	$4,055
8	$3,673	$4,114
9	$3,727	$4,175
10	$3,782	$4,236
11	$3,837	$4,298
12	$3,892	$4,360
13	$3,947	$4,421
14	$4,006	$4,487
15	$4,065	$4,553
16	$4,126	$4,621
17	$4,188	$4,690

18	$4,250	$4,759
19	$4,315	$4,832
20	$4,379	$4,904
21	$4,447	$4,980
22	$4,514	$5,056
23	$4,585	$5,136
24	$4,656	$5,215
25	$4,726	$5,288
26	$4,795	$5,376
27	$4,875	$5,460
28	$4,952	$5,547
29	$5,031	$5,634

2006-2007 Monthly Salary Schedule
"A" Teachers

Years of Experience	"A" Teachers	NBPTS Certification
0	$2,574	N/A
1	$2,617	N/A
2	$2,661	N/A
3	$2,818	$3,156
4	$2,960	$3,315
5	$3,095	$3,466
6	$3,225	$3,612
7	$3,329	$3,729
8	$3,378	$3,783
9	$3,428	$3,839
10	$3,478	$3,896
11	$3,528	$3,951
12	$3,580	$4,009
13	$3,630	$4,066
14	$3,684	$4,126
15	$3,739	$4,187
16	$3,794	$4,250
17	$3,850	$4,312
18	$3,909	$4,378
19	$3,967	$4,443
20	$4,026	$4,509
21	$4,089	$4,580
22	$4,151	$4,649
23	$4,217	$4,723
24	$4,281	$4,795
25	$4,347	$4,869
26	$4,414	$4,944
27	$4,483	$5,021
28	$4,554	$5,101
29	$4,626	$5,181

2006-2007 Monthly Salary Schedule
"M" Teachers

Years of Experience	"M" Teachers	NBPTS Certification

0	$2,832	N/A
1	$2,879	N/A
2	$2,927	N/A
3	$3,099	$3,470
4	$3,256	$3,646
5	$3,404	$3,812
6	$3,547	$3,972
7	$3,663	$4,102
8	$3,715	$4,161
9	$3,770	$4,223
10	$3,826	$4,284
11	$3,881	$4,347
12	$3,937	$4,410
13	$3,993	$4,472
14	$4,052	$4,539
15	$4,112	$4,605
16	$4,173	$4,674
17	$4,236	$4,744
18	$4,299	$4,814
19	$4,364	$4,888
20	$4,429	$4,961
21	$4,498	$5,038
22	$4,566	$5,114
23	$4,638	$5,195
24	$4,710	$5,275
25	$4,781	$5,355
26	$4,855	$5,438
27	$4,931	$5,523
28	$5,009	$5,611
29	$5,088	$5,699

SECTION 7.1.(c) Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service, and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

SECTION 7.1.(d) Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

SECTION 7.1.(e) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified psychologists.

SECTION 7.1.(f) Speech pathologists who are certified as speech pathologists at the masters degree level and audiologists who are certified as audiologists at the masters degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

Speech pathologists and audiologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for speech pathologists and audiologists. Speech pathologists and audiologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for speech pathologists and audiologists.

SECTION 7.1.(g) Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

SECTION 7.1.(h) As used in this section, the term "teacher" shall also include instructional support personnel.

Requested by: Senator Lucas, Swindell, Garrou, Dalton, Hagan

SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 7.2.(a) Effective for the 2005-2006 school year and for the 2006-2007 school year, the Director of the Budget shall transfer from the Reserve for Compensation Increases funds necessary to implement the salary schedules for school-based administrators as provided in this section. These funds shall be used for State-paid employees only.

SECTION 7.2.(b) The base salary schedule for school-based administrators shall apply only to principals and assistant principals. The base salary schedule for the 2005-2006 fiscal year, commencing July 1, 2005, is as follows:

2005-2006
Principal and Assistant Principal Salary Schedules
Classification

Yrs. of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-4	$3,256		-	-	-
5	$3,404	-	-	-	-
6	$3,547	-	-	-	-
7	$3,662	-	-	-	-
8	$3,715	$3,715	-	-	-
9	$3,769	$3,769	-	-	-
10	$3,825	$3,825	$3,880	-	-
11	$3,880	$3,880	$3,936	-	-
12	$3,936	$3,936	$3,993	$4,052	-
13	$3,993	$3,993	$4,052	$4,111	$4,173
14	$4,052	$4,052	$4,111	$4,173	$4,235
15	$4,111	$4,111	$4,173	$4,235	$4,298
16	$4,173	$4,173	$4,235	$4,298	$4,363

17	$4,235	$4,235	$4,298	$4,363	$4,428
18	$4,298	$4,298	$4,363	$4,428	$4,497
19	$4,363	$4,363	$4,428	$4,497	$4,565
20	$4,428	$4,428	$4,497	$4,565	$4,638
21	$4,497	$4,497	$4,565	$4,638	$4,708
22	$4,565	$4,565	$4,638	$4,708	$4,780
23	$4,638	$4,638	$4,708	$4,780	$4,855
24	$4,708	$4,708	$4,780	$4,855	$4,931
25	$4,780	$4,780	$4,855	$4,931	$5,008
26	$4,855	$4,855	$4,931	$5,008	$5,088
27	$4,931	$4,931	$5,008	$5,088	$5,189
28	$5,008	$5,008	$5,088	$5,189	$5,294
29	$5,088	$5,088	$5,189	$5,294	$5,400
30	$5,189	$5,189	$5,294	$5,400	$5,508
31	$5,294	$5,294	$5,400	$5,508	$5,617
32	-	$5,400	$5,508	$5,617	$5,730
33	-	-	$5,617	$5,730	$5,845
34	-	-	$5,730	$5,845	$5,962
35	-	-	-	$5,962	$6,081
36	-	-	-	$6,081	$6,203
37	-	-	-	-	$6,327

2005-2006
Principal and Assistant Principal Salary Schedules
Classification

Yrs. of Exp	PrinV (44-54)	PrinVI (55-65)	PrinVII (66-100)	PrinVIII (101+)
14	$4,298	-	-	-
15	$4,363	-	-	-
16	$4,428	$4,497	-	-
17	$4,497	$4,565	$4,708	-
18	$4,565	$4,638	$4,780	$4,855
19	$4,638	$4,708	$4,855	$4,931
20	$4,708	$4,780	$4,931	$5,008
21	$4,780	$4,855	$5,008	$5,088
22	$4,855	$4,931	$5,088	$5,189
23	$4,931	$5,008	$5,189	$5,294
24	$5,008	$5,088	$5,294	$5,400
25	$5,088	$5,189	$5,400	$5,508
26	$5,189	$5,294	$5,508	$5,617
27	$5,294	$5,400	$5,617	$5,730
28	$5,400	$5,508	$5,730	$5,845
29	$5,508	$5,617	$5,845	$5,962
30	$5,617	$5,730	$5,962	$6,081
31	$5,730	$5,845	$6,081	$6,203
32	$5,845	$5,962	$6,203	$6,327
33	$5,962	$6,081	$6,327	$6,453
34	$6,081	$6,203	$6,453	$6,583
35	$6,203	$6,327	$6,583	$6,714
36	$6,327	$6,453	$6,714	$6,847
37	$6,453	$6,583	$6,847	$6,985
38	$6,583	$6,714	$6,985	$7,124
39	-	$6,847	$7,124	$7,266

40	-	$6,985	$7,266	$7,412
41	-	-	$7,412	$7,560

SECTION 7.2.(c) The base salary schedule for school-based administrators shall apply only to principals and assistant principals. The base salary schedule for the 2006-2007 fiscal year, commencing July 1, 2006, is as follows:

2006-2007
Principal and Assistant Principal Salary Schedules
Classification

Yrs. of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-4	$3,297	-	-	-	-
5	$3,448	-	-	-	-
6	$3,593	-	-	-	-
7	$3,709	-	-	-	-
8	$3,762	$3,762	-	-	-
9	$3,817	$3,817	-	-	-
10	$3,874	$3,874	$3,930	-	-
11	$3,930	$3,930	$3,987	-	-
12	$3,987	$3,987	$4,044	$4,104	-
13	$4,044	$4,044	$4,104	$4,163	$4,226
14	$4,104	$4,104	$4,163	$4,226	$4,289
15	$4,163	$4,163	$4,226	$4,289	$4,353
16	$4,226	$4,226	$4,289	$4,353	$4,419
17	$4,289	$4,289	$4,353	$4,419	$4,484
18	$4,353	$4,353	$4,419	$4,484	$4,554
19	$4,419	$4,419	$4,484	$4,554	$4,623
20	$4,484	$4,484	$4,554	$4,623	$4,697
21	$4,554	$4,554	$4,623	$4,697	$4,769
22	$4,623	$4,623	$4,697	$4,769	$4,842
23	$4,697	$4,697	$4,769	$4,842	$4,917
24	$4,769	$4,769	$4,842	$4,917	$4,994
25	$4,842	$4,842	$4,917	$4,994	$5,072
26	$4,917	$4,917	$4,994	$5,072	$5,153
27	$4,994	$4,994	$5,072	$5,153	$5,256
28	$5,072	$5,072	$5,153	$5,256	$5,361
29	$5,153	$5,153	$5,256	$5,361	$5,469
30	$5,256	$5,256	$5,361	$5,469	$5,579
31	$5,361	$5,361	$5,469	$5,579	$5,689
32	-	$5,469	$5,579	$5,689	$5,803
33	-	-	$5,689	$5,803	$5,920
34	-	-	$5,803	$5,920	$6,039
35	-	-	-	$6,039	$6,158
36	-	-	-	$6,158	$6,282
37	-	-	-	-	$6,408

2006-2007
Principal and Assistant Principal Salary Schedules
Classification

Yrs. of	PrinV	PrinVI	PrinVII	PrinVIII

Exp	(44-54)	(55-65)	(66-100)	(101+)
14	$4,353	-	-	-
15	$4,419	-	-	-
16	$4,484	$4,554	-	-
17	$4,554	$4,623	$4,769	-
18	$4,623	$4,697	$4,842	$4,917
19	$4,697	$4,769	$4,917	$4,994
20	$4,769	$4,842	$4,994	$5,072
21	$4,842	$4,917	$5,072	$5,153
22	$4,917	$4,994	$5,153	$5,256
23	$4,994	$5,072	$5,256	$5,361
24	$5,072	$5,153	$5,361	$5,469
25	$5,153	$5,256	$5,469	$5,579
26	$5,256	$5,361	$5,579	$5,689
27	$5,361	$5,469	$5,689	$5,803
28	$5,469	$5,579	$5,803	$5,920
29	$5,579	$5,689	$5,920	$6,039
30	$5,689	$5,803	$6,039	$6,158
31	$5,803	$5,920	$6,158	$6,282
32	$5,920	$6,039	$6,282	$6,408
33	$6,039	$6,158	$6,408	$6,536
34	$6,158	$6,282	$6,536	$6,667
35	$6,282	$6,408	$6,667	$6,800
36	$6,408	$6,536	$6,800	$6,935
37	$6,536	$6,667	$6,935	$7,074
38	$6,667	$6,800	$7,074	$7,215
39		$6,935	$7,215	$7,359
40		$7,074	$7,359	$7,507

SECTION 7.2.(d) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools and in cooperative innovative high school programs shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

SECTION 7.2.(e) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

SECTION 7.2.(f) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars ($126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars ($253.00) per month.

SECTION 7.2.(g) Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

SECTION 7.2.(h) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subsection applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subsection for one calendar year following the date of the merger.

SECTION 7.2.(i) Participants in an approved full-time masters in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the masters program. For the 2005-2006 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time masters in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

SECTION 7.2.(j) During the 2005-2006 fiscal year and the 2006-2007 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

Requested by: Senator Lucas, Swindell, Garrou, Dalton, Hagan

CENTRAL OFFICE SALARIES

SECTION 7.3.(a) The monthly salary ranges that follow apply to assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 2005-2006 fiscal year, beginning July 1, 2005.

School Administrator I	$2,932	$5,506
School Administrator II	$3,112	$5,840
School Administrator III	$3,303	$6,195
School Administrator IV	$3,436	$6,442
School Administrator V	$3,574	$6,702
School Administrator VI	$3,792	$7,108

School Administrator VII	$3,945	$7,394

The monthly salary ranges that follow apply to assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 2006-2007 fiscal year, beginning July 1, 2006.

School Administrator I	$2,932	$5,671
School Administrator II	$3,112	$6,015
School Administrator III	$3,303	$6,380
School Administrator IV	$3,436	$6,636
School Administrator V	$3,574	$6,903
School Administrator VI	$3,792	$7,322
School Administrator VII	$3,945	$7,616

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which an employee is placed shall be included in the contract of any employee.

SECTION 7.3.(b) The monthly salary ranges that follow apply to public school superintendents for the 2005-2006 fiscal year, beginning July 1, 2005.

Superintendent I	$4,187	$7,844
Superintendent II	$4,445	$8,318
Superintendent III	$4,716	$8,825
Superintendent IV	$5,005	$9,360
Superintendent V	$5,312	$9,931

The monthly salary ranges that follow apply to public school superintendents for the 2006-2007 fiscal year, beginning July 1, 2006.

Superintendent I	$4,187	$8,080
Superintendent II	$4,445	$8,568
Superintendent III	$4,716	$9,090
Superintendent IV	$5,005	$9,641
Superintendent V	$5,312	$10,229

The local board of education shall determine the appropriate category and placement for the superintendent based on the average daily membership of the local school administrative unit and within funds appropriated by the General Assembly for central office administrators and superintendents.

SECTION 7.3.(c) Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees under the State Personnel Act.

SECTION 7.3.(d) Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for under this section.

SECTION 7.3.(e) The State Board of Education shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

SECTION 7.3.(f) The annual salary increase for all permanent full-time personnel paid from the Central Office Allotment who work a nine-, 10-, 11-, or 12-month work year schedule shall be the greater of five hundred dollars ($500.00) or two percent (2%), commencing July 1, 2005. The annual salary increase for all permanent full-time personnel paid from the Central Office Allotment who work a

nine-, 10-, 11-, or 12-month work year schedule shall be the three percent (3%), commencing July 1, 2006. The State Board of Education shall allocate these funds to local school administrative units. The local boards of education shall establish guidelines for providing salary increases to these personnel.

Requested by: Senator Lucas, Swindell, Garrou, Dalton, Hagan

NONCERTIFIED PERSONNEL SALARY

SECTION 7.4.(a) The annual salary increase for permanent, full-time noncertified public school employees whose salaries are supported from the State's General Fund shall be the greater of five hundred dollars ($500.00) or two percent (2%), commencing July 1, 2005.

The annual salary increase for permanent, full-time noncertified public school employees whose salaries are supported from the State's General Fund shall be three percent (3%), commencing July 1, 2006.

SECTION 7.4.(b) Local boards of education shall increase the rates of pay for such employees who were employed for all or part of fiscal year 2004-2005 and who continue their employment for fiscal year 2005-2006 by providing an annual salary increase for employees of the greater of five hundred dollars ($500.00) or two percent (2%).

Local boards of education shall increase the rates of pay for such employees who were employed for all or part of fiscal year 2005-2006 and who continue their employment for fiscal year 2006-2007 by providing an annual salary increase for employees of three percent (3%).

For part-time employees, the pay increase shall be pro rata based on the number of hours worked.

SECTION 7.4.(c) The State Board of Education may adopt salary ranges for noncertified personnel to support increases of the greater of five hundred dollars ($500.00) or two percent (2%) for the 2005-2006 fiscal year.

The State Board of Education may adopt salary ranges for noncertified personnel to support increases of three percent (3%) for the 2006-2007 fiscal year.

SECTION 7.4.(d) For the 2005-2006 fiscal year, permanent full-time employees who work a nine-, 10-, or 11-month work year schedule shall receive the five hundred dollars ($500.00) or the two percent (2%) annual increase provided by this act, whichever is greater.

For the 2006-2007 fiscal year, permanent full-time employees who work a nine-, 10-, or 11-month work year schedule shall receive the three percent (3%) annual increase provided by this act.

Requested by: Senator Lucas, Swindell, Garrou, Dalton, Hagan

BONUS FOR CERTIFIED PERSONNEL AT THE TOP OF THEIR SALARY SCHEDULES

SECTION 7.5. Effective July 1, 2005, any permanent certified personnel employed on July 1, 2003, and paid on the teacher salary schedule with 29+ years of experience shall receive a one-time bonus equivalent to the average increase of the 26 to 29 year steps. Effective July 1, 2005, any permanent personnel employed on July 1, 2004, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%).

Effective July 1, 2006, any permanent certified personnel employed on July 1, 2003, and paid on the teacher salary schedule with 29+ years of experience shall receive a one-time bonus equivalent to the average increase of the 26 to 29 year steps. Effective July 1, 2006, any permanent personnel employed on July 1, 2005, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%).

For permanent part-time personnel, the one-time bonus shall be adjusted pro rata. Personnel defined under G.S. 115C-325(a)(5a) are not eligible to receive the bonus.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES

SECTION 7.6.(a) Funds for Supplemental Funding. – The General Assembly finds that it is appropriate to provide supplemental funds in low-wealth counties to allow those counties to enhance the instructional program and student achievement. Therefore, funds are appropriated to State Aid to Local School Administrative Units for the 2005-2006 fiscal year and the 2006-2007 fiscal year to be used for supplemental funds for the schools.

SECTION 7.6.(b) Use of Funds for Supplemental Funding. – All funds received pursuant to this section shall be used only: (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks; (ii) for salary supplements for instructional personnel and instructional support personnel; and (iii) to pay an amount not to exceed ten thousand dollars ($10,000) of the plant operation contract cost charged by the Department of Public Instruction for services.

Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7. Local boards of education shall report to the State Board of Education on an annual basis on funds used for this purpose, and the State Board shall report this information to the Joint Legislative Education Oversight Committee. These reports shall specify how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools, such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools.

SECTION 7.6.(c) Definitions. – As used in this section:

(1) "Anticipated county property tax revenue availability" means the county-adjusted property tax base multiplied by the effective State average tax rate.

(2) "Anticipated total county revenue availability" means the sum of the:
   a. Anticipated county property tax revenue availability,
   b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes,
   c. Sales tax hold harmless reimbursement received by the county under G.S. 105-521, and
   d. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.

(3) "Anticipated total county revenue availability per student" means the anticipated total county revenue availability for the county divided by the average daily membership of the county.

(4) "Anticipated State average revenue availability per student" means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.

(5) "Average daily membership" means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily

membership of that county includes all students who reside within the county and attend that local school administrative unit.

(6) "County-adjusted property tax base" shall be computed as follows:
- a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county,
- b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies,
- c. Add to the resulting amount the:
  1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2,
  2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes, and
  3. Personal property value for the county.

(7) "County-adjusted property tax base per square mile" means the county-adjusted property tax base divided by the number of square miles of land area in the county.

(8) "County wealth as a percentage of State average wealth" shall be computed as follows:
- a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths,
- b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths,
- c. Compute the percentage that the county-adjusted property tax base per square mile is of the State-adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth,
- d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.

(9) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.

(10) "Effective State average tax rate" means the average of effective county tax rates for all counties.

(10a) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(11) "Per capita income" means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.

(12) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(13) "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(14) "State average adjusted property tax base per square mile" means the sum of the county-adjusted property tax bases for all counties divided by the number of square miles of land area in the State.

(14a) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(15) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.6.(d) Eligibility for Funds. – Except as provided in subsection (h) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

SECTION 7.6.(e) Allocation of Funds. – Except as provided in subsection (g) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply the county wealth as a percentage of State average wealth by the State average current expense appropriations per student.)

The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit located in whole or in part in the county based on the average daily membership of the county's students in the school units.

If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

SECTION 7.6.(f) Formula for Distribution of Supplemental Funding Pursuant to This Section Only. – The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

SECTION 7.6.(g) Minimum Effort Required. – Counties that had effective tax rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall receive reduced funding under this section. This reduction in funding shall be determined by subtracting the amount that the county would have received pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws from the amount that the county would have received if qualified for full funding and multiplying the difference by ten percent (10%). This method of calculating reduced funding shall apply one time only.

This method of calculating reduced funding shall not apply in cases in which the effective tax rate fell below the statewide average effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

If the county documents that it has increased the per student appropriation to the school current expense fund in the current fiscal year, the State Board of Education shall include this additional per pupil appropriation when calculating minimum effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

SECTION 7.6.(h) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2005-2007 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

(2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

SECTION 7.6.(i) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2006, if it determines that counties have supplanted funds.

SECTION 7.6.(j) Department of Revenue Reports. – The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING

SECTION 7.7.(a) Funds for Small School Systems. – Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,175 students and (ii) to each county school administrative unit with an average daily membership from 3,175 to 4,000 students if the county in which the local school administrative unit is located has a county-adjusted property tax base per student that is below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,175 to 4,000 students. The allocation formula shall:

(1) Round all fractions of positions to the next whole position.

(2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four, and seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or fewer.

(3) Provide additional program enhancement teachers adequate to offer the standard course of study.

(4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.

(5) Provide a base for the consolidated funds allotment of at least seven hundred forty thousand seventy-four dollars ($740,074), excluding textbooks for the 2005-2006 fiscal year and a base of seven hundred forty thousand seventy-four dollars ($740,074) for the 2006-2007 fiscal year.

(6) Allot vocational education funds for grade 6 as well as for grades 7-12.

If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fully fund the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

SECTION 7.7.(b) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2005-2007 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

(2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

SECTION 7.7.(c) Phase-Out Provisions. – If a local school administrative unit becomes ineligible for funding under this formula solely because of an increase in the county-adjusted property tax base per student of the county in which the local school administrative unit is located, funding for that unit shall be phased out over a two-year period. For the first year of ineligibility, the unit shall receive the same amount it received for the prior fiscal year. For the second year of ineligibility, it shall receive one-half of that amount.

If a local school administrative unit becomes ineligible for funding under this formula solely because of an increase in the population of the county in which the local school administrative unit is located, funding for that unit shall be continued for five years after the unit becomes ineligible.

SECTION 7.7.(d) Definitions. – As used in this section:

(1) "Average daily membership" means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual adopted by the State Board of Education.

(2) "County-adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.

(2a) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(3) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(4) "State-adjusted property tax base per student" means the sum of all county-adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.

(4a) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(5) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued during the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.7.(e) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2006, if it determines that counties have supplanted funds.

SECTION 7.7.(f) Use of Funds. – Local boards of education are encouraged to use at least twenty percent (20%) of the funds they receive pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7. Local boards of education shall report to the State Board of Education on an annual basis on funds used for this purpose, and the State Board shall report this information to the Joint Legislative Education Oversight Committee. These reports shall specify how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING

SECTION 7.8.(a) Funds are appropriated in this act to address the capacity needs of local school administrative units to meet the needs of disadvantaged students. Each local school administrative unit shall use funds allocated to it for disadvantaged student supplemental funding to implement a plan jointly developed by the unit and the LEA Assistance Program team. The plan shall be based upon the needs of students in the unit not achieving grade-level proficiency. The plan shall detail how these funds shall be used in conjunction with all other supplemental funding allotments such as Low-Wealth, Small County, At-Risk Student Services/Alternative Schools, and Improving Student Accountability, to provide instructional and other services that meet the educational needs of these students. Prior to the allotment of disadvantaged student supplemental funds, the plan shall be approved by the State Board of Education.

Funds received for disadvantaged student supplemental funding shall be used, consistent with the policies and procedures adopted by the State Board of Education, only to:

(1) Provide instructional positions or instructional support positions and/or professional development;

(2) Provide intensive in-school and/or after-school remediation;
(3) Purchase diagnostic software and progress-monitoring tools; and
(4) Provide funds for teacher bonuses and supplements. The State Board of Education shall set a maximum percentage of the funds that may be used for this purpose.

SECTION 7.8.(b) Funds are appropriated in this act to evaluate the Disadvantaged Students Supplemental Funding Initiatives and Low-Wealth Initiatives. The State Board of Education shall use these funds to:

(1) Evaluate the strategies implemented by local school administrative units with Disadvantaged Student Supplemental Funds and Low-Wealth Funds and assess their impact on student performance; and
(2) Evaluate the efficiency and effectiveness of the technical assistance and support provided to local school administrative units by the Department of Public Instruction.

The State Board of Education shall report the results of the evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by February 15, 2006, and by January 15 of each subsequent year.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

STUDENTS WITH LIMITED ENGLISH PROFICIENCY

SECTION 7.9.(a) The State Board of Education shall develop guidelines for identifying and providing services to students with limited proficiency in the English language.

The State Board shall allocate these funds to local school administrative units and to charter schools under a formula that takes into account the average percentage of students in the units or the charters over the past three years who have limited English proficiency. The State Board shall allocate funds to a unit or a charter school only if (i) average daily membership of the unit or the charter school includes at least 20 students with limited English proficiency or (ii) students with limited English proficiency comprise at least two and one-half percent (2.5%) of the average daily membership of the unit or charter school. For the portion of the funds that is allocated on the basis of the number of identified students, the maximum number of identified students for whom a unit or charter school receives funds shall not exceed ten and six-tenths percent (10.6%) of its average daily membership.

Local school administrative units shall use funds allocated to them to pay for classroom teachers, teacher assistants, tutors, textbooks, classroom materials/instructional supplies/equipment, transportation costs, and staff development of teachers for students with limited English proficiency.

A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds.

SECTION 7.9.(b) The Department of Public Instruction shall prepare a current head count of the number of students classified with limited English proficiency by December 1 of each year.

Students in the head count shall be assessed at least once every three years to determine their level of English proficiency. A student who scores "superior" on the standard English language proficiency assessment instrument used in this State shall not be included in the head count of students with limited English proficiency.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

FLEXIBILITY FOR THE HIGHEST PRIORITY ELEMENTARY SCHOOLS

SECTION 7.10. The State Board of Education may allow high priority schools that have made high growth for three consecutive years to be removed from the

list of high priority schools. If a local board of education chooses to have a school removed from the list of high priority schools, the additional high priority funding for that school shall be discontinued.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

AT-RISK STUDENT SERVICES/ALTERNATIVE SCHOOLS

SECTION 7.11. The State Board of Education may use up to two hundred thousand dollars ($200,000) of the funds in the Alternative Schools/At-Risk Student allotment each year for the 2005-2006 fiscal year and for the 2006-2007 fiscal year to implement G.S. 115C-12(24).

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

FUNDS FOR CHILDREN WITH DISABILITIES

SECTION 7.12. The State Board of Education shall allocate funds for children with disabilities on the basis of two thousand eight hundred thirty-eight dollars and thirty-nine cents ($2,838.39) per child for a maximum of 169,164 children for the 2005-2006 school year. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities or (ii) twelve and five-tenths percent (12.5%) of the 2005-2006 allocated average daily membership in the local school administrative unit.

The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve children with disabilities.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

FUNDS FOR ACADEMICALLY GIFTED CHILDREN

SECTION 7.13. The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of nine hundred twenty-six dollars and fifty-five cents ($926.55) per child. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2005-2006 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The State Board shall allocate funds for no more than 55,895 children for the 2005-2006 school year.

The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

EXPENDITURE OF FUNDS TO IMPROVE STUDENT ACCOUNTABILITY

SECTION 7.14.(a) Funds appropriated for the 2005-2006 and 2006-2007 fiscal years for Student Accountability Standards shall be used to assist students to perform at or above grade level in reading and mathematics in grades 3-8 as measured by the State's end-of-grade tests. The State Board of Education shall allocate these funds to LEAs based on the number of students who score at Level I or Level II on either reading or mathematics end-of-grade tests in grades 3-8. Funds in the allocation category shall be used to improve the academic performance of (i) students who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 or (ii) students who are performing at Level I or II on the writing tests in grades 4 and 7. These funds may also be used to improve the academic performance of students who are performing at Level I or II on the high school end-of-course tests. These funds shall not be transferred to other allocation categories or otherwise used for other purposes. Except as otherwise provided by law, local boards of education may transfer other funds available to them into this allocation category.

The principal of a school receiving these funds, in consultation with the faculty and the site-based management team, shall implement plans for expending these funds to improve the performance of students.

Local boards of education are encouraged to use federal funds such as Title I Comprehensive School Reform Development Funds and to examine the use of State funds to ensure that every student is performing at or above grade level in reading and mathematics.

These funds shall be allocated to local school administrative units for the 2005-2006 fiscal year within 30 days of the date this act becomes law.

SECTION 7.14.(b) Funds appropriated for Student Accountability Standards shall not revert at the end of each fiscal year but shall remain available for expenditure until August 31 of the subsequent fiscal year.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

LITIGATION RESERVE FUNDS

SECTION 7.15. The State Board of Education may expend up to five hundred thousand dollars ($500,000) each year for the 2005-2006 and 2006-2007 fiscal years from unexpended funds for certified employees' salaries to pay expenses related to pending litigation.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

BASE BUDGET REDUCTION TO DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 7.16. Notwithstanding any other provision of law, the Department of Public Instruction may use salary reserve funds and other funds and may transfer funds within the Department's continuation budget to implement budget reductions for the 2005-2006 fiscal year.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

REPLACEMENT SCHOOL BUSES FUNDS

SECTION 7.17.(a) The State Board of Education may impose any of the following conditions on allotments to local boards of education for replacement school buses:

(1) The local board of education shall use the funds only to make the first, second, or third year's payment on a financing contract entered into pursuant to G.S. 115C-528.

(2) The term of a financing contract entered into under this section shall not exceed three years.

(3) The local board of education shall purchase the buses only from vendors selected by the State Board of Education and on terms approved by the State Board of Education.

(4) The Department of Administration, Division of Purchase and Contract, in cooperation with the State Board of Education, shall solicit bids for the direct purchase of school buses and activity buses and shall establish a statewide term contract for use by the State Board of Education. Local boards of education and other agencies shall be eligible to purchase from the statewide term contract. The State Board of Education shall also solicit bids for the financing of school buses.

(5) A bus financed pursuant to this section shall meet all federal motor vehicle safety regulations for school buses.

(6) Any other condition the State Board of Education considers appropriate.

SECTION 7.17.(b) Any term contract for the purchase or lease-purchase of school buses or school activity buses shall not require vendor payment of the electronic procurement transaction fee of the North Carolina E-Procurement Service.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

EXPENDITURES FOR DRIVING ELIGIBILITY CERTIFICATES

SECTION 7.18. G.S. 115C-12(28) reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. – The State Board of Education shall adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish the procedures a person who is or was enrolled in a public school or in a charter school must follow and the requirements that person shall meet to obtain a driving eligibility certificate.

c. To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:

1. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).
2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

These rules shall apply to public schools and charter schools.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.

e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released

pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools.

The State Board of Education may use funds appropriated for drivers education to cover the costs of driving eligibility certificates."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

DISCREPANCIES BETWEEN ANTICIPATED AND ACTUAL ADM

SECTION 7.19.(a) If the State Board of Education does not have sufficient resources in the ADM Contingency Reserve line item to make allotment adjustments in accordance with the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual, the State Board of Education may use funds appropriated to State Aid for Public Schools for this purpose.

SECTION 7.19.(b) If the higher of the first or second month average daily membership in a local school administrative unit is at least two percent (2%) or 100 students lower than the anticipated average daily membership used for allotments for the unit, the State Board of Education shall reduce allotments for the unit. The reduced allotments shall be based on the higher of the first or second month average daily membership plus one-half of the number of students overestimated in the anticipated average daily membership.

The allotments reduced pursuant to this subsection shall include only those allotments that may be increased pursuant to the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

CHARTER SCHOOL ADVISORY COMMITTEE/CHARTER SCHOOL EVALUATION

SECTION 7.20. The State Board of Education may spend up to fifty thousand dollars ($50,000) a year from State Aid to Local School Administrative Units for the 2005-2006 and 2006-2007 fiscal years to continue support of a charter school advisory committee and to continue to evaluate charter schools.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

MENTOR TEACHER FUNDS MAY BE USED FOR FULL-TIME MENTORS

SECTION 7.21.(a) The State Board of Education shall grant flexibility to a local board of education regarding the use of mentor funds to provide mentoring support, provided the local board submits a detailed plan on the use of the funds to the State Board and the State Board approves that plan. The plan shall include information on how all mentors in the local school administrative unit have been or will be adequately trained to provide mentoring support.

Local boards of education shall use funds allocated for mentor teachers to provide mentoring support to all State-paid newly certified teachers, second-year teachers who were assigned mentors during the prior school year, and entry-level instructional support personnel who have not previously been teachers.

SECTION 7.21.(b) The State Board, after consultation with the Professional Teaching Standards Commission, shall adopt standards for mentor training.

SECTION 7.21.(c) Each local board of education with a plan approved pursuant to subsection (a) of this section shall report to the State Board on the impact of its mentor program on teacher retention. The State Board shall analyze these reports to determine the characteristics of mentor programs that are most effective in retaining teachers and shall report its findings to the Joint Legislative Education Oversight Committee by October 15, 2006.

SECTION 7.21.(d) In addition to the report required in subsection (c) of this section, the State shall also evaluate the effectiveness of a representative sample of local mentor programs and report on its findings to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2006. The evaluation

shall focus on quantitative evidence, quality of service delivery, and satisfaction of those involved. The report shall include the results of the evaluation and recommendations both for improving mentor programs generally and for an appropriate level of State support for mentor programs.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

VISITING INTERNATIONAL EXCHANGE TEACHERS

SECTION 7.22. G.S. 115C-105.25(b) is amended by adding a new subdivision to read:

"(5a) Positions allocated for classroom teachers may be converted to dollar equivalents to contract for visiting international exchange teachers. These positions shall be converted at the statewide average salary for classroom teachers, including benefits. The converted funds shall be used only to cover the costs associated with bringing visiting international exchange teachers to the local school administrative unit through a State-approved visiting international exchange teacher program and supporting the visiting exchange teachers."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

FUNDS TO IMPLEMENT THE ABCS OF PUBLIC EDUCATION

SECTION 7.23.(a) The State Board of Education shall use funds appropriated in this act for State Aid to Local School Administrative Units to provide incentive funding for schools that met or exceeded the projected levels of improvement in student performance during the 2004-2005 school year, in accordance with the ABCs of Public Education Program. In accordance with State Board of Education policy:

(1) Incentive awards in schools that achieve higher than expected improvements may be:
   a. Up to one thousand five hundred dollars ($1,500) for each teacher and for certified personnel; and
   b. Up to five hundred dollars ($500.00) for each teacher assistant.

(2) Incentive awards in schools that meet the expected improvements may be:
   a. Up to seven hundred fifty dollars ($750.00) for each teacher and for certified personnel; and
   b. Up to three hundred seventy-five dollars ($375.00) for each teacher assistant.

SECTION 7.23.(b) The State Board of Education may use funds appropriated to the State Public School Fund for assistance teams to low-performing schools.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

LEA ASSISTANCE PROGRAM

SECTION 7.24. Of the funds appropriated to the State Public School Fund, the State Board of Education shall use five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year and five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year to provide assistance to the State's low-performing Local School Administrative Units (LEAs) and to assist schools in meeting adequate yearly progress in each subgroup identified in the No Child Left Behind Act of 2001. The State Board of Education shall report to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Education Oversight Committee on the expenditure of these funds by May 15, 2006, and by December 15, 2007. The report shall contain: (i) the criteria for selecting LEAs and schools to receive assistance, (ii) measurable goals and objectives for the assistance program, (iii) an explanation of the assistance provided, (iv) findings from the assistance program, (v) actual expenditures by category, (vi) recommendations for the continuance of this program, and (vii) any

other information the State Board deems necessary. These funds shall not revert at the end of each fiscal year but shall remain available until expended for this purpose.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

FUNDS FOR THE TESTING AND IMPLEMENTATION OF THE NEW STUDENT INFORMATION SYSTEM

SECTION 7.25.(a) Funds appropriated for the Uniform Education Reporting System shall not revert at the end of the 2005-2006 and 2006-2007 fiscal years but shall remain available until expended.

SECTION 7.25.(b) This section becomes effective June 30, 2005.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

PUBLIC SCHOOL BUILDING CAPITAL AND TECHNOLOGY FUND

SECTION 7.26.(a) The title of Article 38A of Chapter 115C of the General Statutes reads as rewritten:

"Article 38A.

Public School Building Capital and Technology Fund."

SECTION 7.26.(b) G.S. 115C-546.1 is amended by deleting the language "Public School Building Capital Fund" wherever it appears and substituting "Public School Building Capital and Technology Fund".

SECTION 7.26.(c) Notwithstanding the provisions of G.S. 115C-546.1(b), as rewritten by subsection (b) of this section, for the third and fourth quarters of the 2005-2006 fiscal year only, the Secretary of Revenue shall remit to the State Treasurer an amount equal to five sixty-ninths of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3. Of these funds, twenty-five million dollars ($25,000,000) each quarter shall be for credit to the State Public School Fund, and the remainder shall be for credit to the Public School Building Capital and Technology Fund.

SECTION 7.26.(d) Notwithstanding the provisions of G.S. 115C-546.1(b), as rewritten by subsection (b) of this section, for the first and second quarters of the 2006-2007 fiscal year only, the Secretary of Revenue shall remit to the State Treasurer an amount equal to five sixty-ninths of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3. Of these funds, twenty million five hundred thousand dollars ($20,500,000) each quarter shall be for credit to the State Public School Fund, and the remainder shall be for credit to the Public School Building Capital and Technology Fund.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

LEA SALES TAX REFUND REPORTING

SECTION 7.27.(a) 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 January 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) A local school administrative unit.
(2c) 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.
(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 7.27.(b) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(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."

SECTION 7.27.(c) In addition to the report required under G.S. 105-164.14(c), as amended by this section, the Secretary of Revenue shall make a report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly within 30 days after this act becomes law of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of G.S. 105-164.14(c) during the 2002-2003, 2003-2004, and 2004-2005 fiscal years.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

REVIEW OF STANDARDS FOR MASTERS IN SCHOOL ADMINISTRATION PROGRAMS

SECTION 7.28. The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall review standards for Masters in School Administration programs to ensure that appropriate competencies related to teacher retention, teacher evaluations, teacher support programs, and teacher effectiveness are included and emphasized.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

EVALUATION OF SCHOOL PRINCIPALS

SECTION 7.29. Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-286.1. Evaluations of principals.**

Local school administrative units shall evaluate all principals and assistant principals at least once each year. Either the superintendent or the superintendent's designee shall conduct the evaluations.

The State Board of Education shall ensure that the standards and criteria for the evaluations include the accountability measures of teacher retention, teacher support, and school climate. The State Board shall revise its evaluation instruments to include these measures. A local board shall use the performance standards and criteria adopted by the State Board unless the board develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

PLANNING TIME FOR TEACHERS

SECTION 7.30. The State Board of Education shall report on best practices from North Carolina schools for providing a minimum of five hours per week within the instructional day for planning, collaborating with colleagues and parents, and professional development, especially within elementary school schedules. The State Board shall submit its report to the Education Cabinet and to the Joint Legislative Education Oversight Committee by December 31, 2005.

The State Board shall disseminate this information about best practices to schools and school systems across the State.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

ONLINE PROFESSIONAL DEVELOPMENT RESOURCE CENTER FOR TEACHERS AND PRINCIPALS

SECTION 7.31. The State Board of Education and the Department of Public Instruction shall develop a Web portal that catalogues high-quality professional development opportunities for teachers and principals.

The State Chief Information Officer must approve the system's information technology project plan before funds are spent for the implementation of this system.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

LEARN AND EARN HIGH SCHOOLS

SECTION 7.32.(a) Funds are appropriated in this act for the Learn and Earn high school workforce development program. The purpose of the program is to create rigorous and relevant high school options that provide students with the opportunity and assistance to earn an associate degree or two years of college credit by the conclusion of the year after their senior year in high school. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

SECTION 7.32.(b) These funds shall be used to establish new high schools in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and postsecondary college curricula operate seamlessly and meet the needs of participating employers.

Funds shall not be allotted until Learn and Earn high schools are certified as operational.

SECTION 7.32.(c) During the first year of its operation, a high school established under G.S. 115C-238.50 shall be allotted a principal regardless of the number of State-paid teachers assigned to the school or the number of students enrolled in the school.

SECTION 7.32.(d) The State Board of Education, in consultation with the State Board of Community Colleges and The University of North Carolina Board of Governors, shall conduct an annual evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; (ii) recommended statutory and policy changes; and (iii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by January 15 of each fiscal year.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

FLEXIBILITY FOR HIGH SCHOOL INNOVATION

SECTION 7.33.(a) Part 9 of Article 16 of Chapter 115C of the General Statutes reads as rewritten:

"Part 9. Cooperative Innovative High School Programs.

"**§ 115C-238.50. Purpose.**

(a) The purpose of this Part is to authorize ~~boards of trustees of community colleges and local boards of education to jointly establish~~ local boards of education to jointly establish with one or more boards of trustees cooperative innovative programs in high schools and ~~community~~ colleges or universities that will expand students' opportunities for educational success through high quality instructional programming. These cooperative innovative high school programs shall target:

(1) High school students who are at risk of dropping out of school before attaining a high school diploma; or

(2) High school students who would benefit from accelerated academic instruction.

(b) All the cooperative innovative high school programs established under this Part shall:

(1) Prepare students adequately for future learning in the workforce or in an institution of higher education.
(2) Expand students' educational opportunities within the public school system.
(3) Be centered on the core academic standards represented by the college preparatory or tech prep program of study as defined by the State Board of Education.
(4) Encourage the cooperative or shared use of resources, personnel, and facilities between public schools and ~~community colleges.~~ colleges or universities, or both.
(5) Integrate and emphasize both academic and technical skills necessary for students to be successful in a more demanding and changing workplace.
(6) Emphasize parental involvement and provide consistent counseling, advising, and parent conferencing so that parents and students can make responsible decisions regarding course taking and can track the students' academic progress and success.
(7) Be held accountable for meeting measurable student achievement results.
(8) Encourage the use of different and innovative teaching methods.
(9) Establish joint institutional responsibility and accountability for support of students and their success.
(10) Effectively utilize existing funding sources for high school, ~~community~~ college, university, and vocational programs and actively pursue new funding from other sources.
(11) Develop methods for early identification of potential participating students in the middle grades and through high school.
(12) Reduce the percentage of students needing remedial courses upon their initial entry from high school into a college or university.

(c) Programs developed under this Part that target students who are at risk of dropping out of high school before attaining a high school diploma shall:
(1) Provide these students with the opportunity to graduate from high school possessing the core academic skills needed for postsecondary education and high-skilled employment.
(2) Enable students to complete a technical or academic program in a field that is in high demand and has high wages.
(3) Set and achieve goals that significantly reduce dropout rates and raise high school and ~~community~~ college retention, certification, and degree completion rates.
(4) Enable students who complete these programs to pass employer exams, if applicable.

(d) Cooperative innovative high school programs that offer accelerated learning programs shall:
(1) Provide a flexible, customized program of instruction for students who would benefit from accelerated, higher level coursework or early graduation from high school.
(2) Enable students to obtain a high school diploma in less than four ~~years and~~ years, to begin or complete an associate degree ~~program or~~ program, to master a certificate or vocational ~~program.~~program, or to earn up to two years of college credit.
(3) Offer a college preparatory academic core and in-depth studies in a career or technical field that will lead to advanced programs or employment opportunities in engineering, health sciences, or teaching.

(e) Cooperative innovative high school programs may include the creation of a school within a school, a technical high school, or a high school or technical center located on the campus of a ~~community college.~~college or university.

(f) Students are eligible to attend these programs as early as ninth grade.

"**§ 115C-238.50A. Definitions.**

The following definitions apply in this Part:

(1) Constituent institution. – A constituent institution as defined in G.S. 116-2(4).

(2) Education partner. – An education partner as provided in G.S. 115C-238.52.

(3) Governing board. – The State Board of Community Colleges, the Board of Governors of The University of North Carolina, or the Board of the North Carolina Independent Colleges and Universities.

(4) Local board of trustees. – The board of trustees of a community college, constituent institution of The University of North Carolina, or private college located in North Carolina.

"**§ 115C-238.51. Application process.**

(a) A local board of education and ~~a~~ at least one local board of trustees ~~of a community college~~ shall jointly apply to establish a cooperative innovative high school program under this Part.

(b) The application shall contain at least the following information:

(1) A description of a program that implements the purposes in G.S. 115C-238.50.

(2) A statement of how the program relates to the Economic Vision Plan adopted for the economic development region in which the program is to be located.

(3) The facilities to be used by the program and the manner in which administrative services of the program are to be provided.

(4) A description of student academic and vocational achievement goals and the method of demonstrating that students have attained the skills and knowledge specified for those goals.

(5) A description of how the program will be operated, including budgeting, curriculum, transportation, and operating procedures.

(6) The process to be followed by the program to ensure parental involvement.

(7) The process by which students will be selected for and admitted to the program.

(8) A description of the funds that will be used and a proposed budget for the program. This description shall identify how the average daily membership (ADM) and full-time equivalent (FTE) students are counted.

(9) The qualifications required for individuals employed in the program.

(10) The number of students to be served.

(11) A description of how the program's effectiveness in meeting the purposes in G.S. 115C-238.50 will be measured.

(c) The application shall be submitted to the State Board of Education and the ~~State Board of Community Colleges~~ applicable governing Boards by November 1 of each year. The ~~State Board of Education and the State Board of Community Colleges~~ Boards shall appoint a joint advisory committee to review the applications and to recommend to the ~~State~~ Boards those programs that meet the requirements of this Part and that achieve the purposes set out in G.S. 115C-238.50.

(d) ~~The State Board of Education and the State Board of Community Colleges shall approve two cooperative innovative high school programs in each of the State's economic development regions.~~ The ~~State~~ Boards may approve programs recommended by the joint advisory committee or may approve other programs that were not

recommended. The ~~State~~ Boards shall approve all applications by March 15 of each year. No application shall be approved unless the ~~State Boards~~ State Board of Education and the applicable governing Board find that the application meets the requirements set out in this Part and that granting the application would achieve the purposes set out in G.S. 115C-238.50. Priority shall be given to applications that are most likely to further State education policies, to address the economic development needs of the economic development regions in which they are located, and to strengthen the educational programs offered in the local school administrative units in which they are located.

"**§ 115C-238.52. Participation by other education partners.**

(a) Any or all of the following education partners may participate in the development of a cooperative innovative program under this Part that is targeted to high school students who would benefit from accelerated academic instruction:

~~(1) A constituent institution of The University of North Carolina.~~

~~(2) A private college or university located in North Carolina.~~

(3) A private business or organization.

(4) The county board of commissioners in the county in which the program is located.

(b) Any or all of the education partners listed in subsection (a) of this section that participate shall:

(1) Jointly apply with the local board of education and the local board of trustees ~~of the community college~~ to establish a cooperative innovative program under this Part.

(2) Be identified in the application.

(3) Sign the written agreement under G.S. 115C-238.53(b).

"**§ 115C-238.53. Program operation.**

(a) A program approved by the State ~~shall be~~ is accountable to the local board of education.

(b) A program approved under this Part shall operate under the terms of a written agreement signed by the local board of education, local board of ~~trustees of the community college,~~ trustees, State Board of Education, and ~~State Board of Community Colleges.~~ applicable governing Board. The agreement shall incorporate the information provided in the application, as modified during the approval process, and any terms and conditions imposed on the program by the State Board of Education and the ~~State Board of Community Colleges.~~ applicable governing Board. The agreement may be for a term of no longer than five school years.

(c) A program may be operated in a facility owned or leased by the local board of education, the local board of ~~trustees of the community college,~~ trustees, or the education partner, if any.

(d) A program approved under this Part shall provide instruction each school year for at least 180 days during nine calendar months, shall comply with laws and policies relating to the education of students with disabilities, and shall comply with Article 27 of this Chapter.

(e) A program approved under this Part may use State, federal, and local funds allocated to the local school administrative unit, to the ~~State Board of Community Colleges,~~ applicable governing Board, and to the ~~community~~ college or university to implement the program. If there is an education partner and if it is a public body, the program may use State, federal, and local funds allocated to that body.

(f) Except as provided in this Part and ~~pursuant to~~ under the terms of the agreement, a program is exempt from laws and rules applicable to a local board of education, a local school administrative unit, a community college, a constituent institution, or a local board of ~~trustees of a community college.~~ trustees.

"**§ 115C-238.54. Funds for programs.**

(a) The Department of Public Instruction shall assign a school code for each program that is approved under this Part. All positions and other State and federal allotments that are generated for this program shall be assigned to that school code.

Notwithstanding G.S. 115C-105.25, once funds are assigned to that school code, the local board of education may use these funds for the program and may transfer these funds between funding allotment categories.

(b) The local board of trustees ~~of a community college~~ may allocate State and federal funds for a program that is approved under this Part.

(c) An education partner under G.S. 115C-238.52 that is a public body may allocate State, federal, and local funds for a program that is approved under this Part.

(d) If not an education partner under G.S. 115C-238.52, a county board of commissioners in a county where a program is located may nevertheless appropriate funds to a program approved under this Part.

(e) The local board of education and the local board of trustees ~~of the community college~~ are strongly encouraged to seek funds from sources other than State, federal, and local appropriations. They are strongly encouraged to seek funds the Education Cabinet identifies or obtains under G.S. 116C-4.

"**§ 115C-238.55. Evaluation of programs.**

The State Board of Education and the ~~State Board of Community Colleges~~ governing Boards shall evaluate the success of students in programs approved under this Part. Success shall be measured by high school retention rates, high school completion rates, high school dropout rates, certification and associate degree completion, admission to four-year institutions, postgraduation employment in career or study-related fields, and employer satisfaction of employees who participated in and graduated from the programs. Beginning October 15, 2005, and annually thereafter, the Boards shall jointly report to the Joint Legislative Education Oversight Committee on the evaluation of these programs. If, by October 15, 2006, the Boards determine any or all of these programs have been successful, they shall jointly develop a prototype plan for similar programs that could be expanded across the State. This plan shall be included in their report to the Joint Legislative Education Oversight Committee that is due by October 15, 2007."

SECTION 7.33.(b) It is the intent of the General Assembly that three cooperative innovative high school programs are established that emphasize the educational development of high school students in the areas of science and mathematics in a nonresidential setting. One of these programs shall be located in the eastern region of the State, one shall be located in the central region of the State, and one shall be located in the western region of the State. The State Board of Education shall begin planning for the design and implementation of these programs and shall report their plan to the Joint Legislative Education Oversight Committee and the Fiscal Research Division of the General Assembly by March 15, 2006.

The plan shall include, but not be limited to, the following aspects of the proposed programs:

(1) Programmatic design including location, curriculum, student access, and calendar,
(2) Projected costs of operation, including instructional, administrative, transportation, capital, and other costs,
(3) Any plans for coordination with institutes of higher education,
(4) Proposed implementation schedule.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

TEACHER PAY DATE

SECTION 7.34. G.S. 115C-302.1(b) reads as rewritten:

"(b) Salary Payments. – State-allotted teachers shall be paid for a term of 10 months. State-allotted months of employment for vocational education to local boards shall be used for the employment of teachers of vocational and technical education for a term of employment to be determined by the local boards of education. However, local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any

school year thereafter. In addition, local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 2003-2004 school year for any school year thereafter.

Each local board of education shall establish a set date on which monthly salary payments to State-allotted teachers shall be made. This set pay date may differ from the end of the month of service. The daily rate of pay for teachers shall equal midway between one twenty-first and one twenty-second of the monthly rate of pay. ~~Except for teachers employed in a year-round school or paid in accordance with a year-round calendar, or both, the~~The initial pay date for teachers, except for teachers employed in a year-round school and other teachers paid on a year-round calendar, shall be no later than ~~August 31 and~~ the end of the first month of employment. The initial payment shall ~~include a~~ be a full monthly payment. Subsequent pay dates shall be spaced no more than one month apart and shall include a full monthly payment.

Teachers may be prepaid on the monthly pay date for days not yet worked. A teacher who fails to attend scheduled workdays or who has not worked the number of days for which the teacher has been paid and who resigns, is dismissed, or whose contract is not renewed shall repay to the local board any salary payments received for days not yet worked. A teacher who has been prepaid and continues to be employed by a local board but fails to attend scheduled workdays may be subject to dismissal under G.S. 115C-325 or other appropriate discipline.

Any individual teacher who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. The request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease the teacher's annual salary nor in any other way alter the contract made between the teacher and the local school administrative unit. Teachers employed for a period of less than 10 months shall not receive their salaries in 12 installments.

Notwithstanding this subsection, the term "daily rate of pay" for the purpose of G.S. 115C-12(8) or for any other law or policy governing pay or benefits based on the teacher salary schedule shall not exceed one twenty-second of a teacher's monthly rate of pay."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

FUNDS FOR EDUCATION OF STUDENTS AT ECKERD YOUTH ALTERNATIVES THERAPEUTIC CAMP

SECTION 7.35. If a student is placed in an Eckerd Youth Alternatives therapeutic camp on the recommendation of a local school administrative unit, the unit shall transfer to the camp the State funds allocated to the unit for the education of the child. For each day that the child receives educational services at the camp, that unit shall pay 1/180 of the annual amount a charter school located in that unit would receive in State funds for that child, for a maximum of 180 days in a fiscal year. If the child is a child with special needs, the unit shall also be responsible for the State per pupil allocation for children with special needs.

Requested by: Senators Lucas, Garrou, Dalton, Hagan

FUND ONE LOCAL SCHOOL ADMINISTRATIVE UNIT PER COUNTY

SECTION 7.36.(a) Notwithstanding any other provision of law, the State Board of Education shall allot State funds on the basis of only one local school administrative unit per county. To implement this change, the State Board shall change formulas that allot funds on a per local school administrative unit basis to formulas that allot funds on a per county basis. If the amount previously allotted per local school administrative unit was graduated on the basis of average daily membership, the amount allotted per county shall be graduated on the basis of the total average daily membership of all units located in the county.

If a city school administrative unit is located in more than one county, the State Board of Education shall include in each county's average daily membership the average daily membership of the county's students in the city school administrative unit.

If a county contains more than one local school administrative unit, the State Board shall divide the amount allotted on a per county basis between the units on the basis of average daily membership.

SECTION 7.36.(b) This section does not apply to allotments to the Nash-Rocky Mount School Administrative Unit, the Edgecombe County School Administrative Unit, the Cleveland County School Administrative Unit, or the Gaston County School Administrative Unit.

SECTION 7.36.(c) This section becomes effective July 1, 2006.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

MINIMIZE TIME DEVOTED TO STANDARDIZED TESTS

SECTION 7.37. G.S. 115C-174.12(a) reads as rewritten:

"(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

(1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;

(2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and

(3) No school shall participate in more than two field tests at any one grade level during a school year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of children with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a child's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a child's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

EDUCATION CABINET

SECTION 7.38.(a) G.S. 116C-1(b) reads as rewritten:

"(b) The Education Cabinet shall consist of the Governor, who shall serve as chair, the President of The University of North Carolina, the State Superintendent of Public Instruction, the Chairman of the State Board of Education, the President of the North Carolina Community Colleges System, the Secretary of Health and Human Services, and the President of the North Carolina Independent Colleges and Universities. The Education Cabinet may invite other representatives of education to participate in its deliberations as adjunct members."

SECTION 7.38.(b) The Education Cabinet shall study:

(1) The extent to which school nurses, school social workers, and other instructional support personnel collaborate with each other and with local health, mental health, and social services providers to meet the needs of at-risk children and their families and to support the educational achievement of at-risk children; and

(2) The need for additional training for school nurses, school social workers, and other instructional support personnel on multidisciplinary assessments and on referral and care coordination for at-risk students and their families.

The Education Cabinet shall report the results of its study and its recommendations to the Joint Legislative Education Oversight Committee prior to April 15, 2006.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

THE CENTER FOR 21ST CENTURY SKILLS

SECTION 7.39.(a) The State Board of Education shall transfer funds appropriated for the Center for 21st Century Skills to the Office of the Governor. These funds shall be used for the establishment of the Center for 21st Century Skills within the North Carolina Business Committee for Education, Inc. The purpose of the Center shall be to design curriculum, teacher training, and student assessment to support students acquiring the knowledge and skills needed for the emerging workforce of the 21st century.

SECTION 7.39.(b) The North Carolina Business Committee for Education, Inc., and the Center for 21st Century Skills shall coordinate their efforts on high school reform with the North Carolina New Schools Project.

SECTION 7.39.(c) The North Carolina Business Committee for Education, Inc., and the Center for 21st Century Skills shall work with the North Carolina Science, Mathematics and Technology Education Center, the North Carolina School of Science and Mathematics, the North Carolina Board of Science and Technology, and the governing boards of education to research and propose options to create new or expand existing mathematics and science summer enrichment programs across the State and to establish nonresidential high schools focused on mathematics, science, and technology. The Center shall also support efforts of the Futures for Kids Program to connect students with the workforce needs of their home communities.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

TEACHER WORKING CONDITIONS INITIATIVE

SECTION 7.40.(a) Funds are appropriated in this act to continue the Governor's Teacher Working Conditions Survey. The State Board of Education shall use these funds: (i) for the administration of the survey by the Professional Teaching Standards Commission on a biennial basis, and (ii) to establish an advisory board to oversee implementation of recommendations from the survey.

SECTION 7.40.(b) The State Board of Education may supplement these funds with gifts or other private funds donated for this purpose.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

PLAN AND FUNDING FOR A VIRTUAL HIGH SCHOOL

SECTION 7.41.(a) The State Board of Education, the Board of Governors of The University of North Carolina, the Independent Colleges and Universities, and the State Board of Community Colleges shall develop E-learning standards and plans for infrastructures that provide virtual learning opportunities accessible to students and other citizens through all North Carolina schools, universities, and community colleges. In developing the plan for the public schools, the State Board of Education shall focus initially on high schools while also researching and developing, where appropriate,

E-learning for middle schools, junior high schools, and elementary schools. E-learning programs shall support both teachers and students.

SECTION 7.41.(b) As used in this section, "E-learning" is electronic learning that includes a wide set of applications and processes, such as Web-based learning, computer-based learning, virtual classrooms, and digital collaboration. It includes the delivery of content via Internet, intranet/extranet (LAN/WAN), audiotape, videotape, satellite broadcast, interactive television, and CD-ROM.

SECTION 7.41.(c) It is the intent of the General Assembly to give public schools the highest priority in funding for and development of E-learning. Funding for E-learning should be a new appropriation and not come exclusively from existing funds.

SECTION 7.41.(d) The State Board of Education shall use funds appropriated for a virtual high school to establish and implement a pilot virtual high school during the 2005-2006 school year and the 2006-2007 school year.

The State Board of Education shall include in the pilot program instruction on personal financial literacy. This instruction shall be designed to equip students with the knowledge and skills they need, before they become self-supporting, to make critical decisions regarding their personal finances. The components of instruction shall include, at a minimum, consumer financial education, personal finance, and personal credit.

SECTION 7.41.(e) If the pilot program is successful, it is the intent of the General Assembly to provide funding to implement a virtual high school on a statewide basis for the 2006-2007 fiscal year.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

FEASIBILITY STUDY FOR DEVELOPING REGIONAL EDUCATION NETWORKS

SECTION 7.42. The North Carolina Rural Economic Development Center and the e-NC Authority, in collaboration with representatives from local school administrative units, The University of North Carolina, the State Board of Education, the State Chief Information Officer, and the Community College System shall perform a feasibility study on developing regional education networks that are centrally managed to provide and sustain broadband connectivity to individual students and teachers in schools, community colleges, and universities.

The study shall include an evaluation of existing technology infrastructures, such as the statewide infrastructure, the North Carolina Research and Education Network, or the regional infrastructure, Winston-Net. These state-of-the-art infrastructures may be capable of supporting growth in traffic and thus serve as a backbone infrastructure for delivering high-speed access to underserved regions.

The North Carolina Rural Economic Development Center and the e-NC Authority shall report the results of the study to the 2006 Regular Session of the 2005 General Assembly.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

PLAN FOR PROJECTING SCHOOL TECHNOLOGY FUNDING NEEDS

SECTION 7.43.(a) G.S. 115C-102.6A(c) reads as rewritten:

"(c) Components of the State school technology plan shall include at least the following:

...

(17) A baseline template for:

a. Technology infrastructure, including broadband connectivity, personnel recommendations, and other resources needed to operate effectively from the classroom desktop to local, regional, and State networks, and

b. An evaluation component that provides for local school administrative unit accountability for maintaining quality upgradeable systems."

SECTION 7.43.(b) Before November 2005, the Department of Public Instruction shall hold regional workshops for local school administrative units to provide guidance in developing local school system technology plans that meet the criteria established in the State school technology plan, including the components added under subsection (a) of this section. The State Chief Information Officer will assist with the regional meetings as needed to provide technical assistance.

SECTION 7.43.(c) G.S. 115C-102.7 is amended by adding the following new subsection to read:

"(c) The Department of Public Instruction shall randomly check local school system technology plans to ensure that local school administrative units are implementing their plans as approved. The Department shall report to the State Board of Education and the State Chief Information Officer on which local school administrative units are not complying with their plans. The report shall include the reasons these local school administrative units are out of compliance and a recommended plan of action to support each of these local school administrative units in carrying out their plans."

SECTION 7.43.(d) The State Board of Education shall determine the total amount of funds needed for the recurring total cost of ownership to implement, maintain, and upgrade technology infrastructures and instructional technology as specified in the revised local school system technology plans. This shall include personnel costs for both technical and instructional needs so that a three- to five-year budget plan can be developed for the General Assembly.

SECTION 7.43.(e) The State Board of Education shall also study and identify the types of resources needed to operate schools designed to meet the needs of twenty-first century learners.

The State Board shall report the results of this study to the 2006 Regular Session of the 2005 General Assembly.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

ANNUAL REPORT THAT HIGHLIGHTS THE IMPACT OF EDUCATION PREPARATION ON ECONOMIC GROWTH

SECTION 7.44. The North Carolina Board of Science and Technology shall prepare an annual report by county on the status of trends that reflect the impact of education on economic growth for the twenty-first century. This report shall contain information about the status of each county with regard to education and economic growth.

The Board shall provide the report to the Regular 2006 Session of the 2005 General Assembly and shall make the report available for citizens.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

PROCESS FOR MORE ASSISTANCE FOR E-RATE

SECTION 7.45. In order to provide assistance to local school administrative units with E-rate applications, the Department of Public Instruction shall, within existing funds, ensure that a minimum of one full-time coordinator who has technical knowledge and skills is assigned this responsibility. The Department shall notify local school administrative units about the person or office assigned the responsibility of providing assistance with E-rate applications.

The Department shall provide the State Board of Education with an annual report on E-rate, including funding, commitments, and enrollment by local school administrative units.

As used in this section, "E-rate" is the mechanism to provide discount rates to support universal telecommunications services for use by schools and libraries as provided in section 254 of the federal Telecommunications Act of 1996.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

PLANNING FOR A STATE CENTRAL INFRASTRUCTURE OFFICE

SECTION 7.46.(a) The Office of State Budget and Management shall conduct a study to determine the feasibility of establishing a State Central Infrastructure Office that would collect and manage information for technology, water, sewer, and other utility infrastructures needed to assist communities in becoming and remaining economically viable.

SECTION 7.46.(b) The Office of State Budget and Management shall report the results of this study to the 2006 Regular Session of the 2005 General Assembly. The report shall include legislative proposals, including a proposal to define the term "infrastructure" in the General Statutes to include technology.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

SCHOOL EMPLOYEE SALARY STUDY

SECTION 7.47. The Joint Legislative Education Oversight Committee shall study the current salary structure for teachers and other school employees. In the course of the study, the Committee shall:

(1) Develop a plan to get the State moving toward the national average in teacher salaries by 2008 and toward the top 10 states in the nation by 2010.

(2) Consider strategies for maintaining the lead in teacher salaries in the Southeastern United States.

(3) Consider the need to reduce the number of steps on the teacher salary schedule, increase the beginning teacher salary, and enable an individual to reach the maximum salary sooner.

(4) Perform a market-sensitive analysis of the skills and knowledge needed to be a successful teacher to determine what it takes to make the schedule attractive and competitive.

(4) Consider the placement of appropriate extraordinary increases on schedule for achievement of career status, teacher retention, and other purposes.

(5) Determine the need to modify the masters schedule differential.

(6) Determine the need to modify the alternative salary schedules to reward different levels of academic preparation and career accomplishments such as attainment of national certification.

(7) Consider the appropriate relationship of the school counselor's schedule to the schedules for other members of the school-based staff.

(8) Determine the need to modify the administrator salary schedule.

(9) Consider other matters the Committee deems appropriate.

The Committee shall report the results of its study to the 2006 Regular Session of the 2005 General Assembly.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

COMMISSION FOR A SOUND BASIC EDUCATION

SECTION 7.48.(a) The North Carolina Commission for a Sound Basic Education is hereby established. The Commission shall (i) investigate strategies and resources which contribute to the opportunity for North Carolina students to obtain a sound basic education, (ii) analyze all current plans for implementing the strategies developed to enhance every child's ability to fulfill his or her potential, and (iii) if necessary, provide a cost analysis for implementing those plans.

SECTION 7.48.(b) The Commission shall consist of six members appointed by the President Pro Tempore of the Senate and six members appointed by the Speaker of the House of Representatives. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Commission from their appointees.

SECTION 7.48.(c) The Commission shall appoint advisory members to assist it in its work. The advisory members shall include at least two parents of children

in the public schools and representatives of State agencies, the Community College System, The University of North Carolina, education organizations, child health organizations, and child advocacy organizations.

SECTION 7.48.(d) The full commission shall meet on a monthly basis. The commission shall develop the necessary and appropriate committees and subcommittees to facilitate completion of its work. The committees and subcommittees shall meet as necessary to effectively conduct the work with which they are charged.

SECTION 7.48.(e) Only members of the Commission may vote on any matter before the Commission.

SECTION 7.48.(f) Members of the Commission and advisory members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 7.48.(g) The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

SECTION 7.48.(h) The Commission shall provide opportunities for substantive and meaningful input into and development and review of the comprehensive plan by all stakeholders in the public education system. These stakeholders include, but are not limited to, students, parents, guardians, educators, school board members, education advocates, and child health professionals. Opportunities for input and review shall include (i) regional public forums, (ii) regular distribution to local newspapers statewide of details of its work and posting of the information on the Internet, (iii) providing stakeholders with the opportunity to identify representative members of stakeholder groups to be included as full participants in the Commission's deliberations, and (iv) open meetings of the Commission and any committees it may create.

SECTION 7.48.(i) The Commission shall make a final report to the General Assembly by January 15, 2006. The report shall include the details of the plans, the results of the cost analysis and a proposed budget, and any statutory changes necessary to implement the plans on a statewide basis.

SECTION 7.48.(j) The Commission shall terminate upon filing its final report or upon the convening of the 2006 Regular Session of the 2005 General Assembly, whichever is earlier.

SECTION 7.48.(k) Funds in the amount of two hundred thousand dollars ($200,000) are appropriated in this act to the General Assembly to carry out its work of the North Carolina Commission for a Sound Basic Education.

PART VIII. COMMUNITY COLLEGES

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

USE OF FUNDS FOR THE COLLEGE INFORMATION SYSTEM PROJECT

SECTION 8.1.(a) Funds appropriated to the Community Colleges System Office for the College Information System Project shall not revert at the end of the 2004-2005 fiscal year but shall remain available until expended.

SECTION 8.1.(b) The Community Colleges System Office shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the College Information System Project.

SECTION 8.1.(c) Subsection (a) of this section becomes effective June 30, 2005.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

CARRYFORWARD FOR EQUIPMENT

SECTION 8.2.(a) Subject to the approval of the Office of State Budget and Management and cash availability, the North Carolina Community Colleges System Office may carry-forward an amount not to exceed fifteen million dollars ($15,000,000) of the operating funds that were not reverted in fiscal year 2004-2005 to be reallocated to the State Board of Community Colleges' Equipment Reserve Fund. These funds shall be distributed to colleges consistent with G.S. 115D-31.

SECTION 8.2.(b) This section becomes effective June 30, 2005.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

SALARIES OF COMMUNITY COLLEGE FACULTY AND PROFESSIONAL STAFF

SECTION 8.3.(a) The minimum salaries for community college faculty shall be based on the following education levels:

(1) Vocational Diploma/Certificate or Less. – This education level includes faculty members who are high school graduates, have vocational diplomas, or have completed one year of college.

(2) Associate Degree or Equivalent. – This education level includes faculty members who have an associate degree or have completed two or more years of college but have no degree.

(3) Bachelors Degree.

(4) Masters Degree or Education Specialist.

(5) Doctoral Degree.

SECTION 8.3.(b) For the 2005-2006 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

Education Level	Minimum Salary 2005-2006	Minimum Salary 2006-2007
Vocational Diploma/Certificate or Less	$29,652	$30,542
Associate Degree or Equivalent	$30,102	31,005
Bachelors Degree	$32,050	33,011
Masters Degree or Education Specialist	$33,777	34,790
Doctoral Degree	$36,269	37,357

No full-time faculty member shall earn less than the minimum salary for his or her education level.

The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

SECTION 8.3.(c)

(1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average, therefore:

a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.

b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent (6%) of the State funds allocated to it for faculty salaries.

c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.

d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.

e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

(2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.

(3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for New and Expanding Industry Training to increase faculty salaries.

SECTION 8.3.(d) As used in this section:

(1) "Average faculty salary at a community college" means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the college, as determined by the North Carolina Community College System on October 1 of each year.

(2) "National average community college faculty salary" means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

SECTION 8.3.(e) The State Board of Community Colleges shall adopt rules to implement the provisions of this section.

SECTION 8.3.(f) The State Board of Community Colleges shall report to the appropriations subcommittees on education, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Fiscal Research Division, and the Office of State Budget and Management by December 1, 2005, and every year thereafter through December 1, 2009, on the implementation of this section.

SECTION 8.3.(g) Funds appropriated in this act for salary increases shall be used to increase faculty and professional staff salaries by an average of two percent (2%). These increases are in addition to other salary increases provided for in this act and shall be calculated on the average salaries prior to the issuance of the compensation increase. Colleges may provide additional increases from funds available.

The State Board of Community Colleges shall adopt rules to ensure that these funds are used only to move faculty and professional staff to the respective national averages. These funds shall not be transferred by the State Board or used for any other budget purpose by the community colleges.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

WORKFORCE DEVELOPMENT PROGRAMS

SECTION 8.4.(a) Article 1 of Chapter 115D of the General Statutes is amended by adding a new G.S. 115D-5.1 to be entitled "Workforce Development Programs"; G.S. 115D-5(d) is recodified as G.S. 115D-5.1(a); G.S. 115D-5(k) is recodified as G.S. 115D-5.1(b); and G.S. 115D-5(i) is recodified as G.S. 115D-5.1(c).

SECTION 8.4.(b) G.S. 115D-5.1, as enacted by subsection (a) of this section, reads as rewritten:

"**§ 115D-5.1. Workforce Development Programs.**

(a) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(b) The North Carolina Community College System's New and Expanding Industry Training (NEIT) Program Guidelines, which were adopted by the State Board of Community Colleges on April 18, 1997, apply to all funds appropriated for the Program after June 30, 1997. A project approved as an exception under these Guidelines, or these Guidelines as modified by the State Board of Community Colleges, shall be approved for one year only.

(c) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on September 1 of each year on expenditures for the New and Expanding Industry Training Program each fiscal year. The report shall include, for each company or individual that receives funds for the New and Expanding Industry Training Program:

(1) The total amount of funds received by the company or individual;

(2) The amount of funds per trainee received by the company or individual;

(3) The amount of funds received per trainee by the community college training the trainee;

(4) The number of trainees trained by company and by community college; and

(5) The number of years the companies or individuals have been funded.

(d) Funds available to the New and Expanding Industry Training Program shall not revert at the end of a fiscal year but shall remain available until expended.

(e) There is created within the North Carolina Community College System the Customized Industry Training (CIT) Program. The CIT Program shall offer programs and training services as new options for assisting existing business and industry to remain productive, profitable, and within the State. Before a business or industry

qualifies to receive assistance under the CIT Program, the President of the North Carolina Community College System shall determine that:

(1) The business is making an appreciable capital investment;
(2) The business is deploying new technology; and
(3) The skills of the workers will be enhanced by the assistance.

The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

(1) The total amount of funds received by a company under the CIT Program;
(2) The amount of funds per trainee received by that company;
(3) The amount of funds received per trainee by the community college delivering the training;
(4) The number of trainees trained by the company and community college; and
(5) The number of years that company has been funded.

The State Board shall adopt rules and policies to implement this section."

SECTION 8.4.(c) Notwithstanding any other provision of law, the State Board of Community Colleges may use funds appropriated to it for the New and Expanding Industry Training Program to operate programs under the Customized Industry Training Program.

SECTION 8.4.(d) G.S. 115D-5.1(d), as enacted by this section, becomes effective June 30, 2005.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

REPORT ON THE ADEQUACY OF MULTICAMPUS FUNDS

SECTION 8.5. The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by October 1 of each year.

Notwithstanding any other provision of law, funds appropriated to the Community Colleges System Office for multicampus colleges or off-campus centers shall be used only for the administration of the multicampus college or off-campus center for which the funds were allotted. These funds shall not be transferred to any other campus or center, or used for any other purpose.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

EDUCATION PROGRAM AUDITING FUNCTION

SECTION 8.6. G.S. 115D-5(m) reads as rewritten:

"(m) ~~The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges.~~ The State Board of Community Colleges shall maintain an education program auditing function that conducts an annual audit of each community college operating under the provisions of this Chapter. The purpose of the annual audit shall be to ensure that college programs and related fiscal operations comply with State law, State regulations, State Board policies, and System Office guidance. The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges. All education program audit findings shall be forwarded to the college president, local college board of trustees, the State Board of Community Colleges, and the State Auditor. The State Board shall assess a twenty-five percent (25%) fiscal

penalty in addition to the audit exception on all audits of both dollars and student membership hours excepted when the audit exceptions result from nonprocessing errors."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

FERRY BOAT OPERATOR TRAINING FEASIBILITY STUDY

SECTION 8.7.(a) The State Board of Community Colleges, in consultation with the Ferry Division of the Department of Transportation, shall study the need for training for ferry boat operators. In conducting the study, the State Board shall consider the following:

(1) Types of training needed and whether it is feasible for the community colleges to provide this training.
(2) Estimated number of students.
(3) Estimated employment opportunities for the students.
(4) Start-up costs for the program and resources for those costs.
(5) Location of the training.

SECTION 8.7.(b) The State Board shall report to the Joint Legislative Education Oversight Committee and the Joint Legislative Transportation Oversight Committee on its findings and recommendations no later than December 1, 2005.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

EXTEND THE SUNSET ON TRAINING AND REEMPLOYMENT CONTRIBUTIONS MADE BY EMPLOYERS

SECTION 8.8.(a) Section 8 of S.L. 1999-321, as amended by Section 30.5(f) of S.L. 2001-424, reads as rewritten:

"Section 8. Section 1 of this act is effective with respect to calendar quarters beginning on or after April 1, 1999. Section 7 of this act becomes effective July 1, 1999. The remainder of this act is effective with respect to calendar quarters beginning on or after January 1, 2000. ~~G.S. 96-6.1, as enacted by Section 2 of this act, is repealed effective with respect to calendar quarters beginning on or after January 1, 2006.~~"

SECTION 8.8.(b) G.S. 96-6.1 is amended by adding a new subsection to read:

"(c) Sunset. – This section is repealed effective with respect to calendar quarters beginning on or after January 1, 2011."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

COMMUNITY COLLEGE INNOVATIVE LEARNING FUND

SECTION 8.9. There is created within the North Carolina Community College System (NCCCS) The Innovative Learning Fund. The purpose of the Fund is to assist colleges with infrastructure needs as they evolve to meet the needs of the changing economy. The President of the NCCCS, in consultation with the State Board of Community Colleges, may make grants to qualified colleges of up to one million dollars ($1,000,000), for planning, equipment, or technology for innovative or lifelong learning centers. The NCCCS shall consult with the seven Economic Development Partnerships, the local boards of trustees, the constituent institutions of The University System when appropriate, and any other entity it deems necessary to prioritize and determine which projects should receive grants from the Fund. In awarding the grants, the President and the State Board shall consider the following:

(1) The Vision Plan of the Economic Development Partnership where the project will be located;
(2) The ability of the county to provide funding for the project;
(3) The maintenance of effort by the county to support the existing mission of the college;
(4) The impact the innovative learning center will have on economic development in the county and region; and

(5) The existence of any other innovative learning centers in the region.

Priority shall be given to projects that directly impact teacher education, allied health, economic development, or public safety.

Funds appropriated in this act for the Innovative Learning Fund shall not revert at the end of the 2005-2006 fiscal year but shall remain available until expended.

Requested by: Senators Rand, Lucas, Swindell, Garrou, Dalton, Hagan

CARRYFORWARD FOR COLLEGES IN ECONOMICALLY DISADVANTAGED COUNTIES

SECTION 8.10.(a) Notwithstanding G.S. 143-18 or any other provision of law, a community college may retain and carry-forward its General Fund current operations credit balance remaining at the end of the fiscal year, if the county in which the main campus of the community college is located:

(1) Is designated as a Tier 1 or Tier 2 county in accordance with G.S. 105-129.3;

(2) Had an unemployment rate greater than or equal to seven percent (7%) in calendar year 2004; and

(3) Is designated as a Low-Wealth County under Section 7.6 of this act, whose wealth as calculated by the Low-Wealth Formula is eighty percent (80%) or less of the State Average.

SECTION 8.10.(b) Colleges who serve counties that meet the criteria outlined in subsection (a) of this section, but whose main campuses are not located in such counties, may carry-forward the percentage of the funds remaining at the end of the fiscal year equal to the percentage of total full-time equivalent students served in those counties that meet the criteria, as determined by the North Carolina Community Colleges System Office.

SECTION 8.10.(c) Allowable carryforwards under this section shall be calculated prior to the calculation of Performance Funding as described in G.S. 115D-31.3.

SECTION 8.10.(d) This section becomes effective June 30, 2005.

Requested by: Senators Rand, Lucas, Swindell, Garrou, Dalton, Hagan

DEFENSE TECHNOLOGY INNOVATION CENTER

SECTION 8.11. Funds appropriated in this act for North Carolina Electronics and Information Technologies Association's Defense Technology Innovation Center shall be used for the following:

(1) Site selection and acquisition, including the purchase or lease of real property to house the Center; the construction of buildings or other site structures; the improvement or refurbishment of existing structures to provide appropriate laboratory and administrative space; and the improvement of existing infrastructure at the facility, including improvements to utility, telecommunications, and Internet infrastructure.

(2) Equipment acquisition, including acquisition of laboratory equipment and supplies and office furniture, equipment, and supplies.

(3) Employment of staff to support the mission of the Center and to oversee day-to-day operations of the Center.

(4) Implementation of a comprehensive business and marketing plan for the Center.

(5) Development of a tenant screening process and the recruitment of appropriate tenants for the Center.

(6) Administration and operation of the Center and the development of a sustainable business plan for the Center.

PART IX. UNIVERSITIES

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

UNC FLEXIBILITY GUIDELINES

SECTION 9.1. The Chancellor of each constituent institution shall report to the Board of Governors of The University of North Carolina on the management flexibility adjustments made to the General Fund budget codes in order to meet the reserve amounts for that institution. The President of The University of North Carolina shall report to the Board of Governors of The University of North Carolina on the reductions made to the General Fund budget codes controlled by the Board in order to meet the reduction reserve amounts for those entities. The Board of Governors shall make a summary report to the Office of State Budget and Management and the Fiscal Research Division by December 31, 2005, on all reductions made by these entities and constituent institutions in order to reduce the budgets by the targeted amounts.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

ENROLLMENT GROWTH FUND/ENCOURAGE PARTNERSHIPS FOR NEW 2 + 2 PROGRAMS

SECTION 9.2.(a) The University of North Carolina Board of Governors' Task Force on Meeting Teacher Supply and Demand called for the President to develop a plan for enrollment growth in the University System's teacher education programs to respond to the State's shortage of teachers. In a presentation to the Joint Legislative Education Oversight Committee and to the Board of Governors, a commitment was made to increase the number of teacher education graduates in 2005-2006 and in 2006-2007. The Office of the President of The University of North Carolina shall obtain plans from each campus as to how they will maintain their current enrollment in the teacher education programs and achieve their growth targets to ensure such increases in those programs occur. Plans may include using enrollment growth funds for targeted admissions, enhanced student support, and advising, recruiting, increases in faculty in necessary instructional areas that lead to certification, and other methods the Office of the President believes will achieve those results. The Office of the President shall report back to the Office of State Budget and Management and the Joint Legislative Education Oversight Committee no later than December 30, 2005, on each campus's plan. No later than March 31, 2006, the Office of the President shall submit a report on progress towards meeting this priority for the 2006-2007 academic year, based on each campus's current students in the education programs, and the students who have been accepted for the 2006-2007 fiscal year who are enrolling in the education programs. The report shall also explain the distribution of enrollment growth funds by specific initiative.

SECTION 9.2.(b) The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall strongly encourage the constituent institutions and the community colleges that do not currently have 2 + 2 programs that emphasize teacher education to design and enter into formal partnerships to offer those 2 + 2 programs. The Board of Governors and the Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee by February 1, 2006, regarding the status of existing 2 + 2 programs and any new partnerships established.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

UNC-NCCCS JOINT INITIATIVE FOR TEACHER EDUCATION AND RECRUITMENT

SECTION 9.3.(a) Funds appropriated in this act to The University of North Carolina for the UNC-NCCCS Joint Initiative for Teacher Education and Recruitment shall be used to establish eight positions. These individuals shall have an office in and work with staff in the Regional Alternative Licensure Centers of the Department of Public Instruction. Their responsibilities are to assist in increasing the number of

certified teachers in the public schools of North Carolina. To accomplish this, their specific tasks are as follows:

(1) Resolve curriculum issues between The University of North Carolina campuses and the community colleges within each region to ensure seamless articulation;
(2) Serve as licensure advisors to prospective teachers and assist with individual reviews for lateral entry candidates;
(3) Offer admissions advice to community college students seeking to transfer to a four-year institution; and
(4) Recruit prospective teachers on community college campuses.

Funds have been included in the appropriation to ensure these staff members can travel routinely among all the University System campuses and community college sites within a region.

SECTION 9.3.(b) The results of this initiative shall be reported annually, and shall include at a minimum, the following performance outcomes by region in which the advisors are working:

(1) Number of community college students articulated and working toward teacher licensure, their "base" community college, and The University of North Carolina institution to which they have moved;
(2) Number of lateral entry teachers worked with by these advisors who are actively pursuing certification, and the number licensed;
(3) Head count of the number of students in the process of receiving courses towards certification, their home county, where/at what institution(s) they are taking the course(s), and whether they are taking the course by regular attendance or via distance education (or the respective percentages if both methods are being employed);
(4) Total full-time equivalencies (FTE's) and student credit hours that the head count in subdivision (3) of this subsection represents;
(5) Articulation issues and curriculum changes effectively made as a result of these advisors; and
(6) Articulation issues that are under discussion but have not been satisfactorily resolved.

SECTION 9.3.(c) These results shall be reported by September 1, 2006, and annually thereafter to the State Board of Education, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, the Education Cabinet, the Joint Legislative Education Oversight Commission, and the Office of State Budget and Management.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

ENROLLMENT GROWTH FUNDING MODEL

SECTION 9.4. The Office of State Budget and Management, jointly with The University of North Carolina and the Fiscal Research Division of the General Assembly, shall conduct a comprehensive review of the enrollment funding model to review the assumptions contained within each element of the formula, to obtain current benchmark information related to specific elements within the formula, and to examine the impact of alternative elements and assumptions. An alternative to the current model shall be the result of this analysis. This alternative shall be used to prepare a request for enrollment growth funding for the budget to be submitted for the 2006 Session of the General Assembly and shall be shown in comparison to the use of the current formula.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

UNC-NCCCS 2+2 E-LEARNING INITIATIVE

SECTION 9.5. Funds appropriated in this act to The University of North Carolina and the North Carolina Community College System for the UNC-NCCCS 2+2 E-Learning Initiative shall be used to fund further development of online courses for

2+2 programs. Based on a mutually agreed upon decision by the State Board of Education Chairman, the President of the North Carolina Community College System, and the President of The University of North Carolina as to the areas of greatest need, funds are available to support joint technology development, systems to track student progress and articulation between a North Carolina community college and a University of North Carolina campus, and to develop technology to support online courses and 2+2 programs.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

USE OF ESCHEAT FUND FOR NEED-BASED FINANCIAL AID PROGRAMS

SECTION 9.6.(a) There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of sixty-seven million two hundred forty-eight thousand sixteen dollars ($67,248,016) for fiscal year 2005-2006 and the sum of sixty-seven million six hundred thirty-eight thousand sixteen dollars ($67,638,016) for fiscal year 2006-2007; and to the State Board of Community Colleges the sum of thirteen million nine hundred eighty-one thousand two hundred two dollars ($13,981,202) for fiscal year 2005-2006 and the sum of thirteen million nine hundred eighty-one thousand two hundred two dollars ($13,981,202) for fiscal year 2006-2007. These funds shall be allocated by the North Carolina State Educational Assistance Authority (SEAA) for need-based student financial aid in accordance with G.S. 116B-7.

The SEAA shall perform all of the administrative functions necessary to implement this program of financial aid. The SEAA shall conduct periodic evaluations of expenditures of the Scholarship Programs to determine if allocations are utilized to ensure access to institutions of higher learning and to meet the goals of the respective programs. The SEAA may make recommendations for redistribution of funds to The University of North Carolina and the President of the Community College System regarding their respective scholarship programs, who then may authorize redistribution of unutilized funds for a particular fiscal year.

SECTION 9.6.(b) There is appropriated from the Escheat Fund to the Board of Governors of The University of North Carolina the sum of seven hundred eighty thousand dollars ($780,000) for the 2005-2006 fiscal year and the sum of one million one hundred seventy thousand dollars ($1,170,000) for the 2006-2007 fiscal year to be allocated to the SEAA for need-based student financial aid to be used in accordance with G.S. 116B-7 and this act. The SEAA shall use these funds only to provide scholarship loans (known as the Millennium Teaching Scholarship Loan Program) to North Carolina high school seniors interested in preparing to teach in the State's public schools who also enroll at any of the Historically Black Colleges and Universities that do not have Teaching Fellows. An allocation of 20 grants of six thousand five hundred dollars ($6,500) each shall be given to the three universities without any Teaching Fellows for the purposes specified in this subsection.

The SEAA shall administer these funds and shall establish any additional criteria needed to award these scholarship loans, the conditions for forgiving the loans, and the collection of the loan repayments when necessary.

SECTION 9.6.(c) If the interest income generated from the Escheat Fund is insufficient to pay the appropriations made in subsections (a) and (b) of this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum of four hundred million dollars ($400,000,000).

SECTION 9.6.(d) All obligations to students for uses of the funds set out in sections that were made before the date this act becomes law shall be fulfilled as to students who remain eligible under the provisions of the respective programs.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

STUDY OF DISTANCE EDUCATION

SECTION 9.7. The Office of State Budget and Management shall conduct a study to identify and analyze the distance education programs at the institutions in the University System. The study shall identify any duplication in course and program offerings, leader courses and programs at campuses in a particular area of study, the cost of developing online courses, and determine which campuses are best suited to offer a particular course or program of study. The findings of the study shall be reported to the Joint Legislative Education Oversight Committee no later than April 30, 2006.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

INFORMATION TECHNOLOGY PROCUREMENT

SECTION 9.8. For purposes of purchasing hardware, software licenses, and multiyear maintenance agreements, The University of North Carolina and its constituent institutions may participate in the aggregation of purchasing administered by the Office of State Technology Services, as defined in G.S. 147-33.72F. The Office of State Budget and Management shall conduct a cost comparison study of hardware, software license, and multiyear maintenance agreement purchases made by The University of North Carolina and its constituent institutions and by the Office of State Technology Services, to determine if further aggregation is cost-justified. The Study shall also include an analysis of aggregated purchases by the University System and the effect of educational discounts available to the University System. The report of comparative unit costs shall be completed by December 31, 2005.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

BOARD OF GOVERNORS' DENTAL SCHOLARSHIPS

SECTION 9.9.(a) The current Board of Governors' Dental Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Dental Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Dental Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers for first-year students, required dental equipment, and an annual payment of five thousand dollars ($5,000) per year to students who have been accepted for admission to the School of Dentistry at the University of North Carolina at Chapel Hill. The Board may adopt standards, including minimum grade point average and SAT scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices dentistry in North Carolina for four years. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice medicine in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year.

SECTION 9.9.(b) Any dental scholarship awarded prior to July 1, 2005, shall remain a scholarship and shall not be converted to a scholarship loan unless the recipient agrees to the conversion.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

BOARD OF GOVERNORS' MEDICAL SCHOLARSHIPS

SECTION 9.10.(a) The current Board of Governors' Medical Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Medical Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Medical Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers, and an annual payment of five thousand dollars ($5,000) per year to students who have been accepted for admission to either Duke University School of Medicine, Brody School of Medicine at East Carolina University, the University of North Carolina at Chapel Hill School of Medicine, or the Wake Forest University School of Medicine. The Board may adopt standards, including minimum grade point average and SAT scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices medicine in North Carolina for four years. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice medicine in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall revert to the General Fund at the end of each fiscal year.

SECTION 9.10.(b) Any medical scholarship awarded prior to July 1, 2005, shall remain a scholarship and shall not be converted to a scholarship loan unless the recipient agrees to the conversion.

Requested by: Senators Swindell, Lucas, Garrou, Dalton, Hagan

TEACHER SCHOLARSHIPS FUNDS

SECTION 9.11.(a) Article 23 of Chapter 116 of the General Statutes is amended by adding the following new section:

"**§ 116-209.38. Future Teachers of North Carolina Scholarship Loan Fund.**

(a) There is established the Future Teachers of North Carolina Scholarship Loan Fund. The purpose of the Fund is to provide a two-year scholarship loan of six thousand five hundred dollars ($6,500) per year for any North Carolina student pursuing a college degree to teach in the public schools of the State. The scholarship loan shall be paid only for the student's junior and senior years. The scholarship loan is available if the student is enrolled in a State institution of higher education or a private institution of higher education located in this State that has an accredited teacher preparation program for students planning to become certified teachers in North Carolina. The State Education Assistance Authority shall administer the Fund and shall award 100 scholarship loans annually.

(b) The Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, shall develop the criteria for awarding the scholarship loans under this section and shall adopt very stringent standards for awarding these scholarship loans to ensure that only the best students receive them. Additional criteria for awarding a scholarship loan under this section shall include all of the following:

(1) The student is one who either: (i) maintained a "B" or better average in college and is enrolled as a junior or senior in a teacher preparation

program at any of the institutions described by subsection (a) of this section; or (ii) completed a college transfer curriculum at a community college in the State's community college system, maintained a "B" or better average in the community college courses, and is accepted and enrolled in a teacher preparation program at one of the institutions described by subsection (a) of this section.

(2) The student agrees to become certified in math, science, special education, or English as a Second Language and teach full-time in that subject area in a North Carolina public school for three years within four years after graduation.

(3) Any additional criteria that the Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, considers necessary to administer the Fund effectively.

(c) If a student who is awarded a scholarship loan under this section fails to comply with the provisions of this section or the terms of the agreement awarding the scholarship loan, then the student shall repay the full amount of the scholarship loan provided to the student and the appropriate amount of interest as determined by the State Education Assistance Authority.

(d) The Board of Governors of The University of North Carolina, the State Board of Education, and the State Board of Community Colleges shall: (i) prepare a clear written explanation of the Future Teachers of North Carolina Scholarship Fund and the information regarding the availability and criteria for awarding the scholarship loans, and (ii) shall provide that information to the appropriate counselors in each local school system and the appropriate institutions of higher education and shall charge those counselors to inform students about the scholarship loans and to encourage them to apply for the scholarship loans.

(e) The Board of Governors of The University of North Carolina shall adopt rules to implement this section.

(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by March 1 each year regarding the Fund and scholarship loans awarded from the Fund."

SECTION 9.11.(b) Of the funds appropriated in this act to the State Education Assistance Authority the sum of six hundred fifty thousand dollars ($650,000) for the 2005-2006 fiscal year and the sum of one million three hundred thousand dollars ($1,300,000) for the 2006-2007 fiscal year shall be used to implement this act.

Requested by: Senators Lucas, Swindell, Nesbitt, Garrou, Dalton, Hagan

UNC-ASHEVILLE RETAIN SALE PROCEEDS

SECTION 9.12. Notwithstanding any other provision of law, the University of North Carolina at Asheville may retain the proceeds from the sale of its existing chancellor's residence and appurtenant land. The University of North Carolina at Asheville may use the proceeds from the sale of its existing chancellor's residence and the appurtenant land to construct or otherwise acquire a new chancellor's residence. Proceeds from the sale not used for that purpose within two fiscal years of the sale shall revert to the General Fund.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

UNC BOND PROJECT MODIFICATIONS

SECTION 9.13.(a) 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 Elizabeth City State University by changing the scope of "Mitchell-Lewis Residence Hall-Comprehensive Renovation" to be a replacement project instead of a renovation. Section 2(a) of S.L. 2000-3 is therefore

amended in the portion under Elizabeth City State University by replacing "Mitchell Lewis Residence Hall-Comprehensive Renovation" with "Mitchell Lewis Residence Hall-Replacement."

SECTION 9.13.(b) 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 Central University by the cancellation of "Latham Residence Hall-Comprehensive Renovation". The unused monies from "Latham Residence Hall-Comprehensive Renovation," should be transferred to "Eagleson Residence Hall-Comprehensive Renovation". Section 2(a) of S.L. 2000-3 is therefore amended in the portion under North Carolina Central University by reducing the money allocated to "Latham Residence Hall-Comprehensive Renovation" by reducing that amount by two million three hundred seventy-three thousand four hundred fifty-seven dollars ($2,373,457) to a total of one million thirty-eight thousand one hundred forty-three dollars ($1,038,143) and by increasing the allocation to "Eagleson Residence Hall-Comprehensive Renovation" by two million three hundred seventy-three thousand four hundred fifty-seven dollars ($2,373,457) to create a total allocation of nine million two hundred forty-two thousand nine hundred fifty-seven dollars ($9,242,957).

SECTION 9.13.(c) 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 Wilmington by the cancellation of "King Hall Classroom Building-Comprehensive Renovation", and by transferring the unused funds to the following projects listed under the portion entitled University of North Carolina at Wilmington: "Academic & Classroom Facilities," "General Classroom Bldg,", "Hinton James Hall Classroom Bldg. – Comprehensive Renovation," "Friday Hall Laboratory Bldg. – Comprehensive Renovation," "Kenan Auditorium – Comprehensive Renovation." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under the University of North Carolina at Wilmington by:

(1) Reducing the allocation to "King Hall Classroom Building – Comprehensive Renovation" by three million one hundred sixty-eight thousand six hundred eighty-nine dollars ($3,168,689) to create a total allocation of three hundred fifty-eight thousand seven hundred eleven dollars ($358,711).

(2) Increasing the allocation to "General Classroom Building" by six hundred seventy-nine thousand seven hundred seventy-eight dollars ($679,778) to create a total allocation of thirteen million three hundred twenty-six thousand seven hundred seventy-eight dollars ($13,326,778).

(3) Increasing the allocation to "Academic & Classroom Facilities" by nine hundred ninety-one thousand one hundred twenty-three dollars ($991,123) to create a total allocation of thirty-four million twenty-three thousand two hundred twenty-three dollars ($34,023,223).

(4) Increasing the allocation to "Hinton James Hall Classroom Building – Comprehensive Renovation" by one hundred seventy-six thousand six hundred nine dollars ($176,609) to create a total allocation of two million eight hundred six thousand five hundred sixty-one dollars ($2,806,561).

(5) Increasing the allocation to "Kenan Auditorium – Comprehensive Renovation" by one hundred fifty-one thousand seven hundred forty-nine dollars ($151,749) to create a total allocation of two million seventy-three thousand seven hundred twenty-four dollars ($2,073,724).

(6) Increasing the allocation to "Friday Hall Laboratory Building – Comprehensive Renovation" by one million one hundred sixty-nine thousand four hundred thirty dollars ($1,169,430) to create a total allocation of eight million eight hundred sixty-two thousand eight hundred thirty dollars ($8,862,830).

SECTION 9.13.(d) 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 Pembroke by the cancellation of "West Residence Hall – Comprehensive Renovation" and by transferring the unused funds to a new project, "North and Belk Residence Halls–Fire Safety Improvements and Renovations" and by the cancellation of "Campuswide Infrastructure Improvements" and by transferring those unused funds to a new project, "Biotechnology Teaching Labs and Classroom Building". Section 2(a) of S.L. 2000-3 is therefore amended in the portion under University of North Carolina at Pembroke by:

(1) Reducing the allocation to "West Residence Hall – Comprehensive Renovation" by eight hundred seventy-nine thousand three hundred dollars ($879,300) to a total allocation of ninety-eight thousand dollars ($98,000).

(2) Reducing the allocation to "Campuswide Infrastructure Improvements" by one million seven hundred thirty thousand three hundred eighty-two dollars ($1,730,382) to a total allocation of two hundred sixty-six thousand two hundred eighteen dollars ($266,218).

(3) Adding a new project entitled "North and Belk Residence Halls – Fire Safety Improvements and Renovations $879,300".

(4) Adding a new project entitled "Biotechnology Teaching Labs and Classroom Building $1,730,382".

SECTION 9.13.(e) Nothing in this section is intended to supersede any other requirement of law or policy for approval of the substituted capital improvement projects.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

AMEND NC SCHOOL OF SCIENCE AND MATH TUITION GRANT

SECTION 9.14.(a) G.S. 116-238.1(f) reads as rewritten:

"(f) Notwithstanding any other provision of this section, no tuition grant awarded to a student under this section shall exceed the cost of ~~tuition of~~ attendance at the constituent institution at which the student is enrolled. If a student, who is eligible for a tuition grant under this subsection, also receives a scholarship or other grant covering the cost of ~~tuition~~ attendance at the constituent institution for which the tuition grant is awarded, then the amount of the tuition grant shall be reduced by an appropriate amount determined by the State Education Assistance Authority. The State Education Assistance Authority shall reduce the amount of the tuition grant so that the sum of all grants and scholarship aid covering the cost of ~~tuition~~ attendance received by the student, including the tuition grant under this section, shall not exceed the cost of ~~tuition~~ attendance for the constituent institution at which the student is enrolled. The cost of attendance, as used in this subsection, shall be determined by the State Education Assistance Authority for each constituent institution."

SECTION 9.14.(b) This section applies to any eligible student who is enrolled full-time in The University of North Carolina after July 1, 2005.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

UNC-CHAPEL HILL CONTINUE TO OPERATE HORACE WILLIAMS AIRPORT

SECTION 9.15. The University of North Carolina at Chapel Hill shall operate the Horace Williams Airport and continue air transportation support for the

Area Health Education Centers (AHEC) and the public from that location until AHEC's Medical Air Operations have access to, or utilize, the Raleigh-Durham International Airport (RDU) on a basis sufficient to serve adequately the needs of patients, physicians, and passengers associated with AHEC's statewide programs and activities. At that time, the University of North Carolina at Chapel Hill may close the Horace Williams Airport.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY FUNDS

SECTION 9.16. Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the 2005-2006 fiscal year the sum of one million eighty-eight thousand nine hundred forty-one dollars ($1,088,941) shall be allocated to North Carolina Agricultural and Technical State University for agricultural and research extension programs. It is the intent of the General Assembly to fully fund these programs for the 2006-2007 fiscal year.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

TRANSFER PROSPECTIVE TEACHER SCHOLARSHIP LOAN AND TEACHER ASSISTANT SCHOLARSHIP LOAN TO THE NC STATE EDUCATION ASSISTANCE AUTHORITY

SECTION 9.17.(a) The Scholarship Loan Fund for Prospective Teachers is transferred from the Department of Public Instruction to the State Education Assistance Authority. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 9.17.(b) G.S. 115C-468 is recodified as G.S. 116-209.33. G.S. 115C-469, 115C-470, and 115C-472.1 are repealed. G.S. 115C-471 is recodified as G.S. 116-209.34.

SECTION 9.17.(c) G.S. 115C-468 recodified by subsection (b) of this section as G.S. 116-209.33 reads as rewritten:

"**§ 116-209.33. ~~Establishment of fund.~~Scholarship Loan Fund for Prospective Teachers.**

(a) There is established a revolving fund known as the "Scholarship Loan Fund for Prospective Teachers". The purpose of the Fund is to provide scholarship loans to qualified individuals who are pursuing college degrees to become teachers. The State Education Assistance Authority shall administer the Fund.

(b) ~~Criteria~~ The State Education Assistance Authority, in consultation with the State Board of Education, shall develop criteria for awarding scholarship loans from ~~the fund shall include measures~~ the Fund. These criteria shall include:

(1) Measures of academic performance including grade point averages, scores on standardized tests, class rank, and recommendations of guidance counselors and principals.

(2) North Carolina residency. – For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1.

(3) The geographic areas or subjects of instruction in which the demand for teachers is greatest.

(4) To the extent practical, an equal number of scholarships shall be awarded in each of the State's Congressional Districts.

(5) Any additional criteria that the State Education Assistance Authority considers necessary to administer the Fund effectively, including the following:

a. Consideration of the appropriate numbers of minority applicants and applicants from diverse socioeconomic backgrounds to receive scholarships pursuant to this section.

b. Consideration of the commitment an individual applying to receive funds demonstrates to the profession of teaching.

(c) The ~~Superintendent of Public Instruction~~State Education Assistance Authority may earmark each year up to twenty percent (20%) of the funds available for scholarship loans ~~each year~~under this section for awards to applicants ~~who have been employed for at least one year as teacher assistants and who are currently employed as teacher assistants. Preference for these scholarship loans from funds earmarked for teacher assistants shall be given first to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished and then to applicants who already hold a baccalaureate degree or who have already been formally admitted to an approved teacher education program in North Carolina. The criteria for awarding scholarship loans to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished shall include whether the teacher assistant has been admitted to an approved teacher education program in North Carolina.~~for the Teacher Assistant Scholarship Fund established in G.S. 116-209.35.

~~The Superintendent of Public Instruction may further earmark a portion of these funds each year for two-year awards to applicants who have been employed for at least one year as teacher assistants to attend community colleges to get other skills of use in public schools or to get an early childhood associate degree. The provisions of this Article shall apply to these scholarship loans except that a recipient of one of these scholarship loans may receive credit upon the amount due by reason of the loan as provided in G.S. 115C-471(5) or by working in a nonteaching position in the North Carolina public schools or by working in a licensed child care center in North Carolina.~~"

SECTION 9.17.(d) G.S. 115C-471 recodified by subsection (b) of this section as G.S. 116-209.34 reads as rewritten:

"**§ 116-209.34. Fund administered by ~~State Superintendent of Public Instruction; rules and regulations.~~State Education Assistance Authority; rule-making authority.**

(a) ~~The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under rules adopted by the State Board of Education and subject to the following directions and limitations:~~The State Education Assistance Authority shall establish the terms and conditions for the scholarship loans consistent with the following:

(1) ~~Any resident of North Carolina who is interested in preparing to teach in the public schools of the State may apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than two thousand five hundred dollars ($2,500) per academic school year. An applicant who has been employed for at least one year as a teacher assistant and who is currently employed as a teacher assistant may apply for a scholarship loan from funds earmarked for teacher assistants in the amount of not more than one thousand two hundred dollars ($1,200) per academic school year.~~The loan amount shall be not more than four thousand dollars ($4,000) per academic school year for a maximum of four years for applicants who are pursuing a college degree to become a teacher.

(2) All scholarship loans shall be evidenced by notes made payable to the ~~State Board of Education~~ Authority that bear interest at the rate of ten percent (10%) per ~~annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a certificate based upon the entry level degree; or in the case of persons already teaching in the public schools who obtain scholarship loans, the notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of~~

~~the scholarship loans; or in the event any such scholarship is terminated under the provisions of subdivision (3) of this section, the notes shall bear interest from the date of termination. A minor recipient who signs a note shall also obtain the endorsement thereon by a parent, if there be a living parent, unless the endorsement is waived by the Superintendent of Public Instruction. The minor recipient shall be obligated upon the note as fully as if the recipient were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon the notes.~~year, beginning September 1 after graduation, or immediately after termination of the scholarship loan, whichever is earlier.

(3) ~~Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until the recipient has qualified for a certificate based upon the entry level degree, but the recipient shall not be so eligible for more than the minimum number of years normally required for qualifying for the certificate. The permanent withdrawal of any recipient from college or failure of the recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction shall immediately forfeit the recipient's right to retain the scholarship and subject the scholarship to termination by the State Superintendent of Public Instruction in the Superintendent's discretion.~~ A scholarship loan shall be terminated upon the recipient's withdrawing from school or a finding by the Authority that the recipient fails to meet the standards set by the Authority. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.

~~(4) Except under emergency conditions applicable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina at the beginning of the next school term after qualifying for a certificate based upon the entry level degree or, in case of persons already teaching in the public schools, at the beginning of the next school term after the use of the loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered by August 31 of the seventh school year following graduation.~~

~~(5)~~(4) ~~For each full school year taught in a North Carolina public school, the recipient of a scholarship loan shall receive credit upon the amount due by reason of the loan equal to the loan amount for a school year as provided in the note plus credit for the total interest accrued on that amount. Also, the recipient of the loan shall receive credit upon the total amount due by reason of all four years of the loan if the recipient teaches for three consecutive years.~~ The Authority shall forgive a four-year loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Authority shall also forgive a four-year loan if, within seven years after graduation, the recipient teaches for three consecutive years, or for three years interrupted only by an approved leave of absence, at a North Carolina public school that is in a low-performing school system or a school system on warning status at the time the recipient accepts employment with the local school administrative unit. ~~In lieu of teaching in the public school, a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof that has not been canceled by the State Board of Education by reason of teaching service rendered.~~For loans

of less than four years, the Authority shall forgive one year for each year the recipient teaches, within four years of graduation, at a North Carolina public school or a school operated by the United States government in North Carolina.

~~(6)~~(5) ~~If any recipient of a scholarship loan dies during the period of attendance at a college or university under a scholarship loan or before the scholarship loan is satisfied by payment or teaching service, any balance shall be automatically canceled.~~

~~If any recipient of a scholarship loan fails to fulfill the recipient's obligations under subdivision (4) of this section, other than as provided above, the amount of the loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill the recipient's obligations.~~ The Authority may forgive or reduce any loan payment if the Authority considers that extenuating circumstances exist that would make teaching or repayment impossible.

~~(7)~~(6) ~~The State Superintendent of Public Instruction shall award scholarship loans with due consideration to factors and circumstances such as aptitude, purposefulness, scholarship, character, financial need, and geographic areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this Article is to attract worthy young people to the teaching profession, preference for scholarship loans, except for the scholarship loans from funds earmarked for teacher assistants, shall be given to high school seniors in the awarding of scholarships. In awarding scholarship loans from funds earmarked for teacher assistants, preference shall be given to applicants who have already earned a baccalaureate degree or who have been formally admitted to an approved teacher education program in North Carolina.~~The Authority shall ensure that all repayments, including the accrued interest, are placed in the Fund.

(b) The State Education Assistance Authority, in consultation with the State Board of Education, shall adopt rules to implement G.S. 116-209.33, 116-209.34, and 116-209.35."

SECTION 9.17.(e) This section becomes effective January 1, 2006, and applies to scholarship loans awarded on or after that date.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

UNIVERSITY SYSTEM AND COMMUNITY COLLEGE SYSTEM JOINT STUDY OF HIGHER EDUCATION STRATEGY/AMEND REPORTING REQUIREMENT

SECTION 9.18. Section 6.2 of S.L. 2004-179 reads as rewritten:

"**SECTION 6.2.** These studies shall be designed to provide information and recommendations that will assist the General Assembly in setting priorities for funding to address the strategic higher education needs of the State. The Board of Governors, the State Board, and their consultant shall periodically report their findings to a higher education programming subcommittee of the Joint Legislative Education Oversight Committee. The two boards and their consultant shall report the preliminary results of the study to the General Assembly and to the Joint Legislative Education Oversight Committee by ~~April 15, 2005,~~ June 15, 2005, and shall file a final report and recommendations with the General Assembly and the Joint Legislative Education Oversight Committee no later than ~~December 31, 2005.~~December 31, 2006."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

UNC RESEARCH INSTITUTIONS MAY INCREASE TUITION

SECTION 9.19.(a) G.S. 116-143 reads as rewritten:

"**§ 116-143. State-supported institutions of higher education required to charge tuition and fees.**

~~The~~ Except as provided in G.S. 116-143.6, the Board of Governors of the University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished.

Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of the University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of the University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of the University of North Carolina may during the period of normal employment enroll for not more than one course per semester in the University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations."

SECTION 9.19.(b) Article 14 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-143.6. Board of Trustees of a Research University I campus may increase tuition without approval of the Board of Governors.**

(a) Notwithstanding G.S. 116-11(7) and G.S. 116-143, the Board of Trustees of a constituent institution designated as a Research University I campus of The University of North Carolina may set undergraduate tuition for an academic year. In considering tuition, the Boards of Trustees shall take into account that undergraduate tuition for North Carolina residents shall remain affordable to ensure accessibility, as required by Section 9 of Article IX of the North Carolina Constitution, and shall take the appropriate steps to increase financial aid accordingly and to ensure that the annual undergraduate in-State tuition rate remains in the lowest quartile of that constituent institution's national public peers.

Any additional revenues derived from a tuition increase set under this section shall remain available for use on that campus and are in addition to the operating budgets approved by the General Assembly.

(b) If a Board of Trustees decides to increase tuition at a constituent institution, the institution shall notify the Board of Governors, the Office of State Budget and Management, and the Fiscal Research Division of the amount of increase, additional receipts anticipated, and the allocation of the funds among various programs in a format prescribed by the Board of Governors of The University of North Carolina."

SECTION 9.19.(c) This section applies to the 2005-2006 academic year and each subsequent academic year.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

NC SPACE GRANT CONSORTIUM FUNDS

SECTION 9.20. Funds appropriated by this act to the North Carolina Space Grant Consortium shall be allocated only to constituent institutions of The University of North Carolina participating in the Consortium; no funds shall be allocated to any private institution as defined by G.S. 116-15(a2) that participates in the Consortium.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

DISTINGUISHED PROFESSORS ENDOWMENT TRUST FUND

SECTION 9.21.(a) G.S. 116-41.15 reads as rewritten:

"**§ 116-41.15. Distinguished Professors Endowment Trust Fund; allocation; administration.**

(a) For constituent institutions other than focused growth institutions and special needs institutions, the amount appropriated to the trust shall be allocated by the Board as follows:

(1) On the basis of one three hundred thirty-four thousand dollar ($334,000) challenge grant for each six hundred sixty-six thousand dollars ($666,000) raised from private sources; or

(2) On the basis of one one hundred sixty-seven thousand dollar ($167,000) challenge grant for each three hundred thirty-three thousand dollars ($333,000) raised from private ~~sources.~~sources; or

(3) On the basis of one challenge grant of up to six hundred sixty-seven thousand dollars ($667,000) for funds raised from private sources in twice the amount of the challenge grant.

If an institution chooses to pursue the use of the allocated challenge grant funds described in either subdivision ~~(1) or~~(1), subdivision ~~(2)~~ (2), or subdivision (3) of this subsection, the challenge grant funds shall be matched by funds from private sources on ~~a two-to-one basis.~~the basis of two dollars of private funds for every one dollar of State funds.

(b) For focused growth institutions and special needs institutions, the amount appropriated to the trust shall be allocated by the Board as follows:

(1) On the basis of one five hundred thousand dollar ($500,000) challenge grant for each five hundred thousand dollars ($500,000) raised from private sources; or

(2) On the basis of one two hundred fifty thousand dollar ($250,000) challenge grant for each two hundred fifty thousand dollars ($250,000) raised from private ~~sources.~~sources; or

(3) On the basis of one challenge grant of up to one million dollars ($1,000,000) for funds raised from private sources in the same amount as the challenge grant.

If an institution chooses to pursue the use of the allocated challenge grant funds described in either subdivision ~~(1) or~~(1), subdivision ~~(2)~~(2), or subdivision (3) of this subsection, the challenge grant funds shall be matched by funds from private sources on ~~a one-to-one basis.~~the basis of one dollar of private funds for every dollar of State funds.

(c) Matching funds shall come from contributions made after July 1, 1985, and pledged for the purposes specified by G.S. 116-41.14. Each participating constituent institution's board of trustees shall establish its own Distinguished Professors Endowment Trust Fund, and shall maintain it pursuant to the provision of G.S. 116-36 to function as a depository for private contributions and for the State matching funds for the challenge grants. The State matching funds shall be transferred to the constituent institution's Endowment Fund upon notification that the institution has received and deposited the appropriate amount required by this section in its own Distinguished Professors Endowment Trust Fund. Only the net income from that account shall be expended in support of the distinguished professorship thereby created."

SECTION 9.21.(b) G.S. 116-41.16 reads as rewritten:

"§ 116-41.16. **Distinguished Professors Endowment Trust Fund; contribution commitments.**

(a) For constituent institutions other than focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

(1) A commitment to make a donation of at least six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143-31.4, and an initial payment of one hundred eleven thousand dollars ($111,000) to receive a grant described in G.S. 116-41.15(a)(1); or

(2) A commitment to make a donation of at least three hundred thirty-three thousand dollars ($333,000), as prescribed by G.S. 143-31.4, and an initial payment of fifty-five thousand five hundred dollars ($55,500) to receive a grant described in G.S. 116-41.15(a)~~(2);~~(2); or

(3) A commitment to make a donation in excess of six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143-31.4, and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(a)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment and shall be made on or before the anniversary date of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair.

(b) For focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

(1) A commitment to make a donation of at least five hundred thousand dollars ($500,000), as prescribed by G.S. 143-31.4, and an initial payment of eighty-three thousand three hundred dollars ($83,300) to receive a grant described in G.S. 116-41.5(b)(1); or

(2) A commitment to make a donation of at least two hundred fifty thousand dollars ($250,000), as prescribed by G.S. 143-31.4, and an initial payment of forty-one thousand six hundred dollars ($41,600) to receive a grant described in G.S. 116-41.15(b)~~(2);~~(2); or

(3) A commitment to make a donation in excess of five hundred thousand dollars ($500,000), as prescribed by G.S. 143-31.4, and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(b)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair."

SECTION 9.21.(c) G.S. 116-41.17 reads as rewritten:

"§ 116-41.17. **Distinguished Professors Endowment Trust Fund; establishment of chairs.**

When the sum of the challenge grant and matching funds in the ~~Scholars'~~ Distinguished Professors Endowment Trust Fund reaches:

(1) One million dollars ($1,000,000), if the sum of funds described in ~~G.S. 116-41.15(1); or~~ G.S. 116-41.15(a)(1) or G.S. 116-41.15(b)(1); or

(2) Five hundred thousand dollars ($500,000), if the sum of funds described in ~~G.S. 116-41.15(2);~~G.S. 116-41.15(a)(2) or G.S. 116-41.15(b)(2); or

(3) An amount up to two million dollars ($2,000,000), if the sum of funds described in G.S. 116-41.15(a)(3) or G.S. 116-41.15(b)(3);

the board of trustees may recommend to the Board, for its approval, the establishment of an endowed chair or chairs. The Board, in considering whether to approve the recommendation, shall include in its consideration the programs already existing in The University of North Carolina. If the Board approves the recommendation, the chair or chairs shall be established. The chair or chairs, the property of the constituent institution, may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the board of trustees."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

UNC MAY ENCOURAGE THE ESTABLISHMENT OF PRIVATE, NONPROFIT CORPORATIONS TO SUPPORT THE UNIVERSITY SYSTEM AND ASSIGN UNC EMPLOYEES TO ASSIST WITH THOSE CORPORATIONS

SECTION 9.22. Article 1 of Chapter 116 of the General Statutes is amended by adding a new Part to read:

"Part 2B. Private, Nonprofit Corporations.

"**§ 116-30.20. Establishment of private, nonprofit corporations.**

The Board of Governors of The University of North Carolina shall encourage the establishment of private, nonprofit corporations to support the constituent institutions of The University of North Carolina and The University System. The President of The University of North Carolina and the chancellors of the constituent institutions may assign employees to assist with the establishment and operation of a nonprofit corporation and may make available to the corporation office space, equipment, supplies, and other related resources; provided, the sole purpose of the corporation is to support The University of North Carolina or one or more of its constituent institutions.

The board of directors of each such private, nonprofit corporation shall secure and pay for the services of The University System's internal auditors or employ a certified public accountant to conduct an audit of the financial accounts of the corporation. The board of directors shall transmit to the Board of Governors a copy of the annual financial audit report of the private, nonprofit corporation."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

ELIMINATE REPORTING REQUIREMENT FOR SCHOOL ADMINISTRATOR TRAINING PROGRAMS

SECTION 9.23. G.S. 116-74.21 reads as rewritten:

"**§ 116-74.21. Establishment of a competitive proposal process for school administrator programs.**

(a) The Board of Governors shall develop and implement a competitive proposal process and criteria for assessing proposals to establish school administrator training programs within the constituent institutions of The University of North Carolina. To facilitate the development of the programs, program criteria, and the proposal process, the Board of Governors may convene a panel of national school administrator program experts and other professional training program experts to assist it in designing the program, the proposal process, and criteria for assessing the proposals.

(b) No more than 12 school administrator programs shall be established under the competitive proposal program. In selecting campus sites, the Board of Governors shall be sensitive to the racial, cultural, and geographic diversity of the State. Special priority shall be given to the following factors: (i) the historical background of the institutions in training educators; (ii) the ability of the sites to serve the geographic regions of the State, such as, the far west, the west, the triad, the piedmont, and the east; and, (iii)

whether the type of roads and terrain in a region make commuting difficult. A school administrator program may provide for instruction at one or more campus sites.

(c) The Board of Governors shall study the issue of supply and demand of school administrators to determine the number of school administrators to be trained in the programs in each year of ~~each biennium. The Board of Governors shall report the results of this study to the Joint Legislative Education Oversight Committee no later than March 1, 1994, and annually thereafter.~~the biennium and report the results of this study to the Joint Legislative Education Oversight Committee no later than March 1 annually.

(d) The Board of Governors shall develop a budget for the programs established under subsection (a) of this section that reflects the resources necessary to establish and operate school administrator programs that meet the vision of the report submitted to the 1993 General Assembly by the Educational Leadership Task Force.

~~(e) The Board of Governors shall report annually on the implementation of the act no later than December 1 of each year.~~"

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

CONTINUE ACADEMIC COMMON MARKET PROGRAM

SECTION 9.24. Section 31.2 of S.L. 2001-424 reads as rewritten:

"**ACADEMIC COMMON MARKET ~~PILOT~~ PROGRAM**

SECTION 31.2.(a) The Southern Regional Education Board currently operates an Academic Common Market program. Under this program, qualified students from participating states may apply to attend programs at public universities in participating states that are not available in their home state's university system. North Carolina's participation for graduate programs would provide a cost-effective means of offering educational access for North Carolina residents. North Carolinians ~~would~~ will be able to attend graduate programs that are not available at The University of North Carolina at reduced rates, and the State would avoid the cost associated with the development of new academic programs.

SECTION 31.2.(b) The Board of Governors of The University of North Carolina may ~~establish a pilot program for~~ continue participation in the Southern Regional Education Board's Academic Common Market at the graduate program level. The Board of Governors shall examine the graduate programs offered in The University of North Carolina system and select for participation only those graduate programs that are likely to be unique or are not commonly available in other Southern Regional Education Board states. Out-of-state tuition shall be waived for students who are residents of other Southern Regional Education Board states and who are participating in the Academic Common Market program. If accepted into The University of North Carolina graduate programs that are part of the Academic Common Market, these students shall pay in-State tuition and shall be treated for all purposes of The University of North Carolina as residents of North Carolina. ~~Prior to the beginning of this pilot, the Board of Governors shall submit its list of graduate programs selected to be a part of the pilot program to the Joint Legislative Education Oversight Committee.~~

SECTION 31.2.(c) ~~The pilot programs established under this section shall terminate July 1, 2005. However, once~~ Once a student is enrolled in The University of North Carolina system under the Academic Common Market program, the student shall be entitled to pay in-State tuition as long as the student is enrolled in that graduate program. The Board of Governors shall ~~report the success of~~ provide a report on the Academic Common Market program to the Joint Legislative Education Oversight Committee by ~~December 31, 2003, and by January 31, 2005, and the Committee may recommend changes, if any are appropriate, to the pilot program at either of those times.~~September 2007, and each biennium thereafter."

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

TUITION WAIVER PROGRAM EXPANSION

SECTION 9.25.(a) G.S. 116-143.1 is amended by adding a new subsection to read:

"(m) Notwithstanding subsection (b) of this section, a person who is a full-time employee of The University of North Carolina, or is the spouse or dependent child of a full-time employee of The University of North Carolina, and who is a legal resident of North Carolina, qualifies as a resident for tuition purposes without having maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes."

SECTION 9.25.(b) The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall study the feasibility of a tuition waiver exchange program under which full-time employees of The University of North Carolina would be allowed to take a specified number of courses at a community college without paying tuition, and full-time employees of a community college would be allowed to take a specified number of courses at a constituent institution of The University of North Carolina without paying tuition. The Boards shall report the results of this study to the Joint Legislative Education Oversight Committee by April 1, 2006.

Requested by: Senators Lucas, Swindell, Kerr, Jenkins, Garrou, Dalton, Hagan

BRODY SCHOOL OF MEDICINE AT ECU/MEDICARE RECEIPTS/FAMILY MEDICINE CENTER

SECTION 9.26.(a) G.S. 116-36.6 reads as rewritten:

"**§ 116-36.6. Brody School of Medicine at East Carolina ~~University School of Medicine; University;~~ Medicare receipts.**

The Brody School of Medicine at East Carolina University ~~School of Medicine~~ shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds shall be allocated as follows:

(1) The portion of the Medicare reimbursement generated through the effort and expense of the Brody School of Medicine's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.

~~(2) The funds from this source budgeted by the General Assembly as part of the School of Medicine's General Fund budget code shall be credited to that code as a receipt.~~

~~(3) The remainder of the funds shall be transferred to a special fund account on deposit with the State Treasurer. This special fund account shall be used for any necessary repayment of Medicare funds due to final audit settlements for funds allocated under subdivision (2) of this subsection. When the amount of these reimbursement funds has been finalized by audit for each year, those funds remaining in the special fund shall be available for specific capital improvement projects for the East Carolina University School of Medicine. Requests by East Carolina University for use of these funds shall be made to the Board of Governors of The University of North Carolina. Approval of projects by the Board of Governors shall be reported to the Joint Legislative Commission on Governmental Operations, and the reports shall include projected costs and sources of funds for operation of the approved projects.~~

(2a) Funds that were received pursuant to this section prior to July 1, 2005, and that were transferred to a special fund account on deposit with the State Treasurer are appropriated to the Brody School of Medicine at East Carolina University and may be expended by the Brody School of

Medicine for the family medicine center and for purposes consistent with its stated mission."

SECTION 9.26.(b) Subsections (b) and (c) of Section 87 of Chapter 321 of the 1993 Session Laws are repealed.

SECTION 9.26.(c) Notwithstanding any other provisions of law, the Board of Governors of The University of North Carolina may authorize the design and construction of a new capital project, a family medicine center, on the Health Sciences Campus of the Brody School of Medicine at East Carolina University, that would replace the existing family medicine facility that has reached capacity. The family medicine center is also used as a clinical teaching site for medical students, and the existing facility is functionally outdated for this purpose. The cost of the facility is estimated to be thirty million dollars ($30,000,000). The Board of Governors of The University of North Carolina may authorize the financing of the project with funds available to the Brody School of Medicine at East Carolina University from Medicare reimbursements for education costs, gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

SECTION 9.26.(d) Effective July 1, 2005, the Brody School of Medicine Medical Faculty Practice Plan shall no longer be required to reimburse the General Fund for use of outpatient facilities built with General Fund monies; the Brody School of Medicine Medical Faculty Practice Plan shall assume responsibility for payment of all operating costs, including utility costs, currently paid for by the General Fund. This subsection shall remain in effect until changed or repealed by the General Assembly.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

SCHOLARSHIP STUDENT

SECTION 9.27.(a) Article 14 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-143.6. Full scholarship students attending constituent institutions.**

(a) Notwithstanding any other provision of law, any person who receives a full scholarship to a constituent institution and who attends the institution as an undergraduate student shall be considered and treated for all purposes of The University of North Carolina as a resident of North Carolina.

(b) The following definitions apply in this section:

(1) 'Full scholarship' means a grant that meets the full cost for a student to attend the constituent institution for an academic year.

(2) 'Full cost' means an amount calculated by the constituent institution that is no less than the sum of in-State tuition, required fees, on-campus room and board, and required course-related books.

(c) This section shall not be applied in any manner that violates federal law.

(d) No State funds shall be expended to offset any fiscal impact of this section."

SECTION 9.27.(b) This section applies to students who accept admission on or after July 1, 2005, to a constituent institution.

Requested by: Senators Lucas, Swindell, Garrou, Dalton, Hagan

ENHANCE NUTRITION IN UNIVERSITY AND COMMUNITY COLLEGE FOOD PROGRAMS

SECTION 9.28. For nutritional purposes, the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall adopt policies governing any food programs operated by the constituent institutions or local community colleges that prohibit: (i) the use of cooking oils in those food programs that contain trans-fatty acids, or (ii) the sale of processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

Requested by: Senators Lucas, Swindell, Snow, Garrou, Dalton, Hagan

GRANT-IN-AID/FIRE TRUCK FOR CULLOWHEE VOLUNTEER FIRE DEPT. TO HELP ENSURE ADEQUATE FIRE PROTECTION SERVICES TO WESTERN CAROLINA UNIVERSITY

SECTION 9.29. Of the funds appropriated from the General Fund to the Board of Governors of The University of North Carolina, the sum of seven hundred fifteen thousand dollars ($715,000) for the 2005-2006 fiscal year shall be allocated to Western Carolina University as a grant-in-aid for the Cullowhee Volunteer Fire Department, Inc., to use to purchase a 95-foot platform truck and equipment to ensure adequate fire protection services to Western Carolina University.

Requested by: Senators Shaw, Lucas, Swindell, Garrou, Dalton, Hagan

WAIVE TUITION FOR A PERSON OF A CERTAIN AGE WHO IS OR WAS A WARD OF THE STATE AND WHO ATTENDS CLASSES AT ANY CONSTITUENT INSTITUTION OF THE UNIVERSITY OF NORTH CAROLINA OR ANY COMMUNITY COLLEGE

SECTION 9.30.(a) G.S. 115B-2 is amended by adding a new subdivision to read:

"(5) Any child, if the child (i) is at least 17 years old but not yet 23 years old, (ii) is a ward of North Carolina or was a ward of the State at the time the child reached the age of 18, and (iii) is a resident of the State;"

SECTION 9.30.(b) G.S. 115B-5 is amended by adding a new subsection to read:

"(c) The officials of the institutions charged with administration of this Chapter may require proof to verify that a person applying to the institution under G.S. 115B-2(5) is eligible for the benefits provided by this Chapter."

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

INFORMATION TECHNOLOGY

SECTION 10.1.(a) To support its information technology initiatives, the Department of Health and Human Services shall develop the following:

(1) A detailed business plan.
(2) An information technology plan directly tied to business requirements.
(3) An IT architecture.

The Department of Health and Human Services shall ensure that the planning documents extend three to five years and include detailed shortfall analyses and associated cost assessments. The Department of Health and Human Services shall forward the documents to the Office of Information Technology Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by December 1, 2005. The Office of Information Technology Services shall review the documents and report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 31, 2006.

SECTION 10.1.(b) The Department of Health and Human Services shall develop a project plan for each of its information technology projects. These plans shall include the following:

(1) A detailed description of the project.
(2) A description of how the project improves Department operations and service to customers.
(3) The projected cost of the project by year and phase.
(4) Deliverables required to implement each phase of the system.
(5) The date that each deliverable is to be implemented.

(6) The cost of implementing each deliverable.
(7) What capabilities each deliverable adds to the project.

SECTION 10.1.(c) The Department of Health and Human Services shall provide the plans to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than October 1, 2005, with subsequent updates provided quarterly. The Department of Health and Human Services shall notify the Division of Fiscal Research within 10 days when costs, completion dates, or system capabilities change and provide a report detailing the impact of the change.

SECTION 10.1.(d) The Department of Health and Human Services shall not spend more than the amounts appropriated by the General Assembly for information technology projects and may not allocate funds appropriated for one information technology project to any other information technology project.

SECTION 10.1.(e) The Department of Health and Human Services shall use funds appropriated for the 2005-2006 and 2006-2007 fiscal years for the North Carolina Families Accessing Services through Technology (NC FAST) program only for program-specific development, deliverables, and maintenance costs associated with the NC FAST program.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

OFFICE OF POLICY AND PLANNING

SECTION 10.2. Article 3 of Chapter 143B is amended by adding the following new Part to read:

"Part 34. Office of Policy and Planning.

"**§ 143B-216.70. Office of Policy and Planning.**

(a) To promote coordinated policy development and strategic planning for the State's health and human services systems, the Secretary of Health and Human Services shall establish an Office of Policy and Planning from existing resources across the Department. The Director of the Office of Policy and Planning shall report directly to the Secretary and shall have the following responsibilities:

(1) Coordinate the development of departmental policies, plans, and rules, in consultation with the Divisions of the Department.
(2) Development of a departmental process for the development and implementation of new policies, plans, and rules.
(3) Development of a departmental process for the review of existing policies, plans, and rules to ensure that departmental policies, plans, and rules are relevant.
(4) Coordination and review of all departmental policies before dissemination to ensure that all policies are well-coordinated within and across all programs.
(5) Implementation of ongoing strategic planning that integrates budget, personnel, and resources with the mission and operational goals of the Department.
(6) Review, disseminate, monitor, and evaluate best practice models.

(b) Under the direction of the Secretary of Health and Human Services, the Director of the Office of Policy and Planning shall have the authority to direct Divisions, offices, and programs within the Department to conduct periodic reviews of policies, plans, and rules and shall advise the Secretary when it is determined to be appropriate or necessary to modify, amend, and repeal departmental policies, plans, and rules. All policy and management positions within the Office of Policy and Planning are exempt positions as that term is defined in G.S. 126-5."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

SENIOR PRESCRIPTION DRUG ACCESS PROGRAM FUNDING

SECTION 10.3. The Director of the Budget shall use available funds up to seven million dollars ($7,000,000) in the 2005-2006 fiscal year to fully fund the Senior Prescription Drug Access Program through December 31, 2005, if there is a shortfall of funds from the Health and Wellness Trust Fund, and the funds are not sufficient to provide drug acquisition services under the Program through December 31, 2005.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

SENIOR CARES PROGRAM ADMINISTRATION

SECTION 10.4.(a) The Department of Health and Human Services may administer the "Senior Cares" prescription drug access program approved by the Health and Wellness Trust Fund Commission and funded from the Health and Wellness Trust Fund. The Department may use funds appropriated in this act to administer the Senior Cares prescription drug access program.

SECTION 10.4.(b) This section expires December 31, 2005.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

NONMEDICAID REIMBURSEMENT CHANGES

SECTION 10.5. Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program.

The Department of Health and Human Services may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of Health and Human Services may negotiate with providers of medical services under the various Department of Health and Human Services programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

Family Size	Medical Eye Care Adults	Rehabilitation Except DSB Over 55 Grant	Other
1	$4,860	$8,364	$4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400
4	7,284	16,092	7,500
5	7,821	18,648	7,900
6	8,220	21,228	8,300
7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. The eligibility level for adults 55 years of age or older who qualify for services through the Division of Services for the Blind, Independent Living Rehabilitation Program, shall be two hundred percent (200%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year.

The eligibility level for adults in the Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred fifty percent (150%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the Atypical Antipsychotic Medication Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of atypical antipsychotic medication and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the Atypical Antipsychotic Medication Program for those enrollees who become gainfully employed is as follows:

Income (% of poverty)	State Participation	Client Participation
0-150%	100%	0%
151-200%	75%	25%
201-250%	50%	50%
251-300%	25%	75%
300% and over	0%	100%

The Department of Health and Human Services shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

PHYSICIAN SERVICES

SECTION 10.6. With the approval of the Office of State Budget and Management, the Department of Health and Human Services may use funds appropriated in this act for across-the-board salary increases and performance pay to offset similar increases in the costs of contracting with private and independent universities for the provision of physician services to clients in facilities operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. This offsetting shall be done in the same manner as is currently done with the constituent institutions of The University of North Carolina.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

LIABILITY INSURANCE

SECTION 10.7.(a) The Secretary of the Department of Health and Human Services, the Secretary of the Department of Environment and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed one million dollars ($1,000,000) per incident on behalf of employees of the Departments licensed to practice medicine or dentistry, on behalf of all licensed physicians who are faculty members of The University of North Carolina who work on contract for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for incidents that occur in Division programs, and on behalf of physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services. This coverage may include commercial insurance or self-insurance and shall cover these individuals for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment or training.

SECTION 10.7.(b) The coverage provided under this section shall not cover any individual for any act or omission that the individual knows or reasonably should know constitutes a violation of the applicable criminal laws of any state or the United States or that arises out of any sexual, fraudulent, criminal, or malicious act or out of any act amounting to willful or wanton negligence.

SECTION 10.7.(c) The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing

contractual service to the Department of Health and Human Services, the Department of Environment and Natural Resources, or the Department of Correction, with the exception that coverage may include physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services and licensed physicians who are faculty members of The University of North Carolina who work for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

DHHS PAYROLL DEDUCTION FOR CHILD CARE SERVICES

SECTION 10.8. Part 1 of Article 3 of Chapter 143B of the General Statutes is amended by adding the following new section to read:

"**§ 143B-139.6B. Department of Health and Human Services; authority to deduct payroll for child care services.**

Notwithstanding G.S. 143-3.3 and pursuant to rules adopted by the State Controller, an employee of the Department of Health and Human Services may, in writing, authorize the Department to periodically deduct from the employee's salary or wages paid for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

COMMUNITY HEALTH CENTERS FUNDS

SECTION 10.9.(a) Of the funds appropriated in this act for Community Health Grants for the 2005-2006 fiscal year, the sum of two million dollars ($2,000,000) in nonrecurring funds shall be used for federally qualified health centers, for those health centers that meet the criteria for federally qualified health centers, and for State-designated rural health centers and public health departments and other clinics to:

(1) Increase access to preventative and primary care services by uninsured or medically indigent patients in existing or new health center locations;

(2) Establish community health center services in counties where no such services exist;

(3) Create new services or augment existing services provided to uninsured or medically indigent patients, including primary care and preventative medical services, dental services, pharmacy, and behavioral health; and

(4) Increase capacity necessary to serve the uninsured by enhancing or replacing facilities, equipment, or technologies.

Grant funds may not be used to enhance or increase compensation or other benefits of personnel, administrators, directors, consultants, or any other parties. Grant funds may not be used to supplant federal funds traditionally received by federally qualified community health centers and may not be used to finance or satisfy any existing debt.

SECTION 10.9.(b) The Office shall work with the North Carolina Community Health Center Association (hereafter "NCCHCA") and the North Carolina Public Health Association (hereafter "NCPHA") to establish an advisory committee to develop an objective and equitable process for awarding grant funds. The Office shall also develop auditing and accountability procedures. Not more than one percent (1%) of the funds appropriated in this section may be used to reimburse the Office for administering the grant program in collaboration with the NCCHCA and the NCPHA.

SECTION 10.9.(c) Recipients of grant funds shall provide to the Office annually a written report detailing the number of additional uninsured and medically indigent patients that are cared for, the types of services that were provided, and any other information requested by the Office as necessary for evaluating the success of the grant program.

SECTION 10.9.(d) The Office shall work with the NCCHCA and NCPHA to study and present recommendations for continuing funds to support the expansion of community health centers, State-designated rural health centers, and public health departments to serve more of the State's uninsured and indigent population. The Office shall submit the report to the 2006 Regular Session of the 2005 General Assembly upon its convening.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

PROVIDER REIMBURSEMENT RATES

SECTION 10.10. The Department of Health and Human Services shall maintain reimbursement rates paid to service providers at fiscal year 2004-2005 levels during the 2005-2006 fiscal year. Exceptions made by the Department shall be made on a case-by-case basis and must be approved by the Office of the Secretary. Changes in rate structures that result in lower payments to the providers are exempted from this requirement. As used in this section, "service providers" includes subcontractors, such as counties, area agencies on aging, departments of social services, departments of public health, child developmental services agencies, and local management entities.

Requested by: Senators Purcell, Malone, Dalton, Garrou, Hagan

MEDICAID

SECTION 10.11.(a) Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection.

Services and payment bases:

(1) Hospital inpatient. – Payment for hospital inpatient services will be prescribed in the State Plan as established by the Department of Health and Human Services.

(2) Hospital outpatient. – Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

(3) Nursing facilities. – Payment for nursing facility services will be prescribed in the State Plan as established by the Department of Health and Human Services. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare. The Division of Medical Assistance shall allow nursing facility providers sufficient time from the effective date of this act to certify additional Medicare beds if necessary. In determining the date that the requirements of this subdivision become effective, the Division of Medical Assistance shall consider the regulations governing certification of Medicare beds and the length of time required for this process to be completed.

(4) Intermediate care facilities for the mentally retarded. – As prescribed in the State Plan as established by the Department of Health and Human Services.

(5) Drugs. – Drug costs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be

available for up to six prescriptions per recipient per month, including refills. The Department may override the six-prescription limit up to two additional prescriptions for a total of not more than eight prescriptions per recipient per month, for recipients that meet the Department's override policy requirements. Payments for drugs are subject to the provisions of subsection (h) of this section and to the provisions at the end of this subsection or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

(6) Physicians, chiropractors, podiatrists, optometrists, dentists, certified nurse midwife services, nurse practitioners. – Fee schedules as developed by the Department of Health and Human Services. Payments for dental services are subject to the provisions of subsection (g) of this section.

(7) Community Alternative Program, EPSDT screens. – Payment to be made in accordance with the rate schedule developed by the Department of Health and Human Services.

(8) Home health and related services, private duty nursing, clinic services, prepaid health plans, durable medical equipment. – Payment to be made according to reimbursement plans developed by the Department of Health and Human Services.

(9) Medicare Buy-In. – Social Security Administration premium.

(10) Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

(11) Hearing aids. – Wholesale cost plus a dispensing fee to the provider.

(12) Rural health clinic services. – Provider-based, reasonable cost; nonprovider-based, single-cost reimbursement rate per clinic visit.

(13) Family planning. – Negotiated rate for local health departments. For other providers, see specific services, for instance, hospitals, physicians.

(14) Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.

(15) Optical supplies. – Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.

(16) Ambulatory surgical centers. – Payment as prescribed in the reimbursement plan established by the Department of Health and Human Services.

(17) Medicare crossover claims. – By not later than October 1, 2005, the Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services.

(18) Physical therapy and speech therapy. – Services limited to EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services. Physical therapy (including occupational therapy) and speech therapy services are subject to prior approval and utilization review.

(19) Personal care services. – Payment in accordance with the State Plan approved by the Department of Health and Human Services.

(20) Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.

(21) Hospice. – Services may be provided in accordance with the State Plan developed by the Department of Health and Human Services.

(22) Other mental health services. – Unless otherwise covered by this section, coverage is limited to:

a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and

b. For children eligible for EPSDT services provided by:

1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and

2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, Medicaid-eligible adults may be self-referred.

d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

e. The Department of Health and Human Services shall not enroll licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addiction specialists, and certified clinical supervisors until all of the following conditions have been met:

1. The fiscal impact of payments to these qualified providers has been projected;
2. Funding for any projected requirements in excess of budgeted Division of Medical Assistance funding has been identified from within State funds appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to support area mental health programs or county programs, or identified from other sources; and
3. Approval has been obtained from the Office of State Budget and Management to transfer these State or other source funds from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to the Division of Medical Assistance. Upon approval and implementation, the Department of Health and Human Services shall, on a quarterly basis, provide a status report to the Office of State Budget and Management and the Fiscal Research Division.

Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2 of this subdivision shall be established by the Division of Medical Assistance.

(23) Medically necessary prosthetics or orthotics. – Reimbursement in accordance with the State Plan approved by the Department of Health and Human Services, except that in order to be eligible for reimbursement, providers must be Board certified not later than July 1, 2005. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.

(24) Health insurance premiums. – Payments to be made in accordance with the State Plan adopted by the Department of Health and Human Services consistent with federal regulations.

(25) Medical care/other remedial care. – Services not covered elsewhere in this section include related services in schools; health professional

services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates. Services addressed by this subdivision are limited to those prescribed in the State Plan as established by the Department of Health and Human Services.

(26) Pregnancy-related services. – Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

Services and payment bases may be changed with the approval of the Director of the Budget.

Payment is limited to Medicaid-enrolled providers that purchase a performance bond in an amount not to exceed one hundred thousand dollars ($100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may waive or limit the requirements of this paragraph for one or more classes of Medicaid-enrolled providers based on the provider's dollar amount of monthly billings to Medicaid or the length of time the provider has been licensed in this State to provide services. In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, emergency rooms, and mental health services subject to independent utilization review are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Health and Human Services where the life of the patient would be threatened without such additional care.

SECTION 10.11.(b) Allocation of Nonfederal Cost of Medicaid. – The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section. In addition, the State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.

SECTION 10.11.(c) Co-Payment for Medicaid Services. – The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation and required by this subsection in order to achieve reductions in the budget in fiscal years 2005-2006 and 2006-2007. The co-payment for inpatient hospitalization services is fifty dollars ($50.00).

SECTION 10.11.(d) Medicaid and Work First Family Assistance, Income Eligibility Standards. – The maximum net family annual income eligibility standards for Medicaid and Work First Family Assistance and the Standard of Need for Work First Family Assistance shall be as follows:

	Categorically Needy		Medically Needy	
	WFFA*			
Family Size	Standard of Need		Families and Children Income Level	AA, AB, AD*
1	$4,344		$2,172	$2,900
2	5,664		2,832	3,800
3	6,528		3,264	4,400

4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

SECTION 10.11.(e) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to all elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines, as revised each April 1. This subsection expires December 31, 2005.

SECTION 10.11.(f) ICF and ICF/MR Work Incentive Allowances. – The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages	Monthly Incentive Allowance
$1.00 to $100.99	Up to $50.00
$101.00 to $200.99	$80.00
$201.00 to $300.99	$130.00
$301.00 and greater	$212.00.

SECTION 10.11.(g) Dental Coverage Limits. – Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.

SECTION 10.11.(h) Dispensing of Generic Drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for atypical antipsychotic drugs and drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". An initial prescription order for an atypical antipsychotic drug or a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand name drugs. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

SECTION 10.11.(i) The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of: (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, and major depressive disorder, or (ii) HIV/AIDS.

SECTION 10.11.(j) Exceptions to Service Limitations, Eligibility Requirements, and Payments. – Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient. The Department of Health and Human Services may proceed with planning and development work on the Program of All-Inclusive Care for the Elderly.

SECTION 10.11.(k) Volume Purchase Plans and Single Source Procurement. – The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other contracting processes in order to improve cost containment.

SECTION 10.11.(l) Cost-Containment Programs. – The Department of Health and Human Services, Division of Medical Assistance, may undertake cost-containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

SECTION 10.11.(m) For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.

SECTION 10.11.(n) The Department of Health and Human Services shall provide Medicaid to 19-, 20-, and 21-year-olds in accordance with federal rules and regulations.

SECTION 10.11.(o) The Department of Health and Human Services shall provide coverage to pregnant women and to children according to the following schedule:

(1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(2) Infants under the age of one with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(3) Children aged one through five with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(4) Children aged six through 18 with family incomes equal to or less than the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(5) The Department of Health and Human Services shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other

conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children described in subdivisions (3) and (4) of this subsection, no resources test shall be applied.

SECTION 10.11.(p) Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.

SECTION 10.11.(q) The Division of Medical Assistance, Department of Health and Human Services, may provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

SECTION 10.11.(r) If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed the currently allocated funds for the new contract for the fiscal agent for the Medicaid Management Information System.

SECTION 10.11.(s) The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

SECTION 10.11.(t) The Department shall report to the Fiscal Research Division of the Legislative Services Office and to the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services or the Joint Legislative Health Care Oversight Committee on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval.

SECTION 10.11.(u) Upon approval of a demonstration waiver by the Centers for Medicare and Medicaid Services (CMS), the Department of Health and Human Services may provide Medicaid coverage for family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty level. Coverage shall be contingent upon federal approval of the waiver.

SECTION 10.11.(v) The Department of Health and Human Services may apply federal transfer of assets policies, as described in Title XIX, section 1917(c) of the Social Security Act, including the attachment of liens, to real property excluded as "income producing", tenancy-in-common, or as nonhomesite property made "income producing" under Title XIX, section 1902(r)(2) of the Social Security Act. The transfer of assets policy shall apply only to an institutionalized individual or the individual's spouse as defined in Title XIX, section 1917(c) of the Social Security Act. This subsection becomes effective no earlier than October 1, 2001. Federal transfer of asset policies and attachment of liens to properties excluded as tenancy-in-common or as nonhomesite property made "income producing" in accordance with this subsection shall become effective not earlier than November 1, 2002.

SECTION 10.11.(w) When implementing the Supplemental Security Income (SSI) method for considering equity value of income producing property, the Department shall, to the maximum extent possible, employ procedures to mitigate the hardship to Medicaid enrollees occurring from application of the Supplemental Security Income (SSI) method.

SECTION 10.11.(x) Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars ($3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars ($3,000,000).

SECTION 10.11.(y) The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

(1) During the development of new medical coverage policy or amendment to existing medical coverage policy, consult with and seek the advice of the Physician Advisory Group of the North Carolina Medical Society and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy.

(2) At least 45 days prior to the adoption of new or amended medical coverage policy, the Department shall:
   a. Publish the proposed new or amended medical coverage policy on the Department's Web site;
   b. Notify all Medicaid providers of the proposed, new, or amended policy; and
   c. Upon request, provide persons copies of the proposed medical coverage policy.

(3) During the 45-day period immediately following publication of the proposed new or amended medical coverage policy, accept oral and written comments on the proposed new or amended policy.

(4) If, following the comment period, the proposed new or amended medical coverage policy is modified, then the Department shall, at least 15 days prior to its adoption:
   a. Notify all Medicaid providers of the proposed policy;
   b. Upon request, provide persons notice of amendments to the proposed policy; and
   c. Accept additional oral or written comments during this 15-day period.

SECTION 10.11.(z) For the purposes of investigating and reducing client fraud and abuse, the Department of Health and Human Services, Division of Medical Assistance, shall include in the Medicaid enrollment process the requirement that the applicant for Medicaid consent to or authorize in writing the release of the applicant's medical records for the three years immediately preceding the application for Medicaid benefits. The Department shall obtain and use information from the applicant's medical

records in a manner and form that complies with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), P.L. 104-191, as amended, and that protects the privacy of the information as required by other applicable federal or State law. In addition to fraud and abuse detection, the Department may require the applicant's consent for other purposes permitted by HIPAA and required or authorized by other applicable federal or State law.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

DISPOSITION OF DISPROPORTIONATE SHARE RECEIPTS

SECTION 10.12.(a) Disproportionate share receipts reserved at the end of the 2005-2006 and 2006-2007 fiscal years shall be deposited with the Department of State Treasurer as nontax revenue for each of those fiscal years.

SECTION 10.12.(b) For each year of the 2005-2007 fiscal biennium, as it receives funds associated with Disproportionate Share Payments from State hospitals, the Department of Health and Human Services, Division of Medical Assistance, shall deposit up to one hundred million dollars ($100,000,000) of these Disproportionate Share Payments to the Department of State Treasurer for deposit as nontax revenue. Any Disproportionate Share Payments collected in excess of one hundred million dollars ($100,000,000) shall be reserved by the State Treasurer for future appropriations.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

COUNTY MEDICAID COST SHARE

SECTION 10.13.(a) Effective July 1, 2000, the county share of the cost of Medicaid services currently and previously provided by area mental health authorities shall be increased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010.

SECTION 10.13.(b) Effective July 1, 2000, the county share of the cost of Medicaid Personal Care Services paid to adult care homes shall be decreased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

MEDICAID COST CONTAINMENT ACTIVITIES

SECTION 10.14. The Department of Health and Human Services may use not more than three million dollars ($3,000,000) in the 2005-2006 fiscal year and not more than three million dollars ($3,000,000) in the 2006-2007 fiscal year in Medicaid funds budgeted for program services to support the cost of administrative activities when cost-effectiveness and savings are demonstrated. The funds shall be used to support activities that will contain the cost of the Medicaid Program, including contracting for services or hiring additional staff. Medicaid cost-containment activities may include prospective reimbursement methods, incentive-based reimbursement methods, service limits, prior authorization of services, periodic medical necessity reviews, revised medical necessity criteria, service provision in the least costly settings, plastic magnetic stripped Medicaid identification cards for issuance to Medicaid enrollees, fraud detection software or other fraud detection activities, technology that improves clinical decision making, credit balance recovery and data mining services, and other cost-containment activities. Funds may be expended under this section only after the Office of State Budget and Management has approved a proposal for the expenditure submitted by the Department. Proposals for expenditure of funds under this section shall include the cost of implementing the cost-containment activity and documentation of the amount of savings expected to be realized from the cost-containment activity. The Department shall provide a copy of proposals for expenditures under this section to the Fiscal Research Division.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

MEDICAID RESERVE FUND TRANSFER

SECTION 10.15. Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, the sum of fifty million dollars ($50,000,000) for the 2005-2006 fiscal year and the sum of fifty million dollars ($50,000,000) for the 2006-2007 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143-23.2(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

NO PRIOR AUTHORIZATION FOR CERTAIN PRESCRIPTION DRUGS UNDER MEDICAID

SECTION 10.16. The Department of Health and Human Services, Division of Medical Assistance, shall not establish prior authorization requirements or other restrictions under the State Medical Assistance Program for FDA-approved medications indicated for the treatment of life-threatening respiratory conditions due to chronic obstructive pulmonary disease (COPD) or stroke. In developing a disease management program, the Department of Health and Human Services shall include initiatives that positively impact COPD and stroke-related health care costs.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

EXPAND COMMUNITY CARE OF NORTH CAROLINA MANAGEMENT TO ADDITIONAL MEDICAID RECIPIENTS

SECTION 10.17.(a) The Department of Health and Human Services shall expand the scope of Community Care of NC care management model to recipients of Medicaid and dually eligible individuals with a chronic condition and long-term care needs. In expanding the scope, the Department shall focus on the Aged, Blind, and Disabled, and CAP-DA populations for improvement in management, cost-effectiveness, and local coordination of services through Community Care of NC and in collaboration with local providers of care. The Department shall target personal care services, private duty nursing, home health, durable medical equipment, ancillary professional services, specialty care, residential services, including skilled nursing facilities, home infusion therapy, pharmacy, and other services determined target-worthy by the Department. The Department shall pilot communitywide initiatives and shall expand statewide successful models.

SECTION 10.17.(b) The Department of Health and Human Services may work with the federal government to attain the necessary regulatory and policy relief to better align policy and economic incentives to improve care in the most cost-effective manner and attain savings through controlled utilization of services.

SECTION 10.17.(c) The Department of Health and Human Services may pay network and primary care providers an enhanced PMPM care management fee and shall also provide additional block grant funds for start-up during the pilot phase.

SECTION 10.17.(d) The Department of Health and Human Services shall report on the implementation of this section, including resulting savings and quality improvement benchmarks to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2007.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

TICKET TO WORK/MEDICAID ELIGIBILITY

SECTION 10.18.(a) Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-54.1. Medicaid buy-in for workers with disabilities.**

(a) Title. – This act may be cited as the Health Coverage for Workers With Disabilities Act. The Department shall implement a Medicaid buy-in eligibility category as permitted under P.L. 106-170, Ticket to Work and Work Incentives Improvement Act of 1999. The Department shall establish rules, policies, and procedures to implement this act in accordance with this section.

(b) Definitions. – As used in this section, unless the context clearly requires otherwise:

(1) 'FPG' means the federal poverty guidelines.

(2) 'HCWD' means Health Coverage for Workers With Disabilities.

(3) 'SSI' means Supplemental Security Income.

(4) 'Ticket to Work' means the Ticket to Work and Work Incentives Improvement Act of 1999.

(c) Eligibility. – An individual is eligible for HCWD if:

(1) The individual is at least 16 years of age and is less than 65 years of age;

(2) The individual meets Social Security Disability criteria, or the individual has been enrolled in HCWD and then becomes medically improved as defined in Ticket to Work and as further specified by the Department. An individual shall be determined to be eligible under this section without regard to the individual's ability to engage in, or actual engagement in, substantial gainful activity as defined in section 223 of the Social Security Act (42 U.S.C. § 423(d)(4)). In conducting annual redetermination of eligibility, the Department may not determine that an individual participating in HCWD is no longer disabled based solely on the individual's participation in employment or earned income;

(3) The individual's unearned income does not exceed one hundred fifty percent (150%) of FPG, and countable resources for the individual do not exceed the resource limit for the minimum community spouse resource standard under 42 U.S.C. § 1396r, and as further determined by the Department. In determining an individual's countable income and resources, the Department may not consider income or resources that are disregarded under the State Medical Assistance Plan's financial methodology, including the sixty-five-dollar ($65.00) disregard, impairment-related work expenses, student earned-income exclusions, and other SSI program work incentive income disregards; and

(4) The individual is engaged in a substantial and reasonable work effort (employed) as provided in this subdivision and as further defined by the Department and allowable under federal law. For purposes of this subsection, "engaged in substantial and reasonable work effort" means all of the following:

a. Working in a competitive, inclusive work setting, or self-employed.

b. Earning at least the applicable minimum wage.

c. Having monthly earnings above the SSI basic sixty-five-dollar ($65.00) earned-income disregard.

d. Being able to provide evidence of paying applicable Medicare, Social Security, and State and federal income taxes.

The Department may impose additional earnings requirements in defining "engaged in substantial and reasonable work effort" for individuals who are eligible for HCWD based on medical improvement.

Individuals who participate in HCWD but thereafter become unemployed for involuntary reasons, including health reasons, shall

have continued eligibility in HCWD for up to 12 months from the time of involuntary unemployment, so long as the individual (i) maintains a connection with the workforce, as determined by the Department, (ii) meets all other eligibility criteria for HCWD during the period, and (iii) pays applicable fees, premiums, and co-payments.

(d) Fees, Premiums, and Co-Payments. – Individuals who participate in HCWD and have countable income greater than one hundred fifty percent (150%) of FPG shall pay an annual enrollment fee of fifty dollars ($50.00) to their county department of social services. Individuals who participate in HCWD and have countable income greater than or equal to two hundred percent (200%) of FPG shall pay a monthly premium in addition to the annual fee. The Department shall set a sliding scale for premiums, which is consistent with applicable federal law. An individual with countable income equal to or greater than four hundred fifty percent (450%) of FPG shall pay not less than one hundred percent (100%) of the cost of the premium, as determined by the Department. The premium shall be based on the experience of all individuals participating in the Medical Assistance Program. Individuals who participate in HCWD are subject to co-payments equal to those required under the North Carolina Health Choice Program."

SECTION 10.18.(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Medical Assistance, the sum of one hundred fifty thousand dollars ($150,000) for the 2006-2007 fiscal year shall be used to support the expansion of Medicaid eligibility authorized under subsection (a) of this section.

SECTION 10.18.(c) Subsection (b) of this section becomes effective July 1, 2006. Subsection (a) of this section becomes effective January 1, 2007. The remainder of this section is effective when it becomes law.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

MEDICAID PERSONAL CARE SERVICES LIMITATIONS

SECTION 10.19.(a) The Department of Health and Human Services, Division of Medical Assistance, shall apply the following minimum criteria for eligibility for personal care services under Medicaid:

(1) Personal care services shall not exceed three hours per day and 40 hours per month.

(2) Before services are authorized, the individual must be assessed by a physician who has examined the individual. The assessing physician must use an assessment tool identified by the Division.

(3) The physician must see the individual at least every six months after service is approved to determine if the need for services continues to exist.

(4) The provider of personal care services must ensure that a nurse reviews the individual's services every 90 days or less, as determined by the Division of Medical Assistance.

The Division may include additional criteria for eligibility for personal care services.

SECTION 10.19.(b) The Division of Medical Assistance shall work with Community Care of North Carolina (CCNC) to determine how CCNC can help with the review of the need for personal care services.

SECTION 10.19.(c) The Division of Medical Assistance shall study and determine appropriate utilization/prior authorization systems for personal care services and other home and community-based services that can be provided to individuals who meet medical criteria and that can be implemented when the new MMIS goes into effect. The Department of Health and Human Services, Division of Medical Assistance, shall report the plan for implementation of this section, including costs, not later than May 1, 2006, to the Senate Appropriations Committee on Health and Human Services,

the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CAP-DA CHANGES

SECTION 10.20.(a) The Department of Health and Human Services, Division of Medical Assistance, shall develop a new system for reimbursing for the CAP-DA program. The new system shall:

(1) Use a case-mix reimbursement system, similar to the one used by nursing facilities, to determine the level of care provided and the amount paid for the care provided; and

(2) Use the Resource Utilization Groups-III (RUG-III) to determine level of need for CAP-DA services.

SECTION 10.20.(b) When determining eligibility and service level for CAP-DA services, the Division shall include criteria that consider the ability and availability of family members to provide care.

SECTION 10.20.(c) Not later than May 1, 2006, the Department of Health and Human Services, Division of Medical Assistance, shall report on the development of the new system, including an implementation schedule. Full implementation of the new system shall be not later than January 1, 2007. The Department shall submit the report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

DMA ACCESS TO HEALTH INSURANCE INFORMATION TO ENSURE RECOUPMENT OF MEDICAID FUNDS SPENT ON MEDICAL CARE COVERED BY INSURANCE

SECTION 10.21.(a) Part 1 of Article 50 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-50-46. Insurers to provide certain information to Department of Health and Human Services.**

(a) As used in this section, the terms:

(1) 'Department' means the Department of Health and Human Services.

(2) 'Division' means the Division of Medical Assistance of the Department of Health and Human Services.

(3) 'Health benefit plan' and 'insurer' have the meaning applicable under G.S. 58-3-167.

(4) 'Medical assistance' means medical assistance benefits provided under the State Medical Assistance Plan.

(b) Every insurer issuing a health benefit plan shall provide to the Department of Health and Human Services, upon its request, information, including automated data matches conducted under the direction of the Department of Health and Human Services, Division of Medical Assistance, as necessary for the purpose of identifying individuals covered under the insurer's health benefit plans who are also recipients of medical assistance. To facilitate the Division in obtaining this and other related information, every insurer shall:

(1) Cooperate with the Division to determine whether a named individual who is a recipient of medical assistance may be covered under the insurer's health benefit plan and eligible to receive benefits under the health benefit plan for services provided under the State Medical Assistance Plan;

(2) Accept the Division's authorization for the provision of medical services on behalf of the recipient of medical assistance as the insurer's authorization for the provision of the services; and

(3) Respond within 15 working days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of medical assistance who is covered by the insurer's health benefit plan.

(c) An insurer that complies with this section shall not be liable on that account in any civil or criminal action or proceedings brought by an individual covered under the insurer's health benefit plan, or the individual's beneficiaries."

SECTION 10.21.(b) G.S. 108A-70 reads as rewritten:

"**§ 108A-70. Recoupment of amounts spent on medical care.**

(a) The Department may garnish the wages, salary, or other employment income of, and the Secretary of Revenue shall withhold amounts from State tax refunds to, any person who:

(1) Is required by court or administrative order to provide health benefit plan coverage for the cost of health care services to a child eligible for medical assistance under Medicaid; and

(2) Has received payment from a third party for the costs of such services; but

(3) Has not used such payments to reimburse, as appropriate, either the other parent or guardian of the child or the provider of the services;

to the extent necessary to reimburse the Department for expenditures for such costs under this Part; provided, however, claims for current and past due child support shall take priority over any such claims for the costs of such services.

(b) To the extent that payment for covered services has been made under G.S. 108A-55 for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the Department of Health and Human Services is considered to have acquired the rights of the individual to payment by any other party for those health care items or services.

(c) The Department of Health and Human Services, Division of Medical Assistance, may request, receive, and use information obtained pursuant to G.S. 58-50-46 in order to enforce this section."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

NC HEALTH CHOICE APPROPRIATIONS; CLAIMS PROCESSING; MEDICAID RATES

SECTION 10.22.(a) The total amount of funds appropriated to the North Carolina Health Choice for Children Program for the 2005-2007 fiscal biennium may be increased through budget transfers, subject to the approval of the Office of State Budget and Management, if needed to match available federal funds to support program expenditures.

SECTION 10.22.(b) The Department of Health and Human Services shall issue a Request for Proposal to contract for administration and claims processing of the NC Health Choice Program. The contract shall provide for applying Medicaid rates for service providers as provided by law. The Department shall schedule the review process for proposals received such that the Department has signed a contract with the selected contractor not later than July 1, 2006. The contract shall provide for full implementation of administration and claims processing, including the application of Medicaid rates for service providers other than prescription drug and dental care providers, not later than July 1, 2007. The Department shall study the impact of paying dental care providers at Medicaid rates and shall make its recommendation to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than May 1, 2006.

SECTION 10.22.(c) Effective July 1, 2007, G.S. 108A-70.22, G.S. 108A-70.24, and Part 5 of Article 3 of Chapter 135 of the General Statutes are repealed.

SECTION 10.22.(d) Effective July 1, 2007, G.S. 108A-70.20 reads as rewritten:

"**§ 108A-70.20. Program established.**

The Health Insurance Program for Children is established. The Program shall be administered by the Department of Health and Human Services in accordance with this Part and as required under Title XXI and related federal rules and regulations. ~~Administration of Program benefits and claims processing shall be as provided under Part 5 of Article 3 of Chapter 135 of the General Statutes.~~"

SECTION 10.22.(e) Effective July 1, 2007, G.S. 108A-70.21(b) reads as rewritten:

"**§ 108A-70.21. Program eligibility; benefits; enrollment fee and other cost-sharing; coverage from private plans; purchase of extended coverage.**

...

(b) Benefits. – Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost-sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan, including optional prepaid plans. Prescription drug providers shall accept as payment in full, for outpatient prescriptions filled, ninety percent (90%) of the average wholesale price for the prescription drug or the amounts published by the Centers for Medicare and Medicaid Services plus a dispensing fee of five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand name drugs. Except for dental care providers, ~~All other~~ health care providers providing services to Program enrollees shall accept as payment in full for services rendered the maximum allowable charges under the ~~North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan~~ State Medical Assistance Program for services less any copayments assessed to enrollees under this Part. Dental care providers providing services to Program enrollees shall accept as payment in full for services rendered the maximum allowable charges under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan for services less any co-payments assessed to enrollees under this Part. No child enrolled in the Plan's self-insured indemnity program shall be required by the Plan to change health care providers as a result of being enrolled in the Program.

In addition to the benefits provided under the Plan, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

(1) Dental: Oral examinations, teeth cleaning, and scaling twice during a 12-month period, full mouth X-rays once every 60 months, supplemental bitewing X-rays showing the back of the teeth once during a 12-month period, fluoride applications twice during a 12-month period, fluoride varnish, sealants, simple extractions, therapeutic pulpotomies, prefabricated stainless steel crowns, and routine fillings of amalgam or other tooth-colored filling material to restore diseased teeth. No benefits are to be provided for services under this subsection that are not performed by or upon the direction of a dentist, doctor, or other professional provider approved by the Plan nor for services and materials that do not meet the standards accepted by the American Dental Association.

(2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. Optical services, supplies, and solutions must be obtained from licensed or certified ophthalmologists, optometrists, or optical dispensing laboratories. Eyeglass lenses are

limited to single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to those made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval of the Plan. Upon prior approval by the Plan, refractions may be covered more often than once every 12 months.

(3) Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other hearing aid specialist approved by the Plan. Prior approval of the Plan is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.

The Department may provide services to children aged birth through five years enrolled in the Program through the State Medical Assistance managed care program. Services provided through the managed care program shall be paid from Program funds."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

HEALTH CHOICE SUBROGATION SAME AS MEDICAID

SECTION 10.23. Part 8 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-70.29. Subrogation rights.**

(a) Notwithstanding any other provisions of law, to the extent of payments under this Part, the State or the county providing health care benefits under this Part shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of this assistance, or of the beneficiary's personal representative, heirs, or the administrator or executor of the estate, against any person. The county attorney, or an attorney retained by the county or the State or both, or an attorney retained by the beneficiary of the assistance if this attorney has actual notice of payments made under this Part, shall enforce this section. Any attorney retained by the beneficiary of the assistance shall, out of the proceeds obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of injury or death, distribute to the Department the amount of assistance paid by the Department on behalf of or to the beneficiary, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, but the amount paid to the Department shall not exceed one-third of the gross amount obtained or recovered.

The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) It is a Class 1 misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

LONG-TERM PLAN FOR MEETING MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES NEEDS

SECTION 10.24.(a) The Secretary of the Department of Health and Human Services shall, in consultation with interested advocacy groups and affected State and local agencies, develop a long-range plan for addressing the mental health, developmental disabilities, and substance abuse services needs of the State. The plan shall be consistent with the plan developed pursuant to G.S. 122C-102, and shall address the following:

(1) The services needed at the community level within each LME in order to ensure an adequate level of services to the average number of persons needing the services based on population projections.

(2) The full continuum of services needed for each disability group within an LME, including:

a. Which services could be regional or multi-LME based;

b. What percent of the population each LME would expect to use State-level facilities; and

c. An inventory of existing services within each LME for each disability group, and the gaps that exist;

(3) Projected growth in services for each disability group within each LME or region that can reasonably be managed over the ensuing five-year period; and

(4) Projected start-up costs and the total funding needed in each year from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to implement the long-range plan.

Funds shall not be transferred from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs until the Secretary has consulted with the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Chairs of the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services.

SECTION 10.24.(b) Moneys in the Trust Fund established pursuant to G.S. 143-15D shall be used to establish or expand community-based services only if sufficient recurring funds can be identified within the Department from funds currently budgeted for mental health, developmental disabilities, and substance abuse services, area mental health programs or county programs, or local government.

SECTION 10.24.(c) Not later than January 1, 2006, the Department of Health and Human Services shall report on the implementation of this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

COMPREHENSIVE TREATMENT SERVICES PROGRAM

SECTION 10.25.(a) The Department of Health and Human Services shall continue the Comprehensive Treatment Services Program for children at risk for institutionalization or other out-of-home placement. The Program shall be implemented by the Department in consultation with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected State agencies. The purpose of the Program is to provide appropriate and medically necessary residential and nonresidential treatment alternatives for children at risk of institutionalization or other out-of-home placement. Program funds shall be targeted for non-Medicaid eligible children. Program funds may also be used to expand a system-of-care approach for services to children and their families statewide. The program shall include the following:

(1) Behavioral health screening for all children at risk of institutionalization or other out-of-home placement.
(2) Appropriate and medically necessary residential and nonresidential services for deaf children.
(3) Appropriate and medically necessary residential and nonresidential treatment services including placements for sexually aggressive youth.
(4) Appropriate and medically necessary residential and nonresidential treatment services including placements for youths needing substance abuse treatment services and children with serious emotional disturbances.
(5) Multidisciplinary case management services, as needed.
(6) A system of utilization review specific to the nature and design of the Program.
(7) Mechanisms to ensure that children are not placed in department of social services custody for the purpose of obtaining mental health residential treatment services.
(8) Mechanisms to maximize current State and local funds and to expand use of Medicaid funds to accomplish the intent of this Program.
(9) Other appropriate components to accomplish the Program's purpose.
(10) The Secretary of the Department of Health and Human Services may enter into contracts with residential service providers.
(11) A system of identifying and tracking children placed outside of the family unit in group homes, therapeutic foster care home settings, and other out-of-home placements.

SECTION 10.25.(b) In order to ensure that children at risk for institutionalization or other out-of-home placement are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these children:

(1) Provide only those treatment services that are medically necessary.
(2) Implement utilization review of services provided.
(3) Adopt the following guiding principles for the provision of services:
  a. Service delivery system must be outcome-oriented and evaluation-based.
  b. Services should be delivered as close as possible to the child's home.
  c. Services selected should be those that are most efficient in terms of cost and effectiveness.
  d. Services should not be provided solely for the convenience of the provider or the client.
  e. Families and consumers should be involved in decision making throughout treatment planning and delivery.
(4) Implement all of the following cost-reduction strategies:
  a. Preauthorization for all services except emergency services.
  b. Levels of care to assist in the development of treatment plans.
  c. Clinically appropriate services.

SECTION 10.25.(c) The Department shall collaborate with other affected State agencies such as the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, the Administrative Office of the Courts, and with local departments of social services, area mental health programs, and local education agencies to eliminate cost shifting and facilitate cost-sharing among these governmental agencies with respect to the treatment and placement services.

SECTION 10.25.(d) The Department shall not allocate funds appropriated for Program services until a Memorandum of Agreement has been executed between the

Department of Health and Human Services, the Department of Public Instruction, and other affected State agencies. The Memorandum of Agreement shall address specifically the roles and responsibilities of the various departmental divisions and affected State agencies involved in the administration, financing, care, and placement of children at risk of institutionalization or other out-of-home placement. The Department shall not allocate funds appropriated in this act for the Program until Memoranda of Agreement between local departments of social services, area mental health programs, local education agencies, and the Administrative Office of the Courts and the Department of Juvenile Justice and Delinquency Prevention, as appropriate, are executed to effectuate the purpose of the Program. The Memoranda of Agreement shall address issues pertinent to local implementation of the Program, including provision for the immediate availability of student records to a local school administrative unit receiving a child placed in a residential setting outside the child's home county.

SECTION 10.25.(e) Notwithstanding any other provision of law to the contrary, services under the Comprehensive Treatment Services Program are not an entitlement for non-Medicaid eligible children served by the Program.

SECTION 10.25.(f) Of the funds appropriated in this act for the Comprehensive Treatment Services Program, the Department of Health and Human Services shall establish a reserve of three percent (3%) to ensure availability of these funds to address specialized needs for children with unique or highly complex problems.

SECTION 10.25.(g) The Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected agencies, shall report on the following Program information:

(1) The number and other demographic information of children served.
(2) The amount and source of funds expended to implement the Program.
(3) Information regarding the number of children screened, specific placement of children including the placement of children in programs or facilities outside of the child's home county, and treatment needs of children served.
(4) The average length of stay in residential treatment, transition, and return to home.
(5) The number of children diverted from institutions or other out-of-home placements such as training schools and State psychiatric hospitals and a description of the services provided.
(6) Recommendations on other areas of the Program that need to be improved.
(7) Other information relevant to successful implementation of the Program.

SECTION 10.25.(h) The Department shall submit a report on December 1, 2005, on the implementation of this section and a final report not later than April 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

SECTION 10.25.(i) This section expires July 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

SERVICES TO MULTIPLY DIAGNOSED ADULTS

SECTION 10.26.(a) In order to ensure that multiply diagnosed adults are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these adults:

(1) Implement the following guiding principles for the provision of services:
a. Service delivery system must be outcome-oriented and evaluation-based.
b. Services should be delivered as close as possible to the consumer's home.
c. Services selected should be those that are most efficient in terms of cost and effectiveness.
d. Services should not be provided solely for the convenience of the provider or the client.
e. Families and consumers should be involved in decision making throughout treatment planning and delivery.
(2) Provide those treatment services that are medically necessary.
(3) Implement utilization review of services provided.

SECTION 10.26.(b) The Department of Health and Human Services shall implement all of the following cost-reduction strategies:
(1) Preauthorization for all services except emergency services.
(2) Criteria for determining medical necessity.
(3) Clinically appropriate services.

SECTION 10.26.(c) No State funds shall be used for the purchase of single-family or other residential dwellings to house multiply diagnosed adults.

SECTION 10.26.(d) The Department shall submit a progress report on implementation of this section not later than February 1, 2006, and a final report not later than May 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

SECTION 10.26.(e) This section expires July 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

EXTEND MENTAL HEALTH CONSUMER ADVOCACY PROGRAM CONTINGENT UPON FUNDS APPROPRIATED BY THE 2007 GENERAL ASSEMBLY

SECTION 10.27. Section 4 of S.L. 2001-437, as amended by Section 10.30 of S.L. 2002-126, and as further amended by Section 10.10 of S.L. 2003-284, reads as rewritten:

"**SECTION 4.** Sections 1.1 through 1.21(b) of this act become effective July 1, 2002. ~~Section 2 of this act becomes effective only if funds are appropriated by the 2005 General Assembly for that purpose.~~ Section 2 of this act becomes effective July 1 of the fiscal year for which funds are appropriated by the ~~2005~~ General Assembly for that purpose. The remainder of this act is effective when it becomes law."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

TRANSITION PLANNING FOR STATE PSYCHIATRIC HOSPITALS

SECTION 10.28.(a) In keeping with the United States Supreme Court decision in Olmstead vs. L.C. & E.W. and State policy to provide appropriate services to clients in the least restrictive and most appropriate environment, the Department of Health and Human Services shall continue to implement a plan for the transition of patients from State psychiatric hospitals to the community or to other long-term care facilities, as appropriate. The goal is to develop mechanisms and identify resources needed to enable patients and their families to receive the necessary services and supports based on the following guiding principles:
(1) Individuals shall be provided acute psychiatric care in non-State facilities when appropriate.

(2) Individuals shall be provided acute psychiatric care in State facilities only when non-State facilities are unavailable.
(3) Individuals shall receive evidenced-based psychiatric services and care that are cost-efficient.
(4) The State shall minimize cost shifting to other State and local facilities or institutions.

SECTION 10.28.(b) The Department of Health and Human Services shall conduct an analysis of the individual patient service needs and shall develop and implement an individual transition plan, as appropriate, for patients in each hospital. The State shall ensure that each individual transition plan, as appropriate, shall take into consideration the availability of appropriate alternative placements based on the needs of the patient and within resources available for the mental health, developmental disabilities, and substance abuse services system. In developing each plan, the Department shall consult with the patient and the patient's family or other legal representative.

SECTION 10.28.(c) In accordance with the plan established in subsections (a) and (b) of this section, any nonrecurring savings in State appropriations that result from reductions in beds or services shall be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs. These funds shall be used to facilitate the transition of clients into appropriate community-based services and supports in accordance with G.S. 143-15.3D. Recurring savings realized through implementation of this section shall be retained by the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, (i) for implementation of subsections (a) and (b) of this section and (ii) to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W.

SECTION 10.28.(d) The Department of Health and Human Services shall submit reports on the status of implementation of this section to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division. These reports shall be submitted on December 1, 2005, and May 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

MENTAL RETARDATION CENTER DOWNSIZING

SECTION 10.29.(a) In accordance with the Department of Health and Human Services' plan for downsizing the State's regional mental retardation facilities by four percent (4%) each year, the Department shall implement cost-containment and reduction strategies to ensure the corresponding financial and staff downsizing of each facility. The Department shall manage the client population of the mental retardation centers in order to ensure that placements for ICF/MR level of care shall be made in non-State facilities. Admissions to State ICF/MR facilities are permitted only as a last resort and only upon approval of the Department. The corresponding budgets for each of the State mental retardation centers shall be reduced, and positions shall be eliminated as the census of each facility decreases. At no time shall mental retardation center positions be transferred to other units within a facility or assigned nondirect care activities such as outreach.

SECTION 10.29.(b) The Department of Health and Human Services shall apply any savings in State appropriations in each year of the 2005-2007 fiscal biennium that result from reductions in beds or services as follows:

(1) The Department shall place nonrecurring savings in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse

Services and Bridge Funding Needs and use the savings to facilitate the transition of clients into appropriate community-based services and support in accordance with G.S. 143-15.3D;

(2) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall retain recurring savings realized through implementation of this section to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W. In determining the savings in this section, savings shall include all savings realized from the downsizing of the State mental retardation centers, including the savings in direct State appropriations in the budgets of the State mental retardation centers; and

(3) The Department of Health and Human Services, Division of Medical Assistance, shall transfer any recurring Medicaid savings resulting from the downsizing of State-operated MR centers from the ICF-MR line in Medicaid to the CAP-MR/DD line.

SECTION 10.29.(c) The Department of Health and Human Services shall report on its progress in complying with this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The Department shall submit the progress report no later than January 15, 2006, and submit a final report no later than May 1, 2006.

SECTION 10.29.(d) The Department of Health and Human Services shall maintain downsizing of mental retardation centers occurring in the 2005-2006 fiscal year for the 2006-2007 fiscal year. The Department shall accomplish downsizing in accordance with this section and the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services. The Department shall use all savings resulting from downsizing occurring on and after July 1, 2005, as set forth in subsection (b) of this section.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

PRIVATE AGENCY UNIFORM COST FINDING REQUIREMENT

SECTION 10.30.(a) To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services may require a private agency that provides services under contract with an area program or county program, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding in accordance with G.S. 122C-147.2. The resulting cost shall be the maximum included for the private agency in the contracting area program's unit cost finding.

SECTION 10.30.(b) If a private agency fails to timely and accurately complete the required agency-wide uniform cost finding in a manner acceptable to the Department's controller's office, the Department may suspend all Department funding and payment to the private agency until such time as an acceptable cost finding has been completed by the private agency and approved by the Department's controller's office.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

DHHS POLICIES AND PROCEDURES IN DELIVERING COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES

SECTION 10.31. The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall in cooperation with area mental health authorities and county programs, identify and eliminate administrative and fiscal barriers created by existing State and local policies and procedures in the delivery of community-based mental health, developmental

disabilities, and substance abuse services provided through the area programs and county programs, including services provided through the Comprehensive Treatment Services Program for Children and services delivered to multiply diagnosed adults. The Department shall implement changes in policies and procedures in order to facilitate all of the following:

(1) The provision of services to adults and children as defined in the Mental Health System Reform State Plan as priority or targeted populations.

(2) A revised system of allocating State and federal funds to area mental health authorities and county programs that reflects projected needs, including the impact of system reform efforts rather than historical allocation practices and spending patterns.

(3) The provision of services to children not deemed eligible for the Comprehensive Treatment Services Program for Children, but who would otherwise be in need of medically necessary treatment services to prevent out-of-home placement.

(4) The provision of services in the community to adults remaining in and being placed in State institutions addressed in Olmstead v. L.C.

Area mental health, developmental disabilities, and substance abuse services authorities and county programs shall use all funds appropriated for and necessary to provide mental health, developmental disabilities, and substance abuse services to meet the need for these services. If excess funds are available after expending appropriated funds to fully meet service needs, one-half of these excess funds shall not revert to the General Fund but shall be transferred to the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs, except that one-half of the funds appropriated for the Comprehensive Treatment Services Program for Children that are unexpended and unencumbered shall not revert to the General Fund but shall be carried forward and used only for services for children and adolescents.

The Department, in consultation with the area mental health authorities and county programs, shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on the progress in implementing these changes. The report shall be submitted on October 1, 2005, and February 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

IMMUNITY FOR REPORTING ABUSE AND NEGLECT

SECTION 10.32. G.S. 122C-66 reads as rewritten:

"**§ 122C-66. Protection from abuse and exploitation; reporting.**

(a) An employee of or a volunteer at a facility who, other than as a part of generally accepted medical or therapeutic procedure, knowingly causes pain or injury to a client or borrows or takes personal property from a client is guilty of a Class 1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(a1) An individual who witnesses or has knowledge of abuse, neglect, or exploitation of a client of a residential facility may report the incident of abuse, neglect, or exploitation to an authorized employee of the facility.

(b) An employee of a facility who witnesses or has knowledge of a violation of subsection (a) or of an accidental injury to a client shall report the violation or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee or volunteer on

account of the report. Violation of this subsection is a Class 3 misdemeanor punishable only by a fine, not to exceed five hundred dollars ($500.00).

(c) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without his consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which a reporting individual is testifying, or when disclosure is legally compelled or authorized by judicial discovery. This subsection shall not be interpreted to require the disclosure of the identity of an individual where it is otherwise prohibited by law.

(d) An employee or citizen who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(e) The duty imposed by this section is in addition to any duty imposed by G.S. 7B-301 or G.S. 108A-102.

(f) The facility shall investigate or provide for the investigation of all reports made under the provisions of this section."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

RULES PERTAINING TO CONFLICT OF INTEREST IN REFERRALS TO PROVIDER AGENCIES

SECTION 10.33. G.S. 122C-26 reads as rewritten:

"**§ 122C-26. Powers of the Commission.**

In addition to other powers and duties, the Commission shall exercise the following powers and duties:

(1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;

(2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;

(3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article;

(4) Adopt rules for the waiver of rules adopted under this Article; and

(5) Adopt rules applicable to facilities licensed under this Article:

a. Establishing personnel requirements of staff employed in facilities;

b. Establishing qualifications of facility administrators or directors;

c. Establishing requirements for death reporting including confidentiality provisions related to death reporting; ~~and~~

d. Establishing requirements for patient ~~advocates.~~ advocates; and

e. Requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO STUDY OVERSIGHT AND MONITORING BY DEPARTMENT OF HEALTH AND HUMAN SERVICES OF SERVICES TO MENTAL HEALTH CONSUMERS

SECTION 10.34. The Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall study the oversight and

monitoring roles and activities of the Divisions of: Social Services, Facility Services, Medical Assistance, and Mental Health, Developmental Disabilities, and Substance Abuse Services, of the Department of Health and Human Services. The study shall focus on how the oversight and monitoring activities benefit consumers of mental health, developmental disabilities, and substance abuse services in residential settings, and shall include in its report recommendations on ensuring quality of care and increasing efficiency in the provision of services. The Oversight Committee shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than April 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

APPEALS PROCESS FOR CLIENTS OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES PROGRAMS

SECTION 10.35. G.S. 122C-151.2 reads as rewritten:

"**§ 122C-151.2. Appeal by area authorities and county ~~programs.~~programs; rules governing appeals process for clients of area authorities or county programs.**

(a) The area authority or county program may appeal to the Commission any action regarding rules under the jurisdiction of the Commission or rules under the joint jurisdiction of the Commission and the Secretary.

(b) The area authority or county program may appeal to the Secretary any action regarding rules under the jurisdiction of the Secretary.

(b1) The Commission shall adopt rules governing an appeals process for clients to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and the Secretary. The appeals process shall ensure that area authority and county program services meet the requirements of applicable statutes and the rules of the Commission and the Secretary.

(c) Appeals shall be conducted according to rules adopted by the Commission and Secretary and in accordance with Chapter 150B of the General Statutes."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CONTROLLED SUBSTANCES REPORTING

SECTION 10.36.(a) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5D.

"North Carolina Controlled Substances Reporting Act.

"**§ 90-113.60. Short title.**

This Article shall be known and may be cited as the "North Carolina Controlled Substances Reporting System Act."

"**§ 90-113.61. Legislative findings.**

The General Assembly makes the following findings:

(1) North Carolina is experiencing an epidemic of poisoning deaths from unintentional drug overdoses.

(2) Since 1997, the number of deaths from unintentional drug overdoses has increased threefold, from 228 deaths in 1997 to 690 deaths in 2003.

(3) The number of unintentional deaths from illicit drugs in North Carolina has decreased since 1992 while unintentional deaths from licit drugs, primarily prescriptions, have increased.

(4) Licit drugs are now responsible for over half of the fatal unintentional poisonings in North Carolina.

(5) Over half of the prescription drugs associated with unintentional deaths are narcotics (opioids).
(6) Of these licit drugs, deaths from methadone, usually prescribed as an analgesic for severe pain, have increased sevenfold since 1997.
(7) Methadone from opioid treatment program clinics is a negligible source of the methadone that has contributed to the dramatic increase in unintentional methadone-related deaths in North Carolina.
(8) Review of the experience of the 19 states that have active controlled substances reporting systems clearly documents that implementation of these reporting systems do not create a "chilling" effect on prescribing.
(9) Review of data from controlled substances reporting systems help:
a. Support the legitimate medical use of controlled substances.
b. Identify and prevent diversion of prescribed controlled substances.
c. Reduce morbidity and mortality from unintentional drug overdoses.
d. Reduce the costs associated with the misuse and abuse of controlled substances.
e. Assist clinicians in identifying and referring for treatment patients misusing controlled substances.
f. Reduce the cost for law enforcement of investigating cases of diversion and misuse.
g. Inform the public, including health care professionals, of the use and abuse trends related to prescription drugs.

"**§ 90-113.62. Definitions.**

The following definitions apply in this Article:
(1) "Controlled substance" means a controlled substance as defined in G.S. 90-87(5).
(2) "Department" means the Department of Health and Human Services.
(3) "Dispenser" means a person who delivers a Schedule II through V controlled substance to an ultimate user in North Carolina, but does not include any of the following:
a. A licensed hospital or long-term care pharmacy that dispenses such substances for the purpose of inpatient administration.
b. A person authorized to administer such a substance pursuant to Chapter 90 of the General Statutes.
c. A wholesale distributor of a Schedule II through V controlled substance.
(4) "Ultimate user" means a person who has lawfully obtained, and who possesses, a Schedule II through V controlled substance for his or her own use, for the use of a member of his or her household, or for the use of an animal owned or controlled by him or her or by a member of his or her household.

"**§ 90-113.63. Requirements for controlled substances reporting system.**

The Department shall establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Each dispenser shall submit the information in accordance with transmission methods and frequency established by rule by the Commission. The Department may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required of electronically submitted data is submitted.

"**§ 90-113.64. Confidentiality.**

(a) Prescription information submitted to the Department shall be confidential and shall not be public records pursuant to G.S. 132-1. The Department may use such information for purposes of administration and enforcement. Any contractor shall be

bound to maintain the confidentiality of prescription information in accordance with this section. The information may only be disclosed in accordance with subsections (b) and (c) of this section.

(b) The Department shall, upon request, release data in the controlled substances reporting system to the following persons:

(1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients.

(2) An individual who requests the individual's own controlled substances reporting system information.

(3) Other agencies authorized to have access to such information pursuant to the provisions of G.S. 90-107.

(4) Primary monitoring authorities for other states if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in such state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in such other state.

(5) To a court pursuant to a lawful court order.

(c) The Department may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients who received prescriptions from dispensers.

"**§ 90-113.65. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules.**

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules necessary to implement this act."

SECTION 10.36.(b) This section becomes effective January 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

SENIOR CENTER OUTREACH

SECTION 10.37.(a) Funds appropriated to the Department of Health and Human Services, Division of Aging and Adult Services, for the 2005-2007 fiscal biennium, shall be used by the Division of Aging and Adult Services to enhance senior center programs as follows:

(1) To expand the outreach capacity of senior centers to reach unserved or underserved areas; or

(2) To provide start-up funds for new senior centers.

All of these funds shall be allocated by October 1 of each fiscal year.

SECTION 10.37.(b) Prior to funds being allocated pursuant to this section for start-up funds for a new senior center, the county commissioners of the county in which the new center will be located shall:

(1) Formally endorse the need for such a center;

(2) Formally agree on the sponsoring agency for the center; and

(3) Make a formal commitment to use local funds to support the ongoing operation of the center.

SECTION 10.37.(c) State funding shall not exceed seventy-five percent (75%) of reimbursable costs.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

STATE/COUNTY SPECIAL ASSISTANCE

SECTION 10.38.(a) The eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, providing these recipients are otherwise

eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand two hundred thirty-one dollars ($1,231) per month per resident.

SECTION 10.38.(b) Effective July 1, 2005, the maximum monthly rate for residents in adult care home facilities shall be one thousand eighty-four dollars ($1,084) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section.

SECTION 10.38.(c) It is the intent of the General Assembly to protect individuals who meet current eligibility standards for State/County Special Assistance from becoming disenfranchised from the program as a result of any changes proposed in this section. Therefore, subject to any necessary approvals by the Center for Medicare & Medicaid Services (CMS):

(1) The eligibility of Special Assistance recipients who resided in adult care homes on September 30, 2003, and remain continuously eligible shall not be affected by an income reduction in the Special Assistance eligibility criteria, providing these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand ninety-one dollars ($1,091) per month per resident; and

(2) The standard of need level for coverage eligibility under State/County Special Assistance, for individuals not enrolled or recipients of the program on September 30, 2003, shall be not less than one thousand ninety-one dollars ($1,091) per month per individual, but the monthly reimbursement rate for such individuals shall be the amount established under subsections (c) and (d) of this section. However, the Department of Health and Human Services, in its determination of reimbursement rates, may establish a minimum monthly reimbursement rate of not more than five dollars ($5.00) per month for any resident of an adult care home facility meeting the established standard of need level for coverage.

SECTION 10.38.(d) Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH-PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State/County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH-PCS), thus maximizing available federal funds. The established rate for State/County Special Assistance set forth in subsection (c) of this section shall be adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance, and related transfer costs and responsibilities from State/County Special Assistance to the Medicaid personal care services for adult care homes (ACH-PCS). Such rate adjustments to the Special Assistance rate shall be effective with the effective date of increased reimbursement under ACH-PCS. In no event shall the reimbursement for services through the ACH-PCS exceed the average cost of such services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

SPECIAL ASSISTANCE IN-HOME

SECTION 10.39.(a) The Department of Health and Human Services may use funds from the existing State-County Special Assistance for Adults budget to provide Special Assistance payments to eligible individuals in in-home living arrangements. These payments may be made for up to 800 individuals during the 2005-2006 fiscal year and the 2006-2007 fiscal year. The standard monthly payment to individuals enrolled in the Special Assistance in-home program shall be fifty percent (50%) of the monthly payment the individual would receive if the individual resided in an adult care home and qualified for Special Assistance, except if a lesser payment amount is appropriate for the individual as determined by the local case manager. For State fiscal year 2005-2006, qualified individuals shall not receive payments at rates less than they would have been eligible to receive in State fiscal year 2004-2005. The Department shall implement Special Assistance in-home eligibility policies and procedures to assure that in-home program participants are those individuals who need and, but for the in-home program, would seek placement in an adult care home facility. The Department's policies and procedures shall include the use of a functional assessment. The Department shall make this in-home option available to all counties on a voluntary basis. To the maximum extent possible, the Department shall consider geographic balance in the dispersion of payments to individuals across the State.

SECTION 10.39.(b) The Department shall report on or before January 1, 2006, and on or before January 1, 2007, to the cochairs of the House of Representatives Appropriations Committee, the House of Representatives Appropriations Subcommittee on Health and Human Services, the cochairs of the Senate Appropriations Committee, and the cochairs of the Senate Appropriations Committee on Health and Human Services. This report shall include the following information:

(1) A description of cost savings that result from allowing individuals eligible for State-County Special Assistance the option of remaining in the home.
(2) A complete fiscal analysis of the in-home option to include all federal, State, and local funds expended.
(3) How much case management is needed and which types of individuals are most in need of case management.
(4) The geographic location of individuals receiving payments under this section.
(5) A description of the services purchased with these payments.
(6) A description of the income levels of individuals who receive payments under this section and the impact on the Medicaid program.
(7) Findings and recommendations as to the feasibility of continuing or expanding the in-home program.
(8) The level and quantity of services (including personal care services) provided to the demonstration project participants compared to the level and quantity of services for residents in adult care homes.

SECTION 10.39.(c) The Department shall incorporate data collection tools designed to compare quality of life among institutionalized versus noninstitutionalized populations (i.e., an individual's perception of his or her own health and well-being, years of healthy life, and activity limitations). To the extent national standards are available, the Department shall utilize those standards.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

LICENSURE OF RESIDENTIAL TREATMENT FACILITIES

SECTION 10.40.(a) Article 2 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"**§ 122C-23.1. Licensure of residential treatment facilities.**

The General Assembly finds:

(1) That much of the care for residential treatment facility residents is paid by the State and the counties;

(2) That the cost to the State for care for residents of residential treatment facilities is substantial, and high vacancy rates in residential treatment facilities further increase the cost of care;

(3) That the proliferation of residential treatment facilities results in costly duplication and underuse of facilities and may result in lower quality service;

(4) There is currently no ongoing relationship between some applicants for licensure and local management entities (LMEs) that are responsible for the placement of children and adults in residential treatment facilities; and

(5) That it is necessary to protect the general welfare and lives, health, and property of the people of the State for the local management entity (LME) to verify that additional beds are needed in the LME's catchment area before new residential treatment facilities are licensed. This process is established to ensure that unnecessary costs to the State do not result, residential treatment facility beds are available where needed, and that individuals who need care in residential treatment facilities may have access to quality care.

Based on these findings, the Department of Health and Human Services may license new residential treatment facilities if the applicant for licensure submits with the application a letter of support obtained from the local management entity in whose catchment area the facility will be located. The letter of support shall be submitted to the Department of Health and Human Services, Division of Facility Services and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and shall specify the number of existing beds in the same type of facility in the catchment area and the projected need for additional beds of the same type of facility. As used in this subsection, "residential treatment facility" means a "residential facility" as defined in and licensed under this Chapter, but not subject to Certificate of Need requirements under Article 9 of Chapter 131E of the General Statutes.

SECTION 10.40.(b) This section applies to license applications pending and license applications submitted on and after the effective date of this act.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

PLAN FOR STAR-RATING SYSTEM FOR ADULT CARE HOMES

SECTION 10.41. The Department of Health and Human Services shall develop a plan for implementing a star-rating system for adult care homes to improve quality of care. The Department shall report on the status and details of the plan, including a recommended timeline for implementation, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

SOCIAL SERVICES COMMISSION TECHNICAL CORRECTION

SECTION 10.42. G.S. 108A-14(a)(8) reads as rewritten:

"**§ 108A-14. Duties and responsibilities.**

(a) The director of social services shall have the following duties and responsibilities:

...

(8) To supervise adult care homes under the rules and regulations of the ~~Social Services~~Medical Care Commission;

...."

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CHILD SUPPORT PROGRAM/ENHANCED STANDARDS

SECTION 10.43.(a) The Department of Health and Human Services shall develop and implement performance standards for each of the State and county child support enforcement offices across the State. To develop these performance standards, the Department of Health and Human Services shall evaluate other private and public child support models and national standards as well as other successful collections models. These performance standards shall include the following:

(1) Cost per collections.
(2) Consumer satisfaction.
(3) Paternity establishments.
(4) Administrative costs.
(5) Orders established.
(6) Collections on arrearages.
(7) Location of absent parents.
(8) Other related performance measures.

The Department of Health and Human Services shall monitor the performance of each office and shall implement a system of reporting that allows each local office to review its performance as well as the performance of other local offices. The Department of Health and Human Services shall publish an annual performance report that shall include the statewide and local office performance of each child support office.

SECTION 10.43.(b) The Department of Health and Human Services shall report on its progress, in compliance with this section, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by May 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CHILD WELFARE SYSTEM STUDY

SECTION 10.44. The Department of Health and Human Services shall conduct a study to document variations in the implementation of the Child Welfare System within North Carolina counties. The study shall include recommendations for correcting identified disparities. The study shall identify systemic issues associated with North Carolina's Child Welfare System and provide recommendations for resolving these issues. The Department shall report the results of its study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than January 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

MULTIPLE RESPONSE SYSTEM

SECTION 10.45.(a) The Department of Health and Human Services, Division of Social Services, shall continue working with local departments of social services to implement an alternative response system of child protection. Local departments of social services shall continue systems already in place. The alternative response system shall provide a family-centered approach to child protective services in which local departments of social services use family assessment tools and family support principles when responding to selected reports of suspected child abuse, neglect, and dependency, including establishing a system of care with child and family teams.

SECTION 10.45.(b) The Department of Health and Human Services shall expand this project using both State appropriations and any non-State funding sources that can be identified for this purpose. Counties may also implement the system using existing resources.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS

SECTION 10.46.(a) The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

(1) $390.00 per child per month for children aged birth through 5;
(2) $440.00 per child per month for children aged 6 through 12; and
(3) $490.00 per child per month for children aged 13 through 18.

Of these amounts, fifteen dollars ($15.00) is a special needs allowance for the child.

SECTION 10.46.(b) The maximum rates for State participation in the adoption assistance program are established on a graduated scale as follows:

(1) $390.00 per child per month for children aged birth through 5;
(2) $440.00 per child per month for children aged 6 through 12; and
(3) $490.00 per child per month for children aged 13 through 18.

SECTION 10.46.(c) In addition to providing board payments to foster and adoptive families of HIV-infected children, as prescribed in Section 23.28 of Chapter 324 of the 1995 Session Laws, any additional funds remaining that were appropriated for this purpose shall be used to provide medical training in avoiding HIV transmission in the home.

SECTION 10.46.(d) The maximum rates for the State participation in HIV foster care and adoption assistance are established on a graduated scale as follows:

(1) $800.00 per child per month with indeterminate HIV status;
(2) $1,000 per child per month confirmed HIV-infected, asymptomatic;
(3) $1,200 per child per month confirmed HIV-infected, symptomatic; and
(4) $1,600 per child per month terminally ill with complex care needs.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CHILD CARING INSTITUTIONS

SECTION 10.47.(a) The Office of the State Auditor shall conduct an audit to evaluate overhead rates and reimbursements for child caring institutions receiving State funding. Of the funds appropriated to the Department of Health and Human Services, Office of the Controller, the sum of one hundred fifty thousand dollars ($150,000) shall be transferred to the State Auditor to conduct the audit. The audit shall include the following:

(1) A detailed evaluation of each child caring institution's cost allocation processes.
(2) A determination of whether the allocated costs are consistent in different agencies.
(3) A determination of the basis used for cost allocation by each agency.
(4) The methodology used to assign direct and indirect costs to specific child caring institution programs.
(5) A determination of whether the overhead charged is reasonable for that specific type of nonprofit, based on national surveys.
(6) A determination of how agency utilization rates impact the child caring institutions' cost allocation and subsequent State reimbursements.
(7) An examination of rate-setting methodologies used by other states and how North Carolina's payment to child caring institutions compare to other states.
(8) Recommendations on how to develop equitable, reasonable rates.
(9) An examination of the feasibility of providing child caring institutions with the opportunity to compete based on providing the best service at least cost.

The Office of the State Auditor shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than March 1, 2006. The written report shall include copies of working papers developed during the course of the audit.

SECTION 10.47.(b) The Department of Health and Human Services shall establish standardized rates for child caring institutions in this State. These rates shall be effective January 1, 2006, and shall be updated annually on July 1. Rate-setting recommendations provided by the Office of the State Auditor shall be incorporated into the Department of Social Services rate-setting methodology.

SECTION 10.47.(c) Until standardized rates are set, child caring institutions' maximum reimbursement shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services Office of the Controller. In determining the maximum reimbursement, counties shall include county and IV-E reimbursements.

SECTION 10.47.(d) Minimum reimbursement for foster parents providing services through child caring institutions shall not be lower than the rates established by the General Assembly.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

SPECIAL CHILDREN ADOPTION FUND

SECTION 10.48.(a) Of the funds appropriated to the Department of Health and Human Services in this act, the sum of one hundred thousand dollars ($100,000) shall be used to support the Special Children Adoption Fund for the 2005-2006 fiscal year. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services. No local match shall be required as a condition for receipt of these funds. In accordance with State rules for allowable costs, the Special Children Adoption Fund may be used for post-adoption services for families whose income exceeds two hundred percent (200%) of the federal poverty level.

SECTION 10.48.(b) Of the total funds appropriated for the Special Children Adoption Fund each year, twenty percent (20%) of the total funds available shall be reserved for payment to participating private adoption agencies. If the funds reserved in this subsection for payments to private agencies have not been spent on or before March 31, 2006, the Division of Social Services may reallocate those funds, in accordance with this section, to other participating adoption agencies.

SECTION 10.48.(c) The Division of Social Services shall monitor the total expenditures in the Special Children Adoption Fund and redistribute unspent funds to ensure that the funds are used according to the guidelines established in subsection (a) of this section. The Division shall implement strategies to ensure that funds that have historically reverted for this program are used for the intended purpose. The Division shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the expenditures and activities of the program no later than December 1, 2005, and June 30, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

STUDY TO IDENTIFY ADOPTION INCENTIVES FOR CHILDREN WHO ARE DIFFICULT TO PLACE

SECTION 10.49. The Department of Health and Human Services shall conduct a study to identify potential incentives for adoption of children who are difficult

to place and the associated costs for each incentive. The study shall identify incentives currently in place in individual counties and the associated costs. The study shall identify funding sources available to support each incentive. The Department shall report the results of its study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than October 1, 2005.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

LIMITATION ON STATE ABORTION FUND

SECTION 10.50. The limitations on funding of the performance of abortion established in Section 23.27 of Chapter 324 of the 1995 Session Laws, as amended by Section 23.8A of Chapter 507 of the 1995 Session Laws, apply to the 2005-2006 and 2006-2007 fiscal years.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

TANF BENEFIT IMPLEMENTATION

SECTION 10.51.(a) The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan FY 2005-2007", prepared by the Department of Health and Human Services and presented to the General Assembly as revised in accordance with subsection (b) of this section, except that the provision contained in the approved North Carolina Temporary Assistance for Needy Families State Plan FY 2005-2007 eliminating pay-after-performance as a benefit delivery method for two-parent families will only be implemented if the federal two-parent work participation rate is eliminated. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, 2005, through September 30, 2007. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2005 General Assembly.

SECTION 10.51.(b) The counties approved as Electing Counties in North Carolina's Temporary Assistance for Needy Families State Plan FY 2005-2007 as approved by this section are: Beaufort, Caldwell, Catawba, Iredell, Lenoir, Lincoln, Macon, McDowell, Sampson, and Stokes.

SECTION 10.51.(c) Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for fiscal years 2005 through 2007, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, 2005. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, 2005.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

RESIDENTIAL SCHOOLS REPORTING

SECTION 10.52. The Office of Education Services shall report not later than December 1, 2005, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the activities of the Eastern North Carolina School for the Deaf at Wilson, the North Carolina School for the Deaf at Morganton, and the Governor Morehead School for the Blind. The report shall include enrollment numbers at the schools, the budgets, and the academic status of the schools as defined under the ABCs program.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

FUNDS FOR SCHOOL NURSES

SECTION 10.53. Of the funds appropriated in this act to the Department of Health and Human Services, the sum of two million five hundred thousand dollars

($2,500,000) for the 2005-2006 fiscal year, and the sum of two million five hundred thousand dollars ($2,500,000) for the 2006-2007 fiscal year shall be used for the school nurse funding initiative. The Department of Health and Human Services, Division of Public Health, in conjunction with the Department of Public Instruction, shall provide funds to communities to hire school nurses. The program will fund 50 permanent local nurses. The criteria shall include determining the areas in greatest need for school nurses with the greatest inability to pay for these nurses. Other criteria to be considered shall include: (i) the current nurse-to-student ratio; (ii) the economic status of the community; and (iii) the health needs of area children.

There shall be no supplanting of local, State, or federal funds with these funds. Communities shall maintain their current level of effort and funding for school nurses. These funds shall not be used for funding nurses for State agencies. All funding shall be used for direct services.

The Department of Health and Human Services shall report on the use of funds allocated under this section by December 1, 2005, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

EARLY INTERVENTION REPORTING AND EVALUATION

SECTION 10.54.(a) The Department of Health and Human Services, Division of Public Health, shall report on Early Intervention services. The report shall include the number of children served, the number and types of services and evaluations provided, and the budget for each Children's Developmental Services Agency. In addition, the Division of Public Health shall evaluate its Early Intervention Program provider network, including provider certification and continuing education requirements.

SECTION 10.54.(b) The Department of Health and Human Services shall analyze the reimbursement rates for Early Intervention services, and may adjust rates according to the findings of the analysis.

SECTION 10.54.(c) The Division of Public Health shall analyze the program funding for the Children with Special Needs Program and shall develop a plan to utilize these funds within the Early Intervention Program. The Division shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than December 1, 2005.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CONTRACTING FOR MORE EFFECTIVE COMBINATION VACCINES

SECTION 10.55. The Department of Health and Human Services may contract for the purchase of new combination vaccines that are more expensive than currently used combination or single component vaccines only if the new, more expensive combination vaccine is more effective than the currently used combination or single component vaccine it replaces.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CHRONIC DISEASE PREVENTION ACTIVITIES INVENTORY

SECTION 10.56. In order to reduce costs and eliminate duplication of effort, the Department of Health and Human Services shall create an inventory of all chronic disease prevention activities, funding, staffing, and other resources for these activities, including funding and resources for related task forces and committees. The inventory shall include at a minimum, heart disease, stroke, diabetes, osteoporosis, and cancer. The Department shall create a plan to combine task forces and activities for

chronic disease prevention and shall explore collapsing these task forces and committees into the Healthy Carolinians structure. The Department shall report on the inventory and the Department's recommendations not later than February 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

PILOT PROGRAM FOR AUTOMATIC EXTERNAL DEFIBRILLATORS IN PUBLIC BUILDINGS

SECTION 10.57.(a) The Department of Health and Human Services, Division of Public Health, shall develop a pilot program to place Automated External Defibrillators (AED) in public buildings, including public gymnasiums, that do not have an operational AED in place. In selecting pilot sites, the Department shall ensure geographic representation of the State.

SECTION 10.57.(b) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of seventeen thousand dollars ($17,000) for the 2005-2006 fiscal year, and the sum of six thousand dollars ($6,000) for the 2006-2007 fiscal year shall be used to purchase AED units, conduct on-site training at the pilot sites, and conduct ongoing education and awareness campaigns to the general public in the piloted sites. The Department shall ensure that training in the use of an AED shall be conducted in accordance with G.S. 90-21.15(b)(3). The Heart Disease and Stroke Prevention Branch of the Division of Public Health shall be responsible for the purchase of AEDs, the training of pilot program participants, and evaluation of the pilot program.

SECTION 10.57.(c) The Department of Health and Human Services shall report on the location, establishment, and implementation of the pilot sites to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

IMMUNIZATION PROGRAM FUNDING

SECTION 10.58.(a) Of the funds appropriated in this act to the Department of Health and Human Services for childhood immunization programs for positions, operating support, equipment, and pharmaceuticals, the sum of one million dollars ($1,000,000) for the 2005-2006 fiscal year and the sum of one million dollars ($1,000,000) for the 2006-2007 fiscal year may be used for projects and activities that are also designed to increase childhood immunization rates in North Carolina. These projects and activities shall include the following:

(1) Outreach efforts at the State and local levels to improve service delivery of vaccines. Outreach efforts may include educational seminars, media advertising, support services to parents to enable children to be transported to clinics, longer operating hours for clinics, and mobile vaccine units.

(2) Continued development of an automated immunization registry.

SECTION 10.58.(b) Funds authorized to be used for immunization efforts under subsection (a) of this section shall not be used to fund additional State positions in the Department of Health and Human Services or contracts, except for contracts to develop an automated immunization registry or contracts with local health departments for outreach.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

AIDS DRUG ASSISTANCE PROGRAM

SECTION 10.59.(a) For the 2005-2006 fiscal year and for the 2006-2007 fiscal year, HIV-positive individuals with incomes at or below one hundred twenty-five

percent (125%) of the federal poverty level are eligible for participation in ADAP. Eligibility for participation in ADAP during the 2005-2007 fiscal biennium shall not be extended to individuals with incomes above one hundred twenty-five percent (125%) of the federal poverty level.

SECTION 10.59.(b) The Department of Health and Human Services shall make an interim report on ADAP program utilization by January 1, 2006, and a final report on ADAP program utilization by May 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on ADAP. The reports shall include ADAP program utilization as follows:

(1) Monthly data on total cumulative AIDS/HIV cases reported in North Carolina.
(2) Monthly data on the number of individuals who have applied to participate in ADAP that have been determined to be ineligible.
(3) Monthly data on the income level of participants in ADAP and of individuals who have applied to participate in ADAP who have been determined to be ineligible.
(4) Monthly data on fiscal year-to-date expenditures of ADAP. The interim report shall contain monthly data on the calendar year-to-date expenditures of ADAP.
(5) An update on the status of the information management system.
(6) Monthly data on ADAP usage patterns and demographics of participants in ADAP.
(7) Fiscal year-to-date budget information.
(8) The status of the new system of management for ADAP, the costs savings realized from the new system, and recommendations for improving the system.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CHILD CARE FUNDS MATCHING REQUIREMENT

SECTION 10.60. No local matching funds may be required by the Department of Health and Human Services as a condition of any locality's receiving any State child care funds appropriated by this act unless federal law requires a match. This shall not prohibit any locality from spending local funds for child care services.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CHILD CARE ALLOCATION FORMULA

SECTION 10.61.(a) The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

(1) Funds shall be allocated based upon the projected cost of serving children in a county under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.
(2) No county's allocation shall be less than ninety percent (90%) of its State Fiscal Year 2001-2002 initial child care subsidy allocation.

SECTION 10.61.(b) The Department of Health and Human Services may reallocate unused child care subsidy voucher funds in order to meet the child care needs of low-income families. Any reallocation of funds shall be based upon the expenditures of all child care subsidy voucher funding, including Smart Start funds, within a county.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CHILD CARE SUBSIDY RATES

SECTION 10.62.(a) The maximum gross annual income for initial eligibility, adjusted biennially, for subsidized child care services shall be seventy-five percent (75%) of the State median income, adjusted for family size.

SECTION 10.62.(b) Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%.

SECTION 10.62.(c) Payments for the purchase of child care services for low-income children shall be in accordance with the following requirements:

(1) Religious-sponsored child care facilities operating pursuant to G.S. 110-106 and licensed child care centers and homes that meet the minimum licensing standards that are participating in the subsidized child care program shall be paid the one-star county market rate or the rate they charge privately paying parents, whichever is lower.

(2) Licensed child care centers and homes with two or more stars shall receive the market rate for that rated license level for that age group or the rate they charge privately paying parents, whichever is lower.

(3) Nonlicensed homes shall receive fifty percent (50%) of the county market rate or the rate they charge privately paying parents, whichever is lower.

(4) Maximum payment rates shall also be calculated periodically by the Division of Child Development and School Readiness for transportation to and from child care provided by the child care provider, individual transporter, or transportation agency, and for fees charged by providers to parents. These payment rates shall be based upon information collected by market rate surveys.

SECTION 10.62.(d) Provisions of payment rates for child care providers in counties that do not have at least 50 children in each age group for center-based and home-based care are as follows:

(1) Except as applicable in subdivision (2) of this subsection, payment rates shall be set at the statewide or regional market rate for licensed child care centers and homes.

(2) If it can be demonstrated that the application of the statewide or regional market rate to a county with fewer than 50 children in each age group is lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children, then the county market rate may be applied.

SECTION 10.62.(e) A market rate shall be calculated for child care centers and homes at each rated license level for each county and for each age group or age category of enrollees and shall be representative of fees charged to unsubsidized privately paying parents for each age group of enrollees within the county. The Division of Child Development and School Readiness shall also calculate a statewide rate and regional market rates for each rated license level for each age category.

SECTION 10.62.(f) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes and facilities operated pursuant to G.S. 110-106 may participate in the program that provides for the purchase of care in child care facilities for minor children of needy families. No separate licensing requirements shall be used to select facilities to participate. In addition, child care facilities shall be required to meet any additional applicable requirements of federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the

General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in addition to those specified in this subsection as a condition for reducing the provider's subsidized child care rate.

SECTION 10.62.(g) Payment for subsidized child care services provided with Work First Block Grant funds shall comply with all regulations and policies issued by the Division of Child Development and School Readiness for the subsidized child care program.

SECTION 10.62.(h) Noncitizen families who reside in this State legally shall be eligible for child care subsidies if all other conditions of eligibility are met. If all other conditions of eligibility are met, noncitizen families who reside in this State illegally shall be eligible for child care subsidies only if at least one of the following conditions is met:

(1) The child for whom a child care subsidy is sought is receiving child protective services or foster care services.
(2) The child for whom a child care subsidy is sought is developmentally delayed or at risk of being developmentally delayed.
(3) The child for whom a child care subsidy is sought is a citizen of the United States.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

CHILD CARE REVOLVING LOAN

SECTION 10.63. Notwithstanding any law to the contrary, funds budgeted for the Child Care Revolving Loan Fund may be transferred to and invested by the financial institution contracted to operate the Fund. The principal and any income to the Fund may be used to make loans, reduce loan interest to borrowers, serve as collateral for borrowers, pay the contractor's cost of operating the Fund, or pay the Department's cost of administering the program.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS

SECTION 10.64.(a) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management.

SECTION 10.64.(b) The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

(1) For amounts of five thousand dollars ($5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.
(2) For amounts greater than five thousand dollars ($5,000), but less than fifteen thousand dollars ($15,000), three written quotes.
(3) For amounts of fifteen thousand dollars ($15,000) or more, but less than forty thousand dollars ($40,000), a request for proposal process.
(4) For amounts of forty thousand dollars ($40,000) or more, a request for proposal process and advertising in a major newspaper.

SECTION 10.64.(c) The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the program in each fiscal year of the

biennium as follows: contributions of cash equal to at least fifteen percent (15%) and in-kind donated resources equal to no more than five percent (5%) for a total match requirement of twenty percent (20%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry-forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

(1) Be verifiable from the contractor's records.
(2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.
(3) Not include expenses funded by State funds.
(4) Be supplemental to and not supplant preexisting resources for related program activities.
(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.
(6) Be otherwise allowable under federal or State law.
(7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.
(8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

Failure to obtain a twenty percent (20%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

SECTION 10.64.(d) The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

SECTION 10.64.(e) The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2005-2006 and 2006-2007 shall be administered and distributed in the following manner:

(1) Capital expenditures are prohibited for fiscal years 2005-2006 and 2006-2007. For the purposes of this section, "capital expenditures" means expenditures for capital improvements as defined in G.S. 143-34.40.
(2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2005-2006 and 2006-2007.

SECTION 10.64.(f) A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

Requested by: Senators Purcell, Malone, Hagan, Garrou, Dalton

SMART START FUNDING STUDY

SECTION 10.65.(a) The North Carolina Partnership for Children, Inc., shall study its allocation of funds to local partnerships. The North Carolina Partnership for Children, Inc., shall study funding equity among all counties and local partnerships based on population, the number of children from birth to five years of age residing in the county region, economic indicators, and the quality of existing child care. The North Carolina Partnership for Children, Inc., shall develop strategies to alleviate the inequity of funds to local partnerships.

SECTION 10.65.(b) The North Carolina Partnership for Children, Inc., shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

ANALYZE CHILD CARE SUBSIDY REIMBURSEMENT SYSTEM

SECTION 10.66.(a) The Department of Health and Human Services, Division of Child Development and School Readiness, shall conduct an analysis of the child care subsidy reimbursement system. The Division of Child Development and School Readiness shall conduct the analysis as follows:

(1) Compare surveyed rates from the 2005 child care market survey to existing reimbursement rates and identify counties and levels of disparity of current market rates to subsidy reimbursements.

(2) Compare overall compensation for child care workers by county and determine if there is a correlation with child care quality and subsidy reimbursements.

(3) Examine the impact of North Carolina Partnership for Children, Inc., funding on child care market rates and quality of child care by comparing the length of time local partnerships have been present in counties, the amount local partnerships spend on child care quality initiatives, the number of higher quality child care centers and homes, and the allocation to the county by percentage of need.

(4) Examine, by county, the prevalence of child care providers who charge parents a differential fee to make up the difference between private and subsidy reimbursement rates.

(5) Examine the impact that child care reimbursement rates have on providing families access to all levels of child care.

SECTION 10.66.(b) The Division of Child Development and School Readiness shall develop strategies to implement market rate equity among counties and submit a report of its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 30, 2006.

Requested by: Senators Purcell, Malone, Garrou, Dalton, Hagan

MORE AT FOUR

SECTION 10.67.(a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of sixty-six million five hundred forty-six thousand six hundred fifty-three dollars ($66,546,653) for the 2005-2006 fiscal year and the sum of seventy-nine million one hundred nine thousand seven hundred seventy-nine dollars ($79,109,779) for the 2006-2007 fiscal year shall be used to implement "More At Four", a voluntary prekindergarten program for at-risk four-year-olds.

SECTION 10.67.(b) The Department of Health and Human Services, Division of Child Development and School Readiness, shall continue the implementation of the "More At Four" prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

(1) A process and system for identifying children at risk of academic failure.

(2) A process and system for identifying children who are not being served first priority in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

(3) A curriculum or several curricula that are recommended by the North Carolina Child Development and School Readiness Task Force (hereinafter "Task Force"). The Task Force will identify and approve appropriate research-based curricula. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

(4) An emphasis on ongoing family involvement with the prekindergarten program.

(5) Evaluation of child progress through pre- and postassessment of children in the statewide evaluation, as well as ongoing assessment of the children by teachers.

(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services, the Department of Public Instruction, and the Task Force. The Department may use the child care rating system to assist in determining program participation.

(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.

(10) A local contribution. Programs must demonstrate that they are accessing resources other than "More At Four".
(11) A system of accountability.
(12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

SECTION 10.67.(c) The Department of Health and Human Services shall plan for expansion of the "More At Four" program within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The Department shall analyze guidelines for use of the "More At Four" funds, State subsidy funds, and Smart Start subsidy funds and devise a complementary plan for administration of funds for all four-year-old classrooms. The four- and five-star-rated centers that choose to become a "More At Four" program shall, at a minimum, receive curricula and access to training and workshops for "More At Four" programs and be considered along with other "More At Four" programs for T.E.A.C.H. funding. The Department shall ensure that no individual receives funding from more than one source for the same purpose or activity during the same funding period. For purposes of this subsection, sources shall include T.E.A.C.H., W.A.G.E.$., and T.E.A.C.H. Health Insurance programs for individual recipients.

The "More At Four" program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through December 30, 2005, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

SECTION 10.67.(d) The Department of Health and Human Services, Division of Child Development and School Readiness, and the Task Force shall submit a report by February 1, 2006, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. This final report shall include the following:

(1) The number of children participating in the program.
(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.
(3) The expected expenditures for the programs and the source of the local match for each grantee.
(4) The location of program sites and the corresponding number of children participating in the program at each site.
(5) Activities involving Child Find in counties.
(6) A comprehensive cost analysis of the program, including the cost per child served by the program.
(7) The plan for expansion of "More At Four" through existing resources as outlined in this section.

SECTION 10.67.(e) For the 2005-2006 and the 2006-2007 fiscal years, the "More At Four" program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income to make the program consistent with the child care subsidy requirements. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors.

SECTION 10.67.(f) The "More At Four" program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2003-2004 fiscal year.

SECTION 10.67.(g) The Department of Health and Human Services, Division of Child Development and School Readiness, shall review and evaluate the early literacy project in Davie County and consider incorporation of this curriculum into the "More At Four" program.

SECTION 10.67.(h) The "More At Four" program shall contract with Prevent Blindness of North Carolina for one hundred fifty thousand dollars ($150,000) for vision screenings for children in the "More At Four" program and other child care classrooms.

SECTION 10.67.(i) The "More At Four" program shall provide a grant of one hundred seventy-seven thousand dollars ($177,000) to the Carolina Children's Communicative Disorders Program at the University of North Carolina at Chapel Hill.

Requested by: Senators Garrou, Dalton, Hagan

ESTABLISH THE DIVISION OF CHILD DEVELOPMENT AND SCHOOL READINESS IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

SECTION 10.68.(a) The Division of Child Development of the Department of Health and Human Services is renamed the Division of Child Development and School Readiness (hereinafter "the Division"). The purpose of the Division is to regulate and license child care facilities, administer the five-star rating system of child care facilities, and ensure school readiness for North Carolina's children through increased coordination and effectiveness of the State's early care and education programs and through improved transitions for at-risk children into kindergarten. In addition, the Division shall have oversight of all prekindergarten programs serving three- and four-year-olds, which includes the More at Four prekindergarten programs, and shall expand the focus of the programs, thereby developing increased collaboration between local Head Start programs and the State's prekindergarten programs as well as private child care programs. The Division shall collaborate with the Department of Public Instruction to develop a common statewide assessment and to promote improved transition practices for children entering kindergarten.

SECTION 10.68.(b) The More at Four Prekindergarten Program is transferred from the Office of the Governor to the Department of Health and Human Services, Division of Child Development and School Readiness. This transfer shall have all the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 10.68.(c) The Head Start Collaboration Office shall remain in the Department of Health and Human Services under the Division of Child Development and School Readiness.

SECTION 10.68.(d) The North Carolina Partnership for Children, Inc., shall continue to be funded through, and work cooperatively with, the Department of Health and Human Services, the Division of Child Development and School Readiness.

SECTION 10.68.(e) The More at Four Task Force shall be reconstituted and renamed the North Carolina Child Development and School Readiness Task Force. The Secretary of the Department of Health and Human Services shall appoint the members of the North Carolina Child Development and School Readiness Task Force from representatives of publicly funded programs and services for children age birth to five years, including the More at Four Prekindergarten Program, the North Carolina Partnership for the Children, Inc., Early Intervention, preschool programs in the public schools and other stakeholders, including Head Start.

The Task Force shall study the integration of public funds and programs to ensure that all North Carolina's children age birth to five years are prepared to come to school ready to achieve. In conducting the study, the Task Force shall consider and develop recommendations for the following:

(1) Creating principles, rationale, strategies, structure, and outcomes for the integration of all funding and programs that serve children age birth to five years to achieve improved school readiness;

(2) Eliminating the duplication of programs;
(3) Enhancing the quality and performance of current programs;
(4) Creating performance measures that will document outcomes for programs and children and will provide accessible service for families;
(5) Creating effective transition plans as children move from one program or service to another;
(6) Documenting all current funding and programs for children ages birth to kindergarten entry and coordination of existing data systems; and
(7) Equalizing the funding of the various programs that provide services to children from birth to the age of five years to ensure equity in accessibility to these programs.

The Task Force shall submit a report by April 1, 2006, to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairs of the Senate Appropriations Committee on Health and Human Services, the Chairs of the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.68.(f) The Revisor of Statutes shall substitute the term "Division of Child Development and School Readiness" for the term "Division of Child Development" everywhere those terms appear in the following sections of the General Statutes:

G.S. 110-90.2. Mandatory child care providers' criminal history checks.
G.S. 110-102. Information for parents.
G.S. 114-19.5. Criminal record checks of child care providers.
G.S. 143B-138.1. Department of Health and Human Service functions and organization.

SECTION 10.68.(g) This section becomes effective July 1, 2005, for organizational changes. The budgetary adjustments required by this section become effective October 1, 2005.

PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

PESTICIDE DISPOSAL PROGRAM

SECTION 11.1. G.S. 143-468(b) reads as rewritten:

"(b) The Pesticide Environmental Trust Fund is established as a nonreverting account within the Department of Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall administer the Fund. The additional assessment imposed by G.S. 143-442(b) on the registration of a brand or grade of pesticide shall be credited to the Fund. The Department shall distribute money in the Fund as follows:

(1) Two and one-half percent (2.5%) to North Carolina State University Cooperative Extension Service to enhance its agromedicine efforts in cooperation with East Carolina University School of Medicine.
(2) Two and one-half percent (2.5%) to East Carolina University School of Medicine to enhance its agromedicine efforts in cooperation with North Carolina State University Cooperative Extension Service.
(3) Twenty percent (20%) to North Carolina State University, Department of Toxicology, to establish and maintain an extension agromedicine specialist position.
(4) Seventy-five percent (75%) to the Department of Agriculture and Consumer Services <u>for the costs of administering its pesticide disposal program, including the salaries and support of staff for the pesticide disposal program, and</u> for its environmental programs, as directed by the Board, including establishing a pesticide container management

program to enhance its pesticide disposal program and its water quality initiatives."

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

TIMBER SALES RECEIPTS FOR CAPITAL IMPROVEMENTS AT AGRICULTURAL RESEARCH STATIONS AND FARMS

SECTION 11.2. The sum of one million thirty-three thousand one hundred dollars ($1,033,100) shall be transferred from the Department of Agriculture and Consumer Services' timber sales capital improvement account in the Department of Agriculture and Consumer Services as such funds become available during the 2005-2006 fiscal year, and used by the Department for the following capital improvements projects at agricultural research stations and research farms:

(1) $378,000 for improvements at the swine facility at the Cherry Research Farm.

(2) $285,500 for renovation of dairy facilities at the Cherry Research Farm.

(3) $369,600 for land acquisition and development at the Tidewater Research Station.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

PLANT CONSERVATION PROGRAM FUNDS

SECTION 11.3. From funds received from the sale of timber that are deposited with the State Treasurer pursuant to G.S. 146-30 to the credit of the Department of Agriculture and Consumer Services in a capital improvement account, the sum of twenty thousand dollars ($20,000) shall be transferred to the Department of Agriculture and Consumer Services to be used by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, and environmental studies.

Requested by: Senators Kerr, Garrou, Dalton, Hagan

INCREASE FUNDS FOR NORTH CAROLINA GRAPE GROWERS COUNCIL

SECTION 11.4. G.S. 105-113.81A reads as rewritten:

"**§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.**

The Secretary shall on a quarterly basis credit to the Department of Agriculture and Consumer Services the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter, except that the amount credited to the Department of Agriculture and Consumer Services under this section shall not exceed ~~three hundred fifty thousand dollars ($350,000)~~ five hundred thousand dollars ($500,000) per fiscal year. The Department of Agriculture and Consumer Services shall allocate the funds received under this section to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. Any funds credited to the Department of Agriculture and Consumer Services under this section that are not expended by June 30 of any fiscal year may not revert to the General Fund, but shall remain available to the Department for the uses set forth in this section."

PART XII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

STATE MATCH FOR FEDERAL SAFE DRINKING WATER ACT FUNDS

SECTION 12.1. Notwithstanding the provisions of Chapter 159G of the General Statutes, the Department of Environment and Natural Resources may transfer from the General Water Supply Revolving Loan Account up to one million five hundred thousand dollars ($1,500,000) to the Department of Environment and Natural Resources to be used to match the federal grant moneys authorized by section 1452 of the federal Safe Drinking Water Act amendments of 1996 for the 2005-2006 fiscal year. The General Water Supply Revolving Loan Account is an account under the Clean Water Revolving Loan and Grant Fund and is established under G.S. 159G-4. The Clean Water Revolving Loan and Grant Fund is established by G.S. 159G-5.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

EXPAND EXPRESS REVIEW PROGRAM STATEWIDE

SECTION 12.2.(a) Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding two new sections to read:

"**§ 143B-279.13. Express permit and certification reviews.**

(a) The Department of Environment and Natural Resources shall develop an express review program to provide express permit and certification reviews in all of its regional offices. Participation in the express review program is voluntary, and the program is to become supported by the fees determined pursuant to subsection (b) of this section. The Department of Environment and Natural Resources shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The express review program shall focus on the following permits or certifications:

(1) Stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.

(2) Stream origination certifications under Article 21 of Chapter 143 of the General Statutes.

(3) Water quality certification under Article 21 of Chapter 143 of the General Statutes.

(4) Erosion and sedimentation control permits under Article 4 of Chapter 113A of the General Statutes.

(5) Permits under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

(b) The Department of Environment and Natural Resources may determine the fees for express application review under the express review program. Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged under subsection (a) of this section for the express review of a project application requiring all of the permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed five thousand five hundred dollars ($5,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the express review of a project application requiring all of the permits under subdivisions (1) through (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars ($4,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express review of a project application for any other combination of permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed four thousand dollars ($4,000). Express review of a project application involving additional permits or certifications issued by the Department of Environment and Natural Resources other than those under subdivisions (1) through (5) of subsection (a) of this section may be allowed by the Department, and, notwithstanding G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum permit application fee charged for the express review of a project application shall not exceed four thousand dollars ($4,000), plus one hundred fifty percent (150%) of the fee that would otherwise

apply by statute or rule for that particular permit or certification. Additional fees, not to exceed fifty percent (50%) of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The Department of Environment and Natural Resources may establish the procedure by which the amount of the fees under this subsection is determined, and the fees and procedures are not rules under G.S. 150B-2(8a) for the express review program under this section.

(c) No later than March 1 of each year, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the program under this section and any other findings or recommendations, including any legislative proposals that it deems pertinent.

"**§ 143B-279.14. Express Review Fund.**

The Express Review Fund is created as a special nonreverting fund. All fees collected under G.S. 143B-279.13 shall be credited to the Express Review Fund. The Express Review Fund shall be used for the costs of implementing the express review program under G.S. 143B-279.13 and the costs of administering the program, including the salaries and support of the program's staff. If the express review program is abolished, the funds in the Express Review Fund shall be credited to the General Fund."

SECTION 12.2.(b) The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 and expanded by Section 12.9 of S.L. 2004-124, and the provisions of G.S. 143B-279.13, as enacted by subsection (a) of this section, shall apply to this statewide program.

SECTION 12.2.(c) The Department of Environment and Natural Resources shall establish and support 12 additional positions to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to seven hundred thirty-six thousand six hundred twenty-nine dollars ($736,629) for the 2005-2006 fiscal year and up to six hundred seventy-one thousand four hundred nine dollars ($671,409) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in G.S. 143B-279.14, as enacted by subsection (a) of this section, to establish and support these 12 positions.

SECTION 12.2.(d) The Department of Environment and Natural Resources shall continue and support the four positions established under Section 12.9(c) of S.L. 2004-124 to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to two hundred twenty-three thousand eight hundred three dollars ($223,803) for the 2005-2006 fiscal year and up to two hundred twenty-three thousand eight hundred three dollars ($223,803) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in G.S. 143B-279.14, as enacted by subsection (a) of this section, to continue and support these four positions.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

SEDIMENTATION EDUCATION FUNDS

SECTION 12.3. The Department of Environment and Natural Resources shall use the funds appropriated in this act to the Department of Environment and Natural Resources for the 2005-2006 fiscal year and for the 2006-2007 fiscal year for sedimentation education for only the following:

(1) Sedimentation education activities that provide technical assistance to local erosion and sedimentation control programs under G.S. 113A-60; or

(2) Sedimentation education to professionals involved in developing erosion and sedimentation control plans for which prior approval is required under Article 4 of Chapter 113A of the General Statutes.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

FUNDS TO IMPLEMENT FISHING LICENSE REQUIREMENTS LEGISLATION/CONTINGENT REPEAL OF SALTWATER FISHING LICENSE REQUIREMENT

SECTION 12.4.(a) The Wildlife Resources Commission may disburse up to one million dollars ($1,000,000) from the Wildlife Resources Fund to implement Senate Bill 1126 (Amend Fishing License Requirements-2) or House Bill 1092 (Amend Fishing License Requirements) if either bill becomes law no later than 30 days after adjournment of the 2005 Regular Session.

SECTION 12.4.(b) The State Treasurer shall transfer a sum equal to the sum of funds disbursed pursuant to subsection (a) of this section from the Marine Resources Fund to the Wildlife Resources Fund on July 1, 2010.

SECTION 12.4.(c) Sections 1 through 4 and Sections 6 through 12 of S.L. 2004-187 and Section 12.16 of S.L. 2004-124 are repealed unless Senate Bill 1126 (Amend Fishing License Requirements-2) or House Bill 1092 (Amend Fishing License Requirements) becomes law no later than 30 days after the adjournment in 2005 of the 2005 Regular Session under a joint resolution.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

GRASSROOTS SCIENCE PROGRAM

SECTION 12.5.(a) Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Grassroots Science Program, the sum of three million one hundred ninety-seven thousand seven hundred sixty-two dollars ($3,197,762) for the 2005-2006 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2005-2006
Aurora Fossil Museum	$59,057
Cape Fear Museum	$161,007
Carolina Raptor Center	$112,174
Catawba Science Center	$133,429
Colburn Gem and Mineral Museum, Inc.	$74,545
Discovery Place	$662,865
Eastern NC Regional Science Center	$50,000
Elizabeth City Science Center	$50,000
Fascinate-U	$80,742
Granville County Museum Commission, Inc.–Harris Gallery	$56,422
Greensboro Children's Museum	$135,076
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	$134,499
Highlands Nature Center	$79,268
Imagination Station	$86,034
Kidsenses	$50,000
Museum of Coastal Carolina	$186,354
Natural Science Center of Greensboro	$74,192
North Carolina Museum of Life and Science	$379,826
Rocky Mount Children's Museum	$72,254
Schiele Museum of Natural History	$229,547
Sci Works Science Center and Environmental Park of Forsyth County	$146,499
Western North Carolina Nature Center	$112,879

Wilmington Children's Museum	$71,093
Total	$3,197,762

SECTION 12.5.(b) No later than March 1, 2006, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The operating budget for the 2004-2005 fiscal year.
(2) The operating budget for the 2005-2006 fiscal year.
(3) The total attendance at the museum during the 2005 calendar year.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

MORATORIUM ON NEW LEASE PURCHASE CONTRACTS FOR FORESTRY EQUIPMENT FOR DIVISION OF FOREST RESOURCES

SECTION 12.6. The Division of Forest Resources of the Department of Environment and Natural Resources shall not enter into any new lease purchase contracts for the purchase of forestry equipment. The Department of Administration shall not enter into any new lease purchase contracts for the purchase of forestry equipment on behalf of the Division of Forest Resources. This section does not apply to existing lease purchase contracts entered into by, or on behalf of, the Division.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

EXTEND AND EXPAND PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE MANAGEMENT SYSTEMS

SECTION 12.7.(a) Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, Section 1.1 of S.L. 2002-176, and Section 6.1 of S.L. 2003-340, reads as rewritten:

"(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 November 1997, and to terminate 1 September ~~2005,~~ 2007, regarding the annual inspections of animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County and Pender County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes in these ~~three~~ four counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these ~~three~~ four counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the ~~three~~ four counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources."

SECTION 12.7.(b) Section 3.3 of S.L. 1999-329, as amended by Section 6 of S.L. 2001-254, Section 1.2 of S.L. 2002-176, and Section 6.2 of S.L. 2003-340, reads as rewritten:

"Section 3.3. The Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, shall submit semiannual interim reports no later than 15 April and 15 October of each year beginning 15 October 1999 ~~and shall submit a final report no later than 15 October 2005~~ to the Environmental Review ~~Commission and to~~Commission,

the Fiscal Research ~~Division.~~Division, and the Appropriations Subcommittees on Natural and Economic Resources in both the Senate and the House of Representatives. These reports shall indicate whether the pilot program has increased the effectiveness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. These reports shall also compare the costs of conducting operations reviews and inspections under the pilot program with the costs of conducting operations reviews and inspections pursuant to G.S. 143-215.10D and G.S. 143-215.10F and the resources that would be required to expand the pilot program to all counties. ~~The final report shall include a recommendation as to whether to continue or expand the pilot program under this act. The Environmental Review Commission may recommend to the General Assembly whether to continue or expand the pilot program under this act and may make any related legislative proposals.~~"

SECTION 12.7.(c) No later than October 15, 2005, the Department of Environment and Natural Resources shall recommend to the Environmental Review Commission and the General Assembly whether to continue or expand the pilot program under this section. The Environmental Review Commission shall recommend to the 2006 Session of the General Assembly whether to continue or expand the pilot program under this section and may make any related legislative proposals.

PART XIII. DEPARTMENT OF COMMERCE

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS

SECTION 13.1.(a) Funds appropriated to the Department of Commerce for the 2004-2005 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of June 30, 2005, shall not revert to the General Fund on June 30, 2005, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes.

SECTION 13.1.(b) Funds appropriated to the Department of Commerce for the 2004-2005 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of June 30, 2005, shall not revert to the General Fund on June 30, 2005.

SECTION 13.1.(c) This section becomes effective June 30, 2005.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

COUNCIL OF GOVERNMENT FUNDS

SECTION 13.2.(a) Of the funds appropriated in this act to the Department of Commerce, eight hundred thirty-two thousand one hundred fifty dollars ($832,150) for the 2005-2006 fiscal year and eight hundred thirty-two thousand one hundred fifty dollars ($832,150) for the 2006-2007 fiscal year shall only be used as provided by this section. Each regional council of government or lead regional organization is allocated up to forty-eight thousand nine hundred fifty dollars ($48,950) for the 2005-2006 and the 2006-2007 fiscal years.

SECTION 13.2.(b) A regional council of government may use funds appropriated by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

SECTION 13.2.(c) Funds appropriated by this section shall be paid by electronic transfer in two equal installments, the first no later than September 1, 2005, and the second subsequent to acceptable submission of the annual report due to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006, as specified in subdivision (e)(2) of this section.

SECTION 13.2.(d) Funds appropriated by this section shall not be used for payment of dues or assessments by the member governments and shall not supplant funds appropriated by the member governments.

SECTION 13.2.(e) Each council of government or lead regional organization shall do the following:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
   b. State fiscal year 2004-2005 itemized expenditures and fund sources;
   c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
   d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
   b. State fiscal year 2005-2006 itemized expenditures and fund sources;
   c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
   d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

TOURISM PROMOTION FUNDS

SECTION 13.3. Funds appropriated in this act to the Department of Commerce for tourism promotion grants shall be allocated to counties in an effort to direct funds to counties most in need. Determinations of which counties are most in need shall focus on those with the lowest per capita income, highest unemployment, and slowest population growth in the following manner:

(1) Counties 1 through 20 are each eligible to receive a maximum grant of seven thousand five hundred dollars ($7,500) for each fiscal year, provided these funds are matched on the basis of one non-State dollar ($1.00) for every four State dollars ($4.00).

(2) Counties 21 through 50 are each eligible to receive a maximum grant of three thousand five hundred dollars ($3,500) for two of the next three fiscal years, provided these funds are matched on the basis of one non-State dollar ($1.00) for every three State dollars ($3.00).

(3) Counties 51 through 100 are each eligible to receive a maximum grant of three thousand five hundred dollars ($3,500) for alternating fiscal years, beginning with the 1991-1992 fiscal year, provided these funds are matched on the basis of four non-State dollars ($4.00) for every one State dollar ($1.00).

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

EMPLOYMENT SECURITY FUNDS

SECTION 13.4.(a) There is appropriated from the Special Employment Security Administration Fund to the Employment Security Commission of North Carolina the sum of six million three hundred thousand dollars ($6,300,000) for the 2005-2006 fiscal year to be used for the following purposes:

(1) Six million dollars ($6,000,000) for the operation and support of local offices.

(2) Two hundred thousand dollars ($200,000) for the State Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs.

(3) One hundred thousand dollars ($100,000) to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

SECTION 13.4.(b) This section becomes effective July 1, 2005.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

INDUSTRIAL DEVELOPMENT FUND

SECTION 13.5. 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, ~~or~~ electrical utility distribution lines or ~~equipment~~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, ~~or~~ electrical utility lines or ~~facilities~~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.

...

(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, in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise

provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, ~~or~~ electrical utility distribution lines or ~~equipment~~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, ~~or~~ electrical utility lines or ~~facilities~~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.

...."

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

ONE NORTH CAROLINA FUND

SECTION 13.6. Of the funds appropriated in Section 1(a) of S.L. 2004-88 to the One North Carolina Fund, the Department of Commerce may use up to three hundred thousand dollars ($300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs in the 2005-2006 fiscal year.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

REGIONAL ECONOMIC DEVELOPMENT COMMISSION ALLOCATIONS

SECTION 13.7.(a) Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following Commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Commission, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, Global TransPark Development Commission, and Carolinas Partnership, Inc.

SECTION 13.7.(b) Funds appropriated pursuant to subsection (a) of this section shall be allocated to each Regional Economic Development Commission as follows:

(1) First, the Department shall establish each Commission's allocation by determining the sum of allocations to each county that is a member of that Commission. Each county's allocation shall be determined by dividing the county's enterprise factor by the sum of the enterprise factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "enterprise factor" means a county's enterprise factor as calculated under G.S. 105-129.3; and

(2) Next, the Department shall subtract from funds allocated to the Global TransPark Development Commission the sum of one hundred eighteen thousand one hundred twenty-nine dollars ($118,129) in the 2005-2006 fiscal year and one hundred eighteen thousand four hundred seventy-seven dollars ($118,477) in the 2006-2007 fiscal year, which sum represents the interest earnings in each fiscal year on the estimated balance of seven million five hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and

(3) Next, the Department shall redistribute the sum of one hundred eighteen thousand one hundred twenty-nine dollars ($118,129) in the 2005-2006 fiscal year and one hundred eighteen thousand four hundred seventy-seven dollars ($118,477) in the 2006-2007 fiscal year

to the seven Regional Economic Development Commissions named in subsection (a) of this section. Each Commission's share of this redistribution shall be determined according to the enterprise factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each Commission's allocation determined under subdivision (1) of this subsection.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

REGIONAL ECONOMIC DEVELOPMENT COMMISSION REPORTS

SECTION 13.8.(a) By February 15 of each fiscal year, the seven regional economic development commissions shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

(1) The preceding fiscal year's program activities, objectives, and accomplishments.

(2) The preceding fiscal year's itemized expenditures and fund sources.

(3) Demonstration of how the commission's regional economic development and marketing strategy aligns with the State's overall economic development and marketing strategies.

(4) To the extent they are involved in promotion activities such as trade shows, visits to prospects and consultants, advertising and media placement, the commissions shall demonstrate how they have generated qualified leads.

SECTION 13.8.(b) Each of the commissions shall provide to the Fiscal Research Division a copy of their annual audited financial statement within 30 days of issuance of the statement.

SECTION 13.8.(c) The reporting requirements for regional economic development commissions, as provided in subsection (a) of this section, shall be reviewed annually by the North Carolina Partnership for Economic Development, and recommendations for changes to the reporting requirements shall be made to the Fiscal Research Division, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

SECTION 13.8.(d) Regional economic development commissions shall receive quarterly allocations of the funds appropriated in this act to the Department of Commerce for regional economic development commissions.

SECTION 13.8.(e) Regional economic development commissions shall remain in the Department of Commerce's Budget Code 14601 with other State-aided nonprofit entities.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

NONPROFIT REPORTING REQUIREMENTS

SECTION 13.9.(a) The N.C. Institute for Minority Economic Development, Inc., Land Loss Prevention Project, North Carolina Minority Support Center, North Carolina Community Development Initiative, Inc., North Carolina Association of Community Development Corporations, Inc., Coalition of Farm and Rural Families, and Partnership for the Sounds, Inc., shall do the following:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;

b. State fiscal year 2004-2005 itemized expenditures and fund sources;

c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments including actual results through December 31, 2005; and
d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
b. State fiscal year 2005-2006 itemized expenditures and fund sources;
c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments including actual results through December 31, 2006; and
d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 13.9.(b) No funds appropriated under this act shall be released to a nonprofit organization listed in subsection (a) of this section until the organization has satisfied the reporting requirement for January 15, 2005. Fourth quarter allotments shall not be released to any nonprofit organization that does not satisfy the reporting requirements by January 15, 2006, or January 15, 2007.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

BIOTECHNOLOGY CENTER

SECTION 13.10.(a) The North Carolina Biotechnology Center shall recapture funds spent in support of successful research and development efforts in the for-profit private sector.

SECTION 13.10.(b) The North Carolina Biotechnology Center shall provide funding for biotechnology, biomedical, and related bioscience applications under its Business and Science Technology Programs.

SECTION 13.10.(c) The North Carolina Biotechnology Center shall:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
b. State fiscal year 2004-2005 itemized expenditures and fund sources;
c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;

b. State fiscal year 2005-2006 itemized expenditures and fund sources;
c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 13.10.(d) The North Carolina Biotechnology Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management and to the Fiscal Research Division in the same manner as State departments and agencies in preparation for biennium budget requests.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 13.11.(a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of two million twenty-five thousand six hundred ninety-seven dollars ($2,025,697) for the 2005-2006 fiscal year and the sum of two million twenty-five thousand six hundred ninety-seven dollars ($2,025,697) for the 2006-2007 fiscal year shall be allocated as follows:

	2005-2006	2006-2007
Research and Demonstration Grants	$370,000	$370,000
Technical Assistance and Center Administration of Research and Demonstration Grants	444,399	444,399
Center Administration, Oversight, and Other Programs	604,298	604,298
Administration of Clean Water/ Natural Gas Critical Needs Bond Act of 1998	199,722	199,722
Additional Administration of Supplemental Funding Program	138,278	138,278
Administration of Capacity Building Assistance Program (1998 Bond Act)	125,000	125,000
Institute for Rural Entrepreneurship	144,000	144,000.

SECTION 13.11.(b) The Rural Economic Development Center, Inc., shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

SECTION 13.11.(c) For purposes of this section, the term "community development corporation" means a nonprofit corporation:

(1) Chartered pursuant to Chapter 55A of the General Statutes;
(2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;
(3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;
(4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and
(5) Whose primary function is to act as deal-maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small

businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the targeted community.

SECTION 13.11.(d) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of two million four hundred fifteen thousand nine hundred ten dollars ($2,415,910) for the 2005-2006 fiscal year and the sum of two million four hundred fifteen thousand nine hundred ten dollars ($2,415,910) for the 2006-2007 fiscal year shall be allocated as follows:

(1) $1,047,410 in each fiscal year for community development grants to support development projects and activities within the State's minority communities. Any community development corporation as defined in this section is eligible to apply for funds. The Rural Economic Development Center, Inc., shall establish performance-based criteria for determining which community development corporation will receive a grant and the grant amount. The Rural Economic Development Center, Inc., shall allocate these funds as follows:
   a. $997,410 for direct grants to local community development corporations to support operations and project activities.
   b. $50,000 in each fiscal year to the Rural Economic Development Center, Inc., to be used to cover expenses in administering this section.

(2) $195,000 in each fiscal year to the Microenterprise Loan Program to support the loan fund and operations of the Program; and

(3) $983,000 in each fiscal year shall be used for a program to provide supplemental funding for matching requirements for projects and activities authorized under this subsection. The Center shall allocate these funds as follows:
   a. $675,000 in each fiscal year to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants for:
      1. Necessary economic development projects and activities in economically distressed areas;
      2. Necessary water and sewer projects and activities in economically distressed communities to address health or environmental quality problems except that funds shall not be expended for the repair or replacement of low-pressure pipe wastewater systems. If a grant is awarded under this sub-subdivision, then the grant shall be matched on a dollar-for-dollar basis in the amount of the grant awarded; or
      3. Projects that demonstrate alternative water and waste management processes for local governments. Special consideration should be given to cost-effectiveness, efficacy, management efficiency, and the ability of the demonstration project to be replicated.
   b. $208,000 in each fiscal year to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants related to water, sewer, or business development projects.
   c. $100,000 in each fiscal year to support the update of the statewide water and sewer database and to support the development of a statewide water management plan.

(4) $190,500 in each fiscal year for the Agricultural Advancement Consortium. These funds shall be placed in a reserve and allocated as follows:

a. $75,000 in each fiscal year for operating expenses associated with the Consortium; and
b. $115,500 in each fiscal year for research initiatives funded by the Consortium.

The Consortium shall facilitate discussions among interested parties and shall develop recommendations to improve the State's economic development through farming and agricultural interests.

The grant recipients in this subsection shall be selected on the basis of need.

SECTION 13.11.(e) The Rural Economic Development Center, Inc., shall:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
b. State fiscal year 2004-2005 itemized expenditures and fund sources;
c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
b. State fiscal year 2005-2006 itemized expenditures and fund sources;
c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of each grant recipient's annual audited financial statement within 30 days of issuance of the statement.

SECTION 13.11.(f) No funds appropriated under this act shall be released to a community development corporation, as defined in this section, unless the corporation can demonstrate that there are no outstanding or proposed assessments or other collection actions against the corporation for any State or federal taxes, including related penalties, interest, and fees.

Requested by: Senators Weinstein, Albertson, Garrou, Dalton, Hagan

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 13.12.(a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of twenty million dollars ($20,000,000) for the 2005-2006 fiscal year and the sum of twenty million dollars ($20,000,000) for the 2006-2007 fiscal year shall be allocated as follows:

(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fifteen

million dollars ($15,000,000) of the funds appropriated in this act for each year of the biennium must be used to provide grants under this Program.

(2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

(3) To provide economic development research and demonstration grants.

SECTION 13.12.(b) The funds appropriated in this act to the Rural Economic Development Center, Inc., shall be recurring funds.

SECTION 13.12.(c) The Rural Economic Development Center, Inc., may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the North Carolina Infrastructure Program, including design of Program guidelines and evaluation of Program results.

SECTION 13.12.(d) During each year of the 2005-2007 biennium, the Rural Economic Development Center, Inc., may use up to two percent (2%) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

SECTION 13.12.(e) No later than January 15 each year, the Rural Economic Development Center, Inc., shall submit an annual report to the Joint Legislative Commission on Governmental Operations concerning the progress of the North Carolina Economic Infrastructure Program.

SECTION 13.12.(f) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year and the sum of five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year shall be allocated to the e-NC Authority.

The e-NC Authority may:

(1) Contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

(2) Use up to five percent (5%) of the funds allocated in this section to cover its expenses in program development and implementation of activity areas.

The e-NC Authority shall report to the 2006 General Assembly on the following:

(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access the high-speed Internet.

(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

The e-NC Authority shall, by January 31, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities.

Requested by: Senators Weinstein, Garrou, Dalton, Hagan

OPPORTUNITIES INDUSTRIALIZATION CENTER FUNDS

SECTION 13.13.(a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of three hundred sixty-one thousand dollars ($361,000) for the 2005-2006 fiscal year and the sum of three hundred sixty-one

thousand dollars ($361,000) for the 2006-2007 fiscal year shall be equally distributed among the certified Opportunities Industrialization Centers for ongoing job training programs.

SECTION 13.13.(b) For each of the Opportunities Industrialization Centers receiving funds pursuant to subsection (a) of this section, the Rural Economic Development Center, Inc., shall:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
   b. State fiscal year 2004-2005 itemized expenditures and fund sources;
   c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
   d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
   b. State fiscal year 2005-2006 itemized expenditures and fund sources;
   c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
   d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Notwithstanding G.S. 143-6.1(d), file annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor. The financial statements must be audited in accordance with standards prescribed by the State Auditor to assure that State funds are used for the purposes provided by law.

(4) Provide to the Fiscal Research Division a copy of the annual audited financial statement required in subdivision (3) of this subsection within 30 days of issuance of the statement.

SECTION 13.13.(c) No funds appropriated under this act shall be released to an Opportunities Industrialization Center (hereinafter Center) listed in subsection (a) of this section if the Center has any overdue tax debts, as that term is defined in G.S. 105-243.1, at the federal or State level.

PART XIV. JUDICIAL DEPARTMENT

Requested by: Senators Thomas, Garrou, Dalton, Hagan

ESTABLISH CONFERENCE OF CLERKS OF COURT OF SUPERIOR COURT

SECTION 14.1.(a) Chapter 7A of the General Statutes is amended by adding a new Subchapter to read:

"**SUBCHAPTER XV. CONFERENCE OF CLERKS OF SUPERIOR COURT.**

"Article 63.

"Conference of Clerks of Superior Court.

"**§ 7A-805. Establishment and purpose.**

There is created the Conference of Clerks of Superior Court of North Carolina, of which each clerk of superior court is a member. The purpose of the Conference is to assist in improving the administration of justice in North Carolina by coordinating the efforts of the various clerks of superior court, by assisting them in the administration of their offices, and by exercising the powers and performing the duties provided for in this Article.

"**§ 7A-806. Annual meetings; organization; election of officers.**

(a) Annual Meetings. – The Conference shall meet each summer and winter at a time and place selected by the President of the Conference.

(b) Election of Officers. – Officers of the Conference are a President, two Vice Presidents, a Secretary, a Treasurer, and other officers from among its membership that the Conference may designate in its bylaws. Officers are elected for one-year terms at the annual summer conference and take office on July 1 immediately following their election.

(c) Executive Committee. – The Executive Committee of the Conference consists of the President, the two Vice Presidents, the Secretary, the Treasurer, and seven other members of the Conference. One of these seven members shall be the immediate past president if there is one and that past president continues to be a member.

(d) Organization and Functioning; Bylaws. – The bylaws may provide for the organization and functioning of the Conference, including the powers and duties of its officers and committees. The bylaws shall state the number of members required to constitute a quorum at any meeting of the Conference or the Executive Committee. The bylaws shall set out the procedure for amending the bylaws.

(e) Calling Meetings; Duty to Attend. – The President or the Executive Committee may call a meeting of the Conference upon 10 days' notice to the members, except upon written waiver of notice signed by at least three-fourths of the members. A member should attend each meeting of the Conference and the Executive Committee of which he is given notice. Members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to State employees.

"**§ 7A-807. Powers of Conference.**

(a) The Conference may:

(1) Cooperate with citizens and other public and private agencies to promote the effective administration of justice.

(2) Develop advisory manuals to assist in the organization and administration of their offices, case management, calendaring, case tracking, filing, and office procedures.

(3) Work with the cooperation of the Administrative Office of the Courts and the Institute of Government of the School of Government at UNC-Chapel Hill to provide education and training programs for clerks and staff.

(b) The Conference may not adopt rules pursuant to Chapter 150B of the General Statutes.

"**§ 7A-808. Executive secretary; clerical support.**

The Conference may employ an executive secretary and any necessary supporting staff to assist it in carrying out its duties."

SECTION 14.1.(b) The organizational meeting of the Conference of Clerks of Superior Court shall be convened by the Director of the Administrative Office of the Courts as soon as feasible. Officers elected at that organizational meeting shall serve until their successors take office July 1, 2006.

Requested by: Senators Thomas, Dalton, Purcell, Garrou, Hagan

DIVIDE DISTRICT COURT DISTRICT 20 AND PROSECUTORIAL DISTRICT 20 INTO 20A AND 20B AND REALIGN SUPERIOR COURT DISTRICTS 20A AND 20B/DIVIDE SUPERIOR COURT, DISTRICT COURT, AND PROSECUTORIAL DISTRICTS 29 INTO DISTRICTS 29A AND 29B

SECTION 14.2.(a) G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	3
Second	4A	Duplin, Jones,	1
		Sampson	1
Second	4B	Onslow	1
Second	5A	(part of New Hanover, part of Pender see subsection (b))	1
	5B	(part of New Hanover, part of Pender see subsection (b))	1
	5C	(part of New Hanover, see subsection (b))	1
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake, see subsection (b))	2
Third	10B	(part of Wake, see subsection (b))	2
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland, see subsection (b))	1
Fourth	12B	(part of Cumberland, see subsection (b))	1

Fourth	12C	(part of Cumberland, see subsection (b))	2
Fourth	13	Bladen, Brunswick, Columbus	2
Third	14A	(part of Durham, see subsection (b))	1
Third	14B	(part of Durham, see subsection (b))	3
Third	15A	Alamance	2
Third	15B	Orange, Chatham	2
Fourth	16A	Scotland, Hoke	1
Fourth	16B	Robeson	2
Fifth	17A	Rockingham	2
Fifth	17B	Stokes, Surry	2
Fifth	18A	(part of Guilford, see subsection (b))	1
Fifth	18B	(part of Guilford, see subsection (b))	1
Fifth	18C	(part of Guilford, see subsection (b))	1
Fifth	18D	(part of Guilford, see subsection (b))	1
Fifth	18E	(part of Guilford, see subsection (b))	1
Sixth	19A	Cabarrus	1
Fifth	19B	Montgomery, Randolph	1
Sixth	19C	Rowan	1
Fifth	19D	Moore	1
Sixth	20A	Anson, Richmond ~~Richmond~~ Stanly	~~1~~ 2
Sixth	20B	~~Stanly,~~ Union	~~2~~ 1
Fifth	21A	(part of Forsyth, see subsection (b))	1
Fifth	21B	(part of Forsyth, see subsection (b))	1
Fifth	21C	(part of Forsyth, see subsection (b))	1
Fifth	21D	(part of Forsyth, see subsection (b))	1
Sixth	22	Alexander, Davidson, Davie, Iredell	3
Fifth	23	Alleghany, Ashe, Wilkes, Yadkin	1
Eighth	24	Avery, Madison, Mitchell, Watauga, Yancey	2
Seventh	25A	Burke, Caldwell	2
Seventh	25B	Catawba	2
Seventh	26A	(part of Mecklenburg, see subsection (b))	2
Seventh	26B	(part of Mecklenburg, see subsection (b))	3
Seventh	26C	(part of Mecklenburg, see subsection (b))	2
Seventh	27A	Gaston	2
Seventh	27B	Cleveland, Lincoln	2

Eighth	28	Buncombe	2
Eighth	~~29~~	~~Henderson,~~	~~2~~
		~~McDowell, Polk, Rutherford,~~	
		~~Transylvania~~	
	29A	McDowell, Rutherford	1
	29B	Henderson, Polk, Transylvania	1
Eighth	30A	Cherokee, Clay,	1
		Graham, Macon, Swain	
Eighth	30B	Haywood, Jackson	1."

SECTION 14.2.(b) The superior court judgeship established for District 20A by subsection (a) of this section shall be filled by the judge currently serving District 20B who resides in Stanly County. That judge's current term expires on December 31, 2006. No election shall be held in 2006 for that judge's seat, and that judge shall serve until a successor is elected in the 2008 general election, in order to provide for unstaggered terms for multiple judgeships in the same district.

SECTION 14.2.(c) The superior court judgeship established for District 29A by subsection (a) of this section shall be filled by the superior court judge from current District 29 who resides in Rutherford County. That judge's term expires on December 31, 2012, and a successor shall be elected in the 2012 general election.

SECTION 14.2.(d) The superior court judgeship established for District 29B by subsection (a) of this section shall be filled by the superior court judge from current District 29 who resides in Henderson County. That judge's term expires on December 31, 2006, and a successor shall be elected in the 2006 general election.

SECTION 14.2.(e) The trial court administrator serving current District 29 shall serve as trial court administrator for both District 29A and District 29B.

SECTION 14.2.(f) G.S. 7A-133(a) reads as rewritten:

"(a) Each district court district shall have the numbers of judges as set forth in the following table:

District	Judges	County
1	5	Camden
		Chowan
		Currituck
		Dare
		Gates
		Pasquotank
		Perquimans
2	4	Martin
		Beaufort
		Tyrrell
		Hyde
		Washington
3A	5	Pitt
3B	5	Craven
		Pamlico
		Carteret
4	8	Sampson
		Duplin
		Jones
		Onslow
5	8	New Hanover
		Pender
6A	2	Halifax
6B	3	Northampton
		Bertie
		Hertford

7	7	Nash Edgecombe Wilson
8	6	Wayne Greene Lenoir
9	4	Granville (part of Vance see subsection (b)) Franklin
9A	2	Person Caswell
9B	2	Warren (part of Vance see subsection (b))
10	15	Wake
11	8	Harnett Johnston Lee
12	9	Cumberland
13	6	Bladen Brunswick Columbus
14	6	Durham
15A	4	Alamance
15B	4	Orange Chatham
16A	3	Scotland Hoke
16B	5	Robeson
17A	2	Rockingham
17B	4	Stokes Surry
18	12	Guilford
19A	4	Cabarrus
19B	6	Montgomery Moore Randolph
19C	4	Rowan
~~20~~ 20A	~~7~~ 4	Stanly ~~Union~~ Anson Richmond
20B	3	Union
21	9	Forsyth
22	9	Alexander Davidson Davie Iredell
23	4	Alleghany Ashe Wilkes Yadkin
24	4	Avery Madison

		Mitchell
		Watauga
		Yancey
25	8	Burke
		Caldwell
		Catawba
26	17	Mecklenburg
27A	6	Gaston
27B	4	Cleveland
		Lincoln
28	6	Buncombe
~~29~~	~~7~~	~~Henderson~~
		~~McDowell~~
		~~Polk~~
		~~Rutherford~~
		~~Transylvania~~
29A	3	McDowell
		Rutherford
29B	4	Henderson
		Polk
		Transylvania
30	5	Cherokee
		Clay
		Graham
		Haywood
		Jackson
		Macon
		Swain."

SECTION 14.2.(g) The four district court judgeships established for District 20A by subsection (f) of this section shall be filled by the district court judges from current District 20 who reside in Anson, Stanly, and Richmond Counties. The term of the judge living in Anson County expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 election. The term of the judge living in Stanly County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 election. The term of one of the judges living in Richmond County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 election. The term of the other judge living in Richmond County expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 election.

SECTION 14.2.(h) The three district court judgeships established for District 20B by subsection (f) of this section shall be filled by the district court judges from current District 20 who reside in Union County. The terms of the three judges living in Union County expire the first Monday in December 2008. Those judges' successors shall be elected in the 2008 election.

SECTION 14.2.(i) The three district court judgeships established for District 29A by subsection (f) of this section shall be filled by the district court judges from current District 29 who reside in McDowell and Rutherford Counties and by the judge established for District 29 to be appointed by the Governor pursuant to Section 14.6 of S.L. 2004-124, as amended by subsection (j) of this section. The term of the judge living in Rutherford County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 general election. The term of the judge living in McDowell County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 election.

SECTION 14.2.(j) Section 14.6(f) of S.L. 2004-124 reads as rewritten:

"**SECTION 14.6.(f)** The Governor shall appoint the additional district court judges for Districts 5, 21, and ~~29~~ 29A authorized by subsection (e) of this section, and those judges' successors shall be elected in the 2006 general election for four-year terms commencing on the first Monday in December 2006.

The district court judge for the additional judgeship in District 17B, as authorized by subsection (e) of this section, shall be elected in the 2004 general election in the same manner as provided for in G.S. 163-329 to serve a four-year term beginning the first Monday in December 2004, and no vacancy exists before that date."

SECTION 14.2.(k) The four district court judgeships established for District 29B by subsection (f) of this section shall be filled by the district court judges from current District 29 who reside in Henderson and Transylvania Counties. The term of the three judges living in Henderson County expires the first Monday in December 2008. Those judges' successors shall be elected in the 2008 general election. The term of the judge living in Transylvania County expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 general election.

SECTION 14.2.(l) G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	10
2	Beaufort, Hyde, Martin, Tyrrell, Washington	6
3A	Pitt	9
3B	Carteret, Craven, Pamlico	10
4	Duplin, Jones, Onslow, Sampson	14
5	New Hanover, Pender	14
6A	Halifax	4
6B	Bertie, Hertford, Northampton	4
7	Edgecombe, Nash, Wilson	16
8	Greene, Lenoir, Wayne	11
9	Franklin, Granville, Vance, Warren	11
9A	Person, Caswell	4
10	Wake	31
11	Harnett, Johnston, Lee	14
12	Cumberland	18
13	Bladen, Brunswick, Columbus	11
14	Durham	13
15A	Alamance	8
15B	Orange, Chatham	7
16A	Scotland, Hoke	5
16B	Robeson	10
17A	Rockingham	5
17B	Stokes, Surry	5
18	Guilford	27
19A	Cabarrus	6
19B	Montgomery, Moore, Randolph	11
19C	Rowan	5

~~20~~ 20A	Anson, Richmond, ~~Stanly, Union~~ Stanly	~~15~~ 8
20B	Union	7
21	Forsyth	17
22	Alexander, Davidson, Davie, Iredell	16
23	Alleghany, Ashe, Wilkes, Yadkin	5
24	Avery, Madison, Mitchell, Watauga, Yancey	4
25	Burke, Caldwell, Catawba	15
26	Mecklenburg	36
27A	Gaston	12
27B	Cleveland, Lincoln	9
28	Buncombe	11
~~29~~	~~Henderson, McDowell, Polk, Rutherford, Transylvania~~	~~11~~
29A	McDowell, Rutherford	5
29B	Henderson, Polk, Transylvania	6
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	9

SECTION 14.2.(m) The district attorneys established for Districts 20A, 20B, 29A, and 29B by subsection (l) of this section shall be elected in the 2006 general election.

SECTION 14.2.(n) The eight assistant district attorney positions established for District 20A by subsection (l) of this section shall be filled by eight assistant district attorneys currently serving Anson, Richmond, and Stanly Counties in District 20. The seven assistant district attorney positions established for District 20B by subsection (l) of this section shall be filled by seven assistant district attorneys currently serving Union County in District 20.

SECTION 14.2.(o) The five assistant district attorney positions established for District 29A by subsection (l) of this section shall be filled by five assistant district attorneys currently serving McDowell and Rutherford Counties in current District 29. The six district attorney positions established for District 29B by subsection (l) of this section shall be filled by six assistant district attorneys currently serving Henderson, Polk, and Transylvania Counties in current District 29.

SECTION 14.2.(p) G.S. 7A-69 reads as rewritten:

"**§ 7A-69. Investigatorial assistants.**

The district attorney in prosecutorial districts 1, 3B, 4, 5, 7, 8, 11, 12, 13, 14, 15A, 15B, 16A, 18, 19B, ~~20,~~ 20A, 20B, 21, 22, 24, 25, 26, 27A, 27B, 28, ~~29,~~ 29A, 29B, and 30 is entitled to one investigatorial assistant, and the district attorney in prosecutorial district 10 is entitled to two investigatorial assistants, to be appointed by the district attorney and to serve at his pleasure.

It shall be the duty of the investigatorial assistant to investigate cases preparatory to trial and to perform such other Duties as may be assigned by the district attorney. The investigatorial assistant is entitled to reimbursement for his subsistence and travel expenses to the same extent as State employees generally."

SECTION 14.2.(q) With respect to the realignment of Superior Court Districts 20A and 20B, subsections (a) through (e) of this section become effective December 1, 2005, or the date upon which subsection (a) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later. With respect to the division of Superior Court District 29, subsections (a) through (e) of this section become effective December 1, 2005. With respect to the division of District Court District 20,

subsections (f) through (k) of this section become effective December 1, 2005, or the date upon which subsection (f) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later. With respect to the division of District Court District 29, subsections (f) through (k) of this section become effective December 1, 2005. With respect to the division of Prosecutorial District 20, subsections (l) through (p) of this section become effective January 1, 2007, or the date upon which subsection (l) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later, but the district attorneys for Prosecutorial Districts 20A and 20B shall be elected in the 2006 general election. With respect to the division of Prosecutorial District 29, subsections (l) through (p) of this section become effective January 1, 2007, but the district attorneys for Prosecutorial Districts 29A and 29B shall be elected in the 2006 general election.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 14.3. Notwithstanding the provisions of G.S. 7A-308(c) and except as otherwise provided in this act, the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2005, for the purchase or repair of office or information technology equipment during the 2005-2006 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

TRANSFER OF EQUIPMENT AND SUPPLY FUNDS

SECTION 14.4. Funds appropriated to the Judicial Department in the 2005-2007 biennium for equipment and supplies shall be certified in a reserve account. The Administrative Office of the Courts may transfer these funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year. These funds shall not be expended for any other purpose.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

STUDY ELECTRONIC PAYMENT

SECTION 14.5. The Judicial Department shall study the feasibility of implementing electronic and online payment options for court fees and other funds collected by the courts. The study shall address the estimated costs and time frame for implementing electronic payment as well as any necessary legislative changes. The Judicial Department shall report its findings as a result of the study to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

GRANT FUNDS

SECTION 14.6. The Judicial Department shall use up to the sum of one million two hundred fifty thousand dollars ($1,250,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

INCREASE CHARGES FOR APPELLATE DIVISION REPORTS TO ACTUAL COST

SECTION 14.7. The Judicial Department shall charge the full cost of production for all copies of the appellate division reports that are sold.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

NORTH CAROLINA STATE BAR FUNDS

SECTION 14.8. Of the funds appropriated in the continuation budget as a grant-in-aid to the North Carolina State Bar for the 2005-2007 biennium, the North Carolina State Bar may in its discretion use up to the sum of five hundred one thousand five hundred dollars ($501,500) for the 2005-2006 fiscal year and up to the sum of five hundred one thousand five hundred dollars ($501,500) for the 2006-2007 fiscal year to contract with the Center for Death Penalty Litigation to provide training, consultation, brief banking, and other assistance to attorneys representing indigent capital defendants. The Office of Indigent Defense Services shall report by February 1, 2006, to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the activities funded by the grant-in-aid authorized by this section.

Requested by: Senators Kinnaird, Garrou, Dalton, Hagan

TRANSFER RESPONSIBILITY FOR PROVIDING LEGAL ASSISTANCE TO INMATES FROM THE DEPARTMENT OF CORRECTION TO THE OFFICE OF INDIGENT DEFENSE SERVICES

The General Assembly of North Carolina enacts:

SECTION 14.9.(a) G.S. 7A-498.3 reads as rewritten:

"§ 7A-498.3. Responsibilities of Office of Indigent Defense Services.

(a) The Office of Indigent Defense Services shall be responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in the following cases:

(1) Cases in which an indigent person is subject to a deprivation of liberty or other constitutionally protected interest and is entitled by law to legal representation;

(2) Cases in which an indigent person is entitled to legal representation under G.S. 7A-451 and G.S. 7A-451.1; ~~and~~

(2a) Cases in which the State is legally obligated to provide legal assistance and access to the courts to inmates in the custody of the Department of Correction; and

(3) Any other cases in which the Office of Indigent Defense Services is designated by statute as responsible for providing legal representation.

(b) The Office of Indigent Defense Services shall develop policies and procedures for determining indigency in cases subject to this Article, and those policies shall be applied uniformly throughout the State. ~~The~~ Except in cases under subdivision (2a) of subsection (a) of this section, the court shall determine in each case whether a person is indigent and entitled to legal representation, and counsel shall be appointed as provided in G.S. 7A-452.

(c) In all cases subject to this Article, appointment of counsel, determination of compensation, appointment of experts, and use of funds for experts and other services related to legal representation shall be in accordance with rules and procedures adopted by the Office of Indigent Defense Services.

(d) The Office of Indigent Defense Services shall allocate and disburse funds appropriated for legal representation and related services in cases subject to this Article pursuant to rules and procedures established by the Office."

SECTION 14.9.(b) Effective October 1, 2005, the State's responsibility for providing inmates in the custody of the Department of Correction with legal assistance and access to the courts shall be administered by the Office of Indigent Defense

Services. The existing contract between the Department of Correction and Prisoner Legal Services, Inc., shall not be extended or renewed beyond that date.

The Director of Indigent Defense Services, in consultation with the Commission on Indigent Defense Services and the Department of Justice, shall determine which types of legal services can best be provided directly to inmates by staff employed by the Office of Indigent Defense Services, which services should be provided by counsel designated by the Office of Indigent Defense Services, and which services should be provided by contract between the Office of Indigent Defense Services and nonprofit organizations or other contract providers.

If the Director of Indigent Defense Services determines that, in order to facilitate the transfer of responsibility provided for in this section, it is necessary for Prisoner Legal Services, Inc., to continue providing legal services and access to the courts to inmates beyond the termination of its contract with the Department of Correction on September 30, 2005, the Director may contract with Prisoner Legal Services, Inc., for a period of time to be determined by the Director.

SECTION 14.9.(c) The sum of one million eight hundred eighty-three thousand eight hundred sixty-five dollars ($1,883,865) for the 2005-2006 fiscal year and the sum of two million five hundred eleven thousand eight hundred twenty dollars ($2,511,820) for the 2006-2007 fiscal year shall be transferred from the Department of Correction to the Office of Indigent Defense Services to implement this section.

SECTION 14.9.(d) Subsections (a) and (b) of this section become effective October 1, 2005. The remainder of this section becomes effective July 1, 2005.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

WAKE COUNTY PUBLIC DEFENDER OFFICE FUNDS

SECTION 14.10. Of the funds appropriated to the Judicial Department, Office of Indigent Defense Services, in this act, the Office of Indigent Defense Services shall use up to the sum of two million three hundred thousand five hundred thirty-four dollars ($2,300,534) for the 2005-2006 fiscal year and the sum of two million one hundred eighty-one thousand three hundred twenty-three dollars ($2,181,323) for the 2006-2007 fiscal year to establish a public defender's office in the Tenth Defender District, as authorized by Section 14.4(b) of S.L. 2004-126. The funds shall be used to establish the public defender, 20 assistant public defenders, four investigators, one administrative assistant II, and five legal assistants.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS

SECTION 14.11. The Judicial Department, Office of Indigent Defense Services, may use up to the sum of one million sixty-nine thousand six hundred forty-five dollars ($1,069,645) in appropriated funds during the 2005-2006 fiscal year and up to the sum of one million twenty-three thousand one hundred thirty-five dollars ($1,023,135) in appropriated funds during the 2006-2007 fiscal year for the expansion of existing offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services by creating up to 10 new attorney positions and five new support staff positions. These funds may be used for salaries, benefits, equipment, and related expenses. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

OFFICE OF INDIGENT DEFENSE SERVICES REPORT

SECTION 14.12. The Office of Indigent Defense Services shall report to the Chairs of the Senate and House of Representatives Appropriations Committees and the

Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on:

(1) The volume and cost of cases handled in each district by assigned counsel or public defenders;
(2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;
(3) Plans for changes in rules, standards, or regulations in the upcoming year; and
(4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

CLARIFY THAT FEES PAID TO ATTORNEYS REPRESENTING INDIGENT CLIENTS SHALL BE FIXED IN ACCORDANCE WITH THE RULES ADOPTED BY THE OFFICE OF INDIGENT DEFENSE SERVICES AND MAY NOT BE SET AT HIGHER RATES WITHOUT THE APPROVAL OF THE OFFICE OF INDIGENT DEFENSE SERVICES

SECTION 14.13. G.S. 7A-458 reads as rewritten:

"**§ 7A-458. Counsel fees.**

The fee to which an attorney who represents an indigent person is entitled shall be fixed in accordance with rules adopted by the Office of Indigent Defense Services. Fees shall be based on the factors normally considered in fixing attorneys' fees, such as the nature of the case, and the time, effort and responsibility involved. Fees shall not be set or ordered at rates higher than those established by the rules adopted under this section without the approval of the Office of Indigent Defense Services. Even if the trial, appeal, hearing or other proceeding is never held, preparation therefor is nevertheless compensable and, in capital cases and other extraordinary cases pending in superior court, a fee for services rendered and payment for expenses incurred may be allowed pending final determination of the case."

PART XV. DEPARTMENT OF JUSTICE

Requested by: Senators Thomas, Garrou, Dalton, Hagan

USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT

SECTION 15.1.(a) Assets transferred to the Departments of Justice, Correction, and Crime Control and Public Safety during the 2005-2007 biennium pursuant to applicable federal law shall be credited to the budgets of the respective departments and shall result in an increase of law enforcement resources for those departments. The Departments of Justice, Correction, and Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations upon receipt of the assets and, before using the assets, shall report on the intended use of the assets and the departmental priorities on which the assets may be expended.

SECTION 15.1.(b) The General Assembly finds that the use of assets transferred pursuant to federal law for new personnel positions, new projects, acquisition of real property, repair of buildings where the repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods. Therefore, the Department of Justice, the Department of Correction, and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly.

SECTION 15.1.(c) Nothing in this section prohibits North Carolina law enforcement agencies from receiving funds from the United States Department of

Justice, the United States Department of the Treasury, and the United States Department of Health and Human Services.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES

SECTION 15.2. The Private Protective Services and Alarm Systems Licensing Boards shall pay the appropriate State agency for the use of physical facilities and services provided to those Boards by the State.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

CERTAIN LITIGATION EXPENSES TO BE PAID BY CLIENTS

SECTION 15.3. Client departments, agencies, and boards shall reimburse the Department of Justice for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to litigation in which the Department of Justice is representing the department, agency, or board.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

REIMBURSEMENT FOR UNC BOARD OF GOVERNORS LEGAL REPRESENTATION

SECTION 15.4. The Department of Justice shall be reimbursed by the Board of Governors of The University of North Carolina for two Attorney III positions to provide legal representation to The University of North Carolina System.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

REPORT ON CRIMINAL RECORD CHECKS CONDUCTED FOR CONCEALED HANDGUN PERMITS/STUDY FEE ADJUSTMENT FOR CRIMINAL RECORD CHECKS

SECTION 15.5.(a) The Department of Justice shall report by January 15 each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the receipts, costs for, and number of criminal record checks performed in connection with applications for concealed weapons permits. The report by the Department of Justice shall also include information on the number of applications received and approved for firearms safety courses.

SECTION 15.5.(b) The Office of State Budget and Management, in consultation with the Department of Justice, shall study the feasibility of adjusting the fees charged for criminal record checks conducted by the Division of Criminal Information of the Department of Justice as a result of the increase in receipts from criminal record checks. The study shall include an assessment of the Division's operational, personnel, and overhead costs related to providing criminal record checks and how those costs have changed since the prior fiscal year. The Office of State Budget and Management shall report its findings and recommendations to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division on or before March 1, 2006.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

NC LEGAL EDUCATION ASSISTANCE FOUNDATION REPORT ON FUNDS DISBURSED

SECTION 15.6. The North Carolina Legal Education Assistance Foundation shall report by March 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State funds, the purpose of the expenditures, the number of attorneys receiving funds, the average award amount, the

average student loan amount, the number of attorneys on the waiting list, and the average number of years for which attorneys receive loan assistance.

Requested by: Senators Hagan, Garrou, Dalton

REDUCE BACKLOG OF RAPE KITS

SECTION 15.7.(a) The Department of Justice shall contract with private entities to reduce the backlog of rape kits in storage in local law enforcement agencies as of July 1, 2004. The Department shall contract with private entities to analyze bodily fluids, DNA evidence, as "DNA" is defined in G.S. 15A-266.2, or both, from rape kits that are evidence in cases in which a suspect has not been identified. The Department shall maximize the use of federal grant funds to expedite the elimination of the backlog.

SECTION 15.7.(b) The Department of Justice shall report, on or before February 1, 2006, and annually thereafter to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the number of rape kits analyzed by private entities and how many of those analyses resulted in arrests or convictions. The Department shall also report on the number of rape kits analyzed by the SBI Crime Lab, the amount of the remaining backlog, and the estimated time left to eliminate the backlog.

SECTION 15.7.(c) Except as provided otherwise by this subsection, the Department of Justice shall hire only nonsworn personnel to fill vacant positions in the State Bureau of Investigation laboratory. A position may be filled with a sworn agent in any of the following circumstances: (i) the position is a promotion for a sworn agent who was employed at the State Bureau of Investigation laboratory prior to July 1, 2005, or (ii) the position is a forensic drug chemist position that has as a primary duty "responding to clandestine methamphetamine laboratories."

Requested by: Senators Thomas, Garrou, Dalton, Hagan

STUDY DNA TESTING AND ANALYSIS COSTS

SECTION 15.8. The Office of State Budget and Management, in consultation with the Department of Justice, shall study the cost of testing and analyzing DNA samples. The study shall include all of the following: a determination of the unit cost for analyzing a rape kit and a comparison of that cost with the unit cost for the same analysis when performed by other labs, both public and private; a comparison of the amount of funds and length of time required to eliminate the backlog of rape kits using private labs versus the SBI crime lab; and a survey of the funding sources used by other states for their DNA testing and analysis lab costs. The Office of State Budget and Management shall report its findings and recommendations to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division on or before March 1, 2006.

PART XVI. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Requested by: Senators Thomas, Garrou, Dalton, Hagan

S.O.S. ADMINISTRATIVE COST LIMITS

SECTION 16.1. Of the funds appropriated to the Department of Juvenile Justice and Delinquency Prevention in this act, not more than four hundred fifty thousand dollars ($450,000) for the 2005-2006 fiscal year and not more than four hundred fifty thousand dollars ($450,000) for the 2006-2007 fiscal year may be used to administer the S.O.S. Program, to provide technical assistance to applicants and to local S.O.S. programs, and to evaluate the local S.O.S. programs. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

JCPC GRANT REPORTING AND CERTIFICATION

SECTION 16.2.(a) On or before May 1 each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants. The list shall include for each recipient the amount of the grant awarded, the membership of the local committee or council administering the award funds on the local level, and a short description of the local services, programs, or projects that will receive funds. The list shall also identify any programs that received grant funds at one time but for which funding has been eliminated by the Department of Juvenile Justice and Delinquency Prevention. A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

SECTION 16.2.(b) Each county in which local programs receive Juvenile Crime Prevention Council grant funds from the Department of Juvenile Justice and Delinquency Prevention shall certify annually through its local council to the Department that funds received are not used to duplicate or supplant other programs within the county.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

REPORTS ON CERTAIN PROGRAMS

SECTION 16.3.(a) Project Challenge North Carolina, Inc., shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 each year on the operation and the effectiveness of its program in providing alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The report shall include information on:

(1) The source of referrals for juveniles.
(2) The types of offenses committed by juveniles participating in the program.
(3) The amount of time those juveniles spend in the program.
(4) The number of juveniles who successfully complete the program.
(5) The number of juveniles who commit additional offenses after completing the program.
(6) The program's budget and expenditures, including all funding sources.

SECTION 16.3.(b) The Juvenile Assessment Center shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the effectiveness of the Center by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of juvenile assessment plans and services provided as a result of these plans. In addition, the report shall include information on the Center's budget and expenditures, including all funding sources.

SECTION 16.3.(c) Communities in Schools shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Joint Legislative Education Oversight Committee by April 1 each year on the operation and effectiveness of its program. The report shall include information on:

(1) The number of children served.
(2) The number of volunteers used.
(3) The impact on children who have received services from Communities in Schools.
(4) The program's budget and expenditures, including all funding sources.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

ANNUAL EVALUATION OF COMMUNITY PROGRAMS

SECTION 16.4. The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the Eckerd and Camp Woodson wilderness camp programs, the teen court programs, the program that grants funds to the local organizations of the Boys and Girls Clubs established pursuant to Section 21.10 of S.L. 1999-237, the Save Our Students program, the Governor's One-on-One Programs, and multipurpose group homes. The teen court report shall include statistical information on the number of juveniles served, the number and type of offenses considered by teen courts, referral sources for teen courts, and the number of juveniles that become court-involved after participation in teen courts. The report on the Boys and Girls Clubs program shall include information on:

(1) The expenditure of State appropriations on the program;
(2) The operations and the effectiveness of the program; and
(3) The number of juveniles served under the program.

In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department shall also identify whether the programs are achieving the goals and objectives of the Juvenile Justice Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Subcommittees on Justice and Public Safety of the House of Representatives and Senate Appropriations Committees by March 1 of each year.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 16.5. Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2005-2006 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants, or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2005-2006 fiscal year, the amount of funds anticipated for the 2006-2007 fiscal year, and the allocation of funds by program and purpose.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

IMPLEMENTATION OF TREATMENT STAFFING MODEL AT YOUTH DEVELOPMENT CENTERS

SECTION 16.6.(a) The Department of Juvenile Justice and Delinquency Prevention shall report each December 31, March 31, June 30, and September 30 of the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers. The report shall include a list of total positions at each facility by job class, whether the position is vacant or filled, whether positions were filled from internal employees or new employees, and the training and certification status of each position. The report shall also describe the nature of the treatment program, the criteria for evaluating the program, and how the program is performing in comparison to these

criteria. The report shall also describe the training approach to be used to train staff in using treatment methods in youth development centers and provide information on current staff training and staff training planned for the next quarter. The Department shall also develop indicators for evaluating staff performance once the model has been implemented.

SECTION 16.6.(b) The Department of Juvenile Justice and Delinquency Prevention shall report each December 31, March 31, June 30, and September 30 of the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers. The Department shall identify the number of positions reallocated to the new treatment job classes and the source of funding for those positions.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

PROGRESS REPORTS ON YOUTH DEVELOPMENT CENTER CAPITAL PROJECTS

SECTION 16.7. The Department of Juvenile Justice and Delinquency Prevention shall report each December 31, March 31, June 30, and September 30 of the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the Department's progress in the planning, design, and construction of new youth development centers. The report shall include:

(1) An overall project schedule for each new youth development center showing the original estimated date for construction completion and the original estimated date for occupancy by juvenile offenders, compared to the latest projected dates.

(2) An explanation of significant delays in the schedule or any potential cost increase.

The Office of State Construction and the Capital Improvement Section of the Office of State Budget and Management shall assist the Department of Juvenile Justice and Delinquency Prevention in the preparation of the report required by this section.

PART XVII. DEPARTMENT OF CORRECTION

Requested by: Senators Thomas, Garrou, Dalton, Hagan

FEDERAL GRANT REPORTING

SECTION 17.1. The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

REIMBURSE COUNTIES FOR HOUSING AND EXTRAORDINARY MEDICAL COSTS FOR INMATES, PAROLEES, AND POST-RELEASE SUPERVISEES AWAITING TRANSFER TO STATE PRISON SYSTEM

SECTION 17.2. The Department of Correction may use funds available to the Department for the 2005-2007 biennium to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

HOLIDAY PAY FOR DEPARTMENT OF CORRECTION STAFF

SECTION 17.3. Holiday pay for Department of Correction staff entitled to holiday pay shall be one hundred fifty percent (150%) of regular pay during the 2005-2007 biennium, except that the Department of Correction may use funds available to pay up to one hundred seventy-five percent (175%) of regular pay for holiday pay during the 2005-2007 biennium.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

DEPARTMENT OF CORRECTION SECURITY STAFFING FORMULAS

SECTION 17.4.(a) G.S. 143B-262.5 reads as rewritten:

"§ 143B-262.5. Security Staffing.

(a) The Department of Correction shall ~~conduct security staffing post-audits of each prison at least biannually, the first such audit to be completed during the 2002-2003 fiscal year. The initial post-audit shall be conducted jointly by Department staff and a consultant, external to the Department, and shall include analysis of the staffing levels assigned for supervision of correctional officers.~~ conduct:

(1) On-site post-audits of every prison at least once every three years;

(2) Regular audits of post-audit charts through the automated post-audit system; and

(3) Other staffing audits as necessary.

(b) The Department of Correction shall update the security staffing relief formula ~~biannually, the first update to be completed during the 2002-2003 fiscal year.~~ at least every three years. Each update shall include a review of all annual training requirements for security staff to determine which of these requirements should be mandatory and the appropriate frequency of the training. The Department shall survey other states to determine which states use a vacancy factor in their staffing relief formulas."

SECTION 17.4.(b) The Department of Correction shall implement the current post-audit by July 1, 2005, and report by October 1, 2005, to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the effect that the new post-audit has had on staffing at each prison.

SECTION 17.4.(c) The Department of Correction shall report on its progress in implementing the staffing recommendations of the National Institute of Corrections to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2006. The report shall include a status report on the implementation of a centralized postaudit control system, the automation of leave records, and the survey of other states' use of a vacancy factor in staffing relief formulas.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

USE OF CLOSED PRISON FACILITIES

SECTION 17.5. In conjunction with the closing of prison facilities, including small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located, with the elected State and local officials, and with State agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and the future needs of the Department of Correction, the State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from one security custody level to another, where that conversion would be cost-effective. A prison unit under lease to a county pursuant to the provisions of this section for use as a jail is exempt for the period of the lease from any of the minimum standards adopted by the Secretary of Health and Human Services pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

Prior to any transfer or lease of these units, the Department of Correction shall report on the terms of the proposed transfer or lease to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department of Correction shall also provide annual summary reports to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the conversion of these units to other use and on all leases or transfers entered into pursuant to this section.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

INMATE COSTS/MEDICAL BUDGET FOR PRESCRIPTION DRUGS AND INMATE CLOTHING AND LAUNDRY SERVICES

SECTION 17.6.(a) If the cost of providing food and health care to inmates housed in the Division of Prisons is anticipated to exceed the continuation budget amounts provided for that purpose in this act, the Department of Correction shall report the reasons for the anticipated cost increase and the source of funds the Department intends to use to cover those additional needs to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

SECTION 17.6.(b) Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2006 fiscal year for the purchase of prescription drugs for inmates if expenditures are projected to exceed the Department's inmate medical continuation budget for prescription drugs. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

SECTION 17.6.(c) Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2006 fiscal year for the purchase of clothing and laundry services for inmates if expenditures are projected to exceed the Department's budget for clothing and laundry services. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

CONVERSION OF CONTRACTED MEDICAL POSITIONS

SECTION 17.7.(a) The Department of Correction may convert contract medical positions to permanent State medical positions if the Department can document that the total savings generated will exceed the total cost of the new positions for each facility. Where practical, the Department shall convert contract positions to permanent positions by using existing vacancies in medical positions.

SECTION 17.7.(b) The Department of Correction shall report by April 1, 2006, to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on all conversions made pursuant to this section, by type of position and location, and on the savings generated at each correctional facility.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

LIMIT USE OF OPERATIONAL FUNDS

SECTION 17.8. Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds shall not be expended for any other purpose, except as provided for in this act, and shall not be expended for additional prison personnel positions until the new facilities are within 120 days of projected completion, except for certain management, security, and support positions necessary to prepare the facility for opening, as authorized in the budget approved by the General Assembly.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

FEDERAL GRANT MATCHING FUNDS

SECTION 17.9. Notwithstanding the provisions of G.S. 148-2, the Department of Correction may use up to the sum of seven hundred fifty thousand dollars ($750,000) from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

COMPUTER/DATA PROCESSING SERVICES FUNDS

SECTION 17.10. Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2006 fiscal year for expenses for computer/data processing services if expenditures exceed the Department's continuation budget amount for those services. The Department shall report to the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

MEDIUM CUSTODY ROAD CREW COMPENSATION/COMMUNITY WORK CREWS

SECTION 17.11.(a) Of funds appropriated to the Department of Transportation by this act, the sum of ten million dollars ($10,000,000) per year shall be transferred by the Department of Transportation to the Department of Correction during the 2005-2007 biennium for the actual costs of highway-related labor performed by medium-custody prisoners, as authorized by G.S. 148-26.5. This transfer shall be made quarterly in the amount of two million five hundred thousand dollars ($2,500,000). The Department of Transportation may use funds appropriated by this act to pay an additional amount exceeding the ten million dollars ($10,000,000), but those payments shall be subject to negotiations among the Department of Transportation, the

Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

SECTION 17.11.(b) The Department of Correction may use up to 39 work crews for Department of Transportation litter control projects. The Department of Transportation shall transfer at least one million three hundred thousand dollars ($1,300,000) per year from the Highway Fund to the Department of Correction during the 2005-2007 biennium to cover the cost of those work crews. Should the two departments determine that the actual cost of operating 39 work crews exceeds that amount, the Department of Transportation shall transfer an additional amount as agreed upon by the two departments and the Office of State Budget and Management.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

INMATE CUSTODY AND CLASSIFICATION SYSTEM

SECTION 17.12.(a) The Department of Correction shall review the current inmate custody and classification system, with the assistance of consultants from the National Institute of Corrections. The review shall focus primarily on the custody classification instrument used to assess inmate custody and the policies and practice of overriding the assessed custody level. The review should focus particularly on determining whether the instrument is effective in predicting custody classification, analyzing the current override rate by custody level, and assessing any need for changes in the override policy. The Department should request assistance from the National Institute of Corrections in obtaining (i) a comparison between Department of Correction override rates and policies and those of other states; (ii) suggestions on an acceptable override rate for classification systems; and (iii) any recommendations the NIC may have on the Department's custody classification instrument and override policy.

SECTION 17.12.(b) The Department shall report its findings and recommendations to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety no later than April 15, 2006.

Requested by: Senators Garrou, Dalton, Hagan

EXTEND LIMITS OF CONFINEMENT/TERMINALLY ILL AND PERMANENTLY AND TOTALLY DISABLED INMATES

SECTION 17.13. G.S. 148-4 reads as rewritten:

"**§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.**

The Secretary of Correction shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Secretary of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Secretary shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Secretary of Correction for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners

and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

The Secretary of Correction may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to

(1) Contact prospective employers; or

(2) Secure a suitable residence for use when released on parole or upon discharge; or

(3) Obtain medical services not otherwise available; or

(4) Participate in a training program in the community; or

(5) Visit or attend the funeral of a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person though not a natural parent, has acted in the place of a parent), brother, or sister; or

(6) Participate in community-based programs of rehabilitation, including, but not limited to the existing community volunteer and home-leave programs, pre-release and after-care programs as may be provided for and administered by the Secretary of Correction and other programs determined by the Secretary of Correction to be consistent with the prisoner's rehabilitation and return to society; or

(7) Be on maternity leave, for a period of time not to exceed 60 days. The county departments of social services are expected to cooperate with officials at the North Carolina Correctional Center for Women to coordinate prenatal care, financial services, and placement of the child; or

(8) Receive palliative care, only in the case of a terminally ill inmate or a permanently and totally disabled inmate that the Secretary finds no longer poses ~~a threat to society,~~ a significant public safety risk, and only after consultation with any victims of the inmate or the victims' families. For purposes of this subdivision, the term "terminally ill" describes an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that did not exist at the time of sentencing, that will likely produce death within ~~12 months.~~ six months, and that is so debilitating that it is highly unlikely that the inmate poses a significant public safety risk. For purposes of this subdivision, the term "permanently and totally disabled" describes an inmate who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing physical or medical ~~condition.~~ condition that did not exist at the time of sentencing and that is so incapacitating that it is highly unlikely that the inmate poses a significant public safety risk. The Department's medical director shall notify the Secretary immediately when an inmate has been classified as terminally ill and shall provide regular reports on inmates classified as permanently and totally disabled. The Secretary shall act expeditiously in determining whether to extend the limits of confinement under this subdivision upon receiving notice that an inmate has been classified as terminally ill or permanently and totally disabled and, in the case of a terminally ill inmate, the Secretary shall make a good faith effort to reach a

determination within 30 days of receiving notice of the inmate's terminal condition.

The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary of Correction punishable as provided in G.S. 148-45."

Requested by: Senators Thomas, Garrou, Dalton, Hagan

PARTIAL REIMBURSEMENT/INMATE COMMUNITY WORK CREWS AND INMATE LABOR CONTRACTS

SECTION 17.14.(a) G.S. 148-26 is amended by adding a new subsection to read:

"(e1) Departments, institutions, agencies, and political subdivisions of the State using inmate community work crews or inmate labor contracts as authorized by this section shall reimburse the Department of Correction for a portion of the costs of operating inmate community work crews and a portion of the administrative expenses of managing inmate labor contracts. In determining the amount of reimbursement to require under this subsection, the Department may consider requiring a smaller amount from entities that can demonstrate a limited ability to pay for inmate labor."

SECTION 17.14.(b) In determining reimbursement amounts required by G.S. 148-26(e1), the Department of Correction shall attempt to recoup at least the sum of six hundred thousand dollars ($600,000) for each year of the 2005-2007 biennium in inmate work crew costs and administrative expenses of managing inmate labor contracts.

SECTION 17.14.(c) The Department of Correction shall report by March 1, 2006, to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the inmate labor contracts and community work programs, identifying total project man-hours by client agency, the total operating costs of these programs, the benefits of these programs, and the potential for reimbursement that more closely reflects the actual cost of all projects.

Requested by: Senators Rand, Thomas, Garrou, Dalton, Hagan

PROVIDER RATES FOR INMATE HEALTH SERVICES NOT TO EXCEED PROVIDER RATES UNDER TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN

SECTION 17.15.(a) G.S. 148-19 reads as rewritten:

"**§ 148-19. Health services.**

(a) The general policies, rules and regulations of the Department of Correction shall prescribe standards for health services to prisoners, which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. A prisoner may be taken, when necessary, to a medical facility outside the State prison system. The Department of Correction shall seek the cooperation of public and private agencies, institutions, officials and individuals in the development of adequate health services to prisoners.

(b) Upon request of the Secretary of Correction, the Secretary of Health and Human Services may detail personnel employed by the Department of Health and Human Services to the Department of Correction for the purpose of supervising and furnishing medical, psychiatric, psychological, dental, and other technical and scientific services to the Department of Correction. The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations to the Department of Health and Human Services, and reimbursed from applicable appropriations to the Department of Correction. The Secretary of Correction may make similar arrangements with any other agency of State government able and willing to aid the Department of Correction to meet the needs of prisoners for health services.

Reimbursement rates to public and private agencies and health care providers for health care services rendered to prisoners shall be established as provided in G.S. 148-22.

(c) Each prisoner committed to the State Department of Correction shall receive a physical and mental examination by a health care professional authorized by the North Carolina Medical Board to perform such examinations as soon as practicable after admission and before being assigned to work. The prisoner's work and other assignments shall be made with due regard for the prisoner's physical and mental condition.

(d) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt standards for the delivery of mental health and mental retardation services to inmates in the custody of the Department of Correction. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall give the Secretary of Correction an opportunity to review and comment on proposed standards prior to promulgation of such standards; however, final authority to determine such standards remains with the Commission. The Secretary of the Department of Health and Human Services shall designate an agency or agencies within the Department of Health and Human Services to monitor the implementation by the Department of Correction of these standards and of substance abuse standards adopted by the Department of Correction upon the advice of the Substance Abuse Advisory Council established pursuant to G.S. 143B-270. The Secretary of Health and Human Services shall send a written report on the progress which the Department of Correction has made on the implementation of such standards to the Governor, the Lieutenant Governor, and the Speaker of the House. Such reports shall be made on an annual basis beginning January 1, 1978."

SECTION 17.15.(b) G.S. 148-22 reads as rewritten:

"§ 148-22. Treatment programs.

(a) The general policies, rules and regulations of the Department of Correction shall provide for humane treatment of prisoners and for programs to effect their correction and return to the community as promptly as practicable. Visits and correspondence between prisoners and approved friends shall be authorized under reasonable conditions, and family members shall be permitted and encouraged to maintain close contact with the prisoners unless such contacts prove to be hurtful. Casework, counseling, and psychotherapy services provided to prisoners may be extended to include members of the prisoner's family if practicable and necessary to achieve the purposes of such programs. Education, library, recreation, and vocational training programs shall be developed so as to coordinate with corresponding services and opportunities which will be available to the prisoner when he is released. Programs may be established for the treatment and training of mentally retarded prisoners and other special groups. These programs may be operated in segregated sections of facilities housing other prisoners or in separate facilities.

(b) The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs designed to give persons committed to the Department opportunities for physical, mental and moral improvement. The Department may enter into agreements with other agencies of federal, State or local government and with private agencies to promote the most effective use of available resources.

Specifically the Secretary of Correction may enter into contracts or agreements with appropriate public or private agencies or providers offering needed services including health, mental health, mental retardation, substance abuse, rehabilitative or training services for such inmates of the Department of Correction as the Secretary may deem eligible. These agencies and providers shall be reimbursed from applicable appropriations to the Department of Correction for health services rendered at a rate not to exceed ~~that which such agencies normally receive for serving their regular clients~~ the contract rate paid for the same or similar service or diagnostic-related grouping under the Teachers' and State Employees' Comprehensive Major Medical Plan ("Plan") for

Plan members. Before paying the claim approved by the Secretary, the Secretary of Correction shall submit the claim to the Plan for verification of the rate charged under the claim in accordance with procedures established by the Executive Administrator and Board of Trustees of the Plan. The Department of Correction shall, from State appropriations and any other funds available for this purpose, transfer to the Teachers' and State Employees' Comprehensive Major Medical Plan funds in the amount determined by the Plan as necessary to cover the Plan's administrative costs for verifying claim rates. The Secretary may contract for the housing of work-release inmates at county jails and local confinement facilities. Inmates may be placed in the care of such agencies but shall remain the responsibility of the Department and shall be subject to the complete supervision of the Department. The Department may reimburse such agencies for the support of such inmates at a rate not in excess of the average daily cost of inmate care in the corrections unit to which the inmate would otherwise be assigned."

SECTION 17.15.(c) Article 3 of Chapter 135 of the General Statutes is amended by adding the following new Part to read:

"Part 6. Administrative Services to Other State Agencies.

"**§ 135-43. Verification of Plan rates for health services provided to prison inmates.**

As used in this Part, "Plan" means the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. Upon receipt of a claim for health services approved by the Secretary of Correction, the Plan shall review the claim rates and shall verify to the Secretary of Correction that the rates applied in the claim do not exceed the rates applicable under the Plan for the same or similar services or diagnostic-related grouping code for Plan members. Nothing in this section shall be construed as providing Plan benefits to prison inmates. The Plan's self-insured indemnity program shall not incur any financial obligations for claims submitted by the Secretary of Correction for health services rendered to prison inmates."

Requested by: Senators Kerr, Thomas, Garrou, Dalton, Hagan

REPLACEMENT OF UMSTEAD LAUNDRY

SECTION 17.16. In preparation for the scheduled closing of Umstead Hospital in 2007, the Department of Correction shall develop a plan for the replacement of the Correction Enterprises laundry operation at Umstead Hospital and report that plan to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

STAFFING STUDY OF UNIT MANAGEMENT

SECTION 17.17. The Department of Correction shall conduct an organization and staffing study of unit management in the State prison system, focusing on the 18 prison facilities that use unit management. The Department shall review workload and staffing at each of the prisons and make recommendations for staffing changes and staffing efficiencies. The study shall consider the responsibilities and workloads of custody supervisors in relation to unit managers and determine whether certain functions should be the responsibility of custody supervisors or program staff.

The Department shall report its findings and recommendations to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006.

Requested by: Senators Thomas, Dalton, Garrou, Hagan

STUDY EXPANSION AT CLEVELAND CORRECTIONAL CENTER

SECTION 17.18. As part of its development and update of its long-range prison housing plan, the Department of Correction shall consider the feasibility of expanding minimum custody bed capacity at the Cleveland Correctional Center. The

study shall include an engineering analysis of the site and a cost analysis of either expanding the current facility or building a stand-alone minimum custody prison. The cost analysis shall include a determination of possible savings by using inmate labor to assist with construction. The Department of Correction shall report its findings to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2006.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

REPORT ON ELECTRONIC MONITORING COSTS

SECTION 17.19. The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on its efforts to increase the use of electronic monitoring of sentenced offenders in the community as an alternative to the incarceration of probation violators. The report shall also document the geographical distribution of electronic monitoring use compared to other intermediate sanctions. The Department shall also analyze the reasons for the underutilization of the electronic monitoring program and include its findings in the report.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

REPORT ON PROBATION AND PAROLE CASELOADS

SECTION 17.20.(a) The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

(1) Data on current caseload averages for Probation Parole Officer I, Probation Parole Officer II, and Probation Parole Officer III positions;
(2) An analysis of the optimal caseloads for these officer classifications;
(3) An assessment of the role of surveillance officers;
(4) The number and role of paraprofessionals in supervising low-risk caseloads;
(5) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004;
(6) The selection of a risk assessment and the resulting distribution of offenders among risk levels; and
(7) Any position reallocations in the previous 12 months, and the reasons for and fiscal impact of those reallocations.

SECTION 17.20.(b) The Department of Correction shall conduct a study of probation/parole officer workload at least biannually. The study shall include analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

SECTION 17.20.(c) The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by January 1, 2007.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

COMMUNITY SERVICE WORK PROGRAM

SECTION 17.21. The Department of Correction shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the integration of the Community Service Work Program into the Division of Community Corrections, including the Department's ability to monitor the collection of offender payments from unsupervised offenders sentenced to community service. The Department shall also report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the average caseloads of Community Service Work Program coordinators, by district, division, and statewide. The report shall also include the money collected, the type and value of the work performed, and the number of offenders in the Community Service Work Program, by type of referral (i.e. parole, supervised probation, unsupervised probation or community punishment, DWI, or any other agency referrals).

Requested by: Senators Thomas, Garrou, Dalton, Hagan

REPORTS ON NONPROFIT PROGRAMS

SECTION 17.22.(a) Funds appropriated in this act to the Department of Correction to support the programs of Harriet's House may be used for program operating costs, the purchase of equipment, and the rental of real property to serve women released from prison with children in their custody. Harriet's House shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who successfully complete the Harriet's House program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 17.22.(b) Summit House shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who successfully complete the program while housed at Summit House, Inc., and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 17.22.(c) Women at Risk shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State funds and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who have successfully completed the program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

CRIMINAL JUSTICE PARTNERSHIP PROGRAM

SECTION 17.23.(a) It is the intent of the General Assembly that State Criminal Justice Partnership Program funds not be used to fund case manager positions when those services can be reasonably provided by Division of Community Corrections personnel or by the Treatment Alternatives to Street Crime (TASC) Program in the Department of Health and Human Services.

SECTION 17.23.(b) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

SECTION 17.23.(c) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

SECTION 17.23.(d) The Department of Correction shall report by February 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees, the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

(1) The amount of funds carried over from the prior fiscal year;
(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;
(3) Any counties the Department anticipates will submit requests for new implementation grants;
(4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;
(5) An analysis of offender participation data received, including data on each program's utilization and capacity;
(6) An analysis of comparable programs, prepared by the Research and Planning Division of the Department of Correction, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards; and
(7) An evaluation of Criminal Justice Partnership programs based upon evaluation standards designed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Department of Correction, Division of Research and Planning.

SECTION 17.23.(e) G.S. 143B-273.4 reads as rewritten:

"§ 143B-273.4. Eligible population.

(a) An eligible offender is an adult offender who ~~either is in confinement awaiting trial, or~~ was convicted of a misdemeanor or a felony offense and received a nonincarcerative sentence of an intermediate punishment or is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall ~~be:~~

~~(1) Offenders~~ be offenders sentenced to intermediate ~~punishments; and~~
~~(2) Offenders who are appropriate for release from jail prior to trial under the supervision of a pretrial monitoring program.~~ punishments."

SECTION 17.23.(f) G.S. 143B-273.15 reads as rewritten:

"§ 143B-273.15. Funding formula.

To determine the grant amount for which a county or counties may apply, the granting authority shall apply the following formula:

(1) ~~Twenty percent (20%)~~ Twenty-five percent (25%) based on a fixed equal dollar amount for each county;
(2) ~~Sixty percent (60%)~~ Fifty percent (50%) based on the county share of the State population; and
(3) ~~Twenty percent (20%)~~ Twenty-five percent (25%) based on the ~~supervised probation admissions~~ intermediate punishment entry rate

for the ~~county.~~ county, using the total of the three most recent years of data available divided by the average county population for that same period.

The sum of the amounts in subdivisions (1), (2), and (3) is the total amount of the funding that a county may apply for under this subsection.

Grants to participating counties are for a period of one fiscal year with unobligated funds being returned to the Account at the end of the grant period. Funds are provided to participating counties on a reimbursement basis unless a county documents a need for an advance of grant funds."

SECTION 17.23.(g) For the 2005-2006 fiscal year, notwithstanding the formula in G.S. 143B-273.15, each county's formula allocation shall be capped at no less than ninety-five percent (95%) and no greater than one hundred twenty percent (120%) of the funds allocated to that county for the 2004-2005 fiscal year. After determining the capped formula allocations, funds that were used in the 2003-2004 fiscal year for pretrial release programs shall be reallocated among all participating counties using the formula in G.S. 143B-273.15 and dedicated to sentenced offender programs. For the 2006-2007 fiscal year, the same procedures shall be used, except that the capped amounts shall be no less than ninety percent (90%) and no greater than one hundred thirty percent (130%) of the funds allocated to that county for the 2004-2005 fiscal year.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

REPORT ON INMATES ELIGIBLE FOR PAROLE

SECTION 17.24. The Post-Release Supervision and Parole Commission shall report by January 15 and July 15 of each year to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on inmates eligible for parole. These reports shall include at least the following:

(1) The total number of Fair Sentencing and Pre-Fair Sentencing inmates that were parole-eligible during the current fiscal year and the total number of those inmates that were paroled. The report should group these inmates by offense type, custody classification, and type of parole. The report should also include a more specific analysis of those inmates who were parole-eligible and assigned to minimum custody classification but not released;

(2) The average time served, by offense class, of Fair Sentencing and Pre-Fair Sentencing inmates compared to inmates sentenced under Structured Sentencing; and

(3) The projected number of parole-eligible inmates to be paroled or released by the end of the 2007-2008 fiscal year and by the end of each of the next five fiscal years, beginning with the 2008-2009 fiscal year.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

PROVIDE THAT THE TERMS OF THE MEMBERS OF THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION SERVING ON JUNE 30, 2005, EXPIRE ON THAT DATE AND RESTRUCTURE THE COMMISSION TO CONSIST OF ONE FULL-TIME MEMBER AND TWO HALF-TIME MEMBERS

SECTION 17.25.(a) G.S. 143B-267 reads as rewritten:

"**§ 143B-267. Post-Release Supervision and Parole Commission – members; selection; removal; chairman; compensation; quorum; services.**

~~The~~ Effective July 1, 2005, the Post-Release Supervision and Parole Commission shall consist of ~~three~~ one full-time ~~members.~~ member and two half-time members. The three ~~full-time~~ members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the

Commission. The terms of office of ~~the five members presently~~ any members serving on the Commission on June 30, 2005, shall expire on ~~July 31, 1999.~~ that date. ~~The term of one of the members appointed effective August 1, 1999, shall be for one year. The term of one of the members appointed effective August 1, 1999, shall be for two years. The term of one of the members appointed effective August 1, 1999, shall be for three years. Thereafter, the~~ The terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a ~~full-time~~ member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a ~~full-time~~ member of the Commission to serve as ~~chairman~~ chair of the Commission at the pleasure of the Governor.

The granting, denying, revoking, or rescinding of parole, the authorization of work-release privileges to a prisoner, or any other matters of business coming before the Commission for consideration and action shall be decided by majority vote of the full Commission.

The ~~full-time~~ members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction."

SECTION 17.25.(b) This section becomes effective June 30, 2005.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

POST-RELEASE SUPERVISION AND PAROLE COMMISSION/REPORT ON STAFFING REORGANIZATION AND REDUCTION

SECTION 17.26. The Post-Release Supervision and Parole Commission shall report by October 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on a plan for restructuring the organization and operation of the Commission and implementing staff reductions to reflect both declines and changes in workload.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

MUTUAL AGREEMENT PAROLE PROGRAM

SECTION 17.27. The Department of Correction and the Post-Release Supervision and Parole Commission shall make a good faith effort to enroll at least ten percent (10%) of all program-eligible, pre-Structured Sentencing felons in the Mutual Agreement Parole Program by January 1, 2006. The Department shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on the number of inmates actually enrolled in the program, the number of inmates who have been paroled as a result of participation in the program, and the number of inmates who have enrolled but terminated as a result of unsuccessful participation in the program. If the ten percent (10%) participation goal established by this section has not been reached, the report shall explain why the goal was not realized.

PART XVIII. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Requested by: Senators Thomas, Garrou, Dalton, Hagan

ANNUAL EVALUATION OF TARHEEL CHALLENGE PROGRAM

SECTION 18.1. The Department of Crime Control and Public Safety shall report to the Chairs of the House of Representatives and Senate Appropriations

Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1 of each year of the biennium on the operations and effectiveness of the National Guard Tarheel Challenge Program. The report should evaluate the program's effectiveness as an intervention method for preventing juveniles from becoming undisciplined or delinquent. The report shall also evaluate the Program's role in improving individual skills and employment potential for participants and shall include:

(1) The source of referrals for individuals participating in the Program;
(2) The summary of types of actions or offenses committed by the participants of the Program;
(3) An analysis outlining the cost of providing services for each participant, including a breakdown of all expenditures related to the administration and operation of the Program and the education and treatment of the Program participants;
(4) The number of individuals who successfully complete the Program; and
(5) The number of participants who commit offenses after completing the Program.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

VICTIMS ASSISTANCE NETWORK REPORT

SECTION 18.2. The Department of Crime Control and Public Safety shall report on the expenditure of funds allocated pursuant to this section for the Victims Assistance Network. The Department shall also report on the Network's efforts to gather data on crime victims and their needs, act as a clearinghouse for crime victims' services, provide an automated crime victims' bulletin board for subscribers, coordinate and support activities of other crime victims' advocacy groups, identify the training needs of crime victims' services providers and criminal justice personnel, and coordinate training for these personnel. The Department shall submit its report to the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the Senate and House of Representatives by December 1 of each year of the biennium.

Requested by: Senators Thomas, Garrou, Dalton, Hagan

TRANSFER THE STATEWIDE FLOODPLAIN MAPPING UNIT

SECTION 18.3. The Statewide Floodplain Mapping Unit is transferred from the Department of Crime Control and Public Safety to the Department of Environment and Natural Resources. This transfer has all of the elements of a Type I transfer as defined in G.S. 143A-6.

PART XIX. DEPARTMENT OF ADMINISTRATION

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

CONTINUATION OF THE STUDY OF ADVOCACY PROGRAMS IN THE DEPARTMENT OF ADMINISTRATION

SECTION 19.1. The Secretary of the Department of Administration, in collaboration with appropriate entities that concentrate on public policy and business management, shall continue the study that was completed during the 2003-2004 fiscal year of the functions of the advocacy programs that are housed in the Department of Administration to determine the appropriate organizational placement of the programs within State government. The study shall include both the advocacy and service functions of the Division of Veterans Affairs, the Council for Women and the Domestic Violence Commission, the Commission of Indian Affairs, the Governor's Advocacy Council for Persons with Disabilities, the Human Relations Commission, and the Youth Advocacy and Involvement Office. The study shall also consider whether the functions of the programs could be more efficiently and effectively performed by an appropriate

nonprofit organization. The Secretary shall report the findings and recommendations to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House of Representatives Appropriations Committees by April 1, 2006.

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

VETERANS SCHOLARSHIPS PARTIALLY FUNDED FROM ESCHEAT FUND

SECTION 19.2. In accordance with G.S. 116B-7(b), there is appropriated from the Escheat Fund to the Department of Administration the sum of four million two hundred ninety-seven thousand five hundred forty-four dollars ($4,297,544) for the 2005-2006 fiscal year and four million three hundred fifty-eight thousand forty-six dollars ($4,358,046) for the 2006-2007 fiscal year.

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

STATE VETERANS CEMETERIES

SECTION 19.3. The Department of Administration may use funds credited to the Veterans Burial Fund for the 2005-2007 biennium to cover costs incurred as a result of burials on Saturday or Sunday.

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

ALLOCATION OF PETROLEUM VIOLATION ESCROW FUNDS

SECTION 19.4. The unallocated balance of the funds and interest thereon received from the cases of United States v. Stripper Well, United States v. Exxon, United States v. Diamond Shamrock, United States v. Amoco, United States v. Chevron, and United States v. Occidental that remain in the Special Reserve for Oil Overcharge Funds is appropriated to the Department of Administration for the 2005-2006 fiscal year to be allocated for projects approved by the State Energy Policy Council.

Requested by: Senators Albertson, Jenkins, Dorsett, Garrou, Dalton, Hagan

INCREASED FUEL EFFICIENCY OF STATE MOTOR FLEET

SECTION 19.5.(a) The Department of Administration, Motor Fleet Management, shall develop and implement a plan to improve and increase the overall fuel efficiency of the State's motor fleet by twenty percent (20%). The Department shall implement this plan and achieve the twenty percent (20%) increase in fuel efficiency by July 1, 2006. Fuel efficiency goals may be met by petroleum displacement through the use of biodiesel, ethanol, other alternative fuels, the purchase of hybrid electric vehicles and other fuel-efficient vehicles.

SECTION 19.5.(b) The Department shall report to the Joint Legislative Commission on Governmental Operations its plan for increasing and maintaining the fuel efficiency of the State's motor fleet no later than January 1, 2006.

PART XX. OFFICE OF THE GOVERNOR

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

HOUSING FINANCE AGENCY HOME MATCHING FUNDS

SECTION 20.1.(a) Funds appropriated in this act to the Housing Finance Agency for the federal HOME Program shall be used to match federal funds appropriated for the HOME Program. In allocating State funds appropriated to match federal HOME Program funds, the Agency shall give priority to HOME Program projects, as follows:

(1) First priority to projects that are located in counties designated as Tier One, Tier Two, or Tier Three Enterprise Counties under G.S. 105-129.3; and

(2) Second priority to projects that benefit persons and families whose incomes are fifty percent (50%) or less of the median family income for the local area, with adjustments for family size, according to the latest figures available from the United States Department of Housing and Urban Development.

The Housing Finance Agency shall report to the Joint Legislative Commission on Governmental Operations by April 1 of each year concerning the status of the HOME Program and shall include in the report information on priorities met, types of activities funded, and types of activities not funded.

SECTION 20.1.(b) If the United States Congress changes the HOME Program such that matching funds are not required for a given program year, then the Agency shall not spend the matching funds appropriated under this act for that program year.

SECTION 20.1.(c) Funds appropriated in this act to match federal HOME Program funds shall not revert to the General Fund on June 30, 2006, or on June 30, 2007.

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

HOUSING FINANCE AGENCY SHALL CONTINUE THE NORTH CAROLINA HOME PROTECTION PILOT PROGRAM AND LOAN FUND

SECTION 20.2.(a) The North Carolina Housing Finance Agency shall continue to administer a pilot program to assist North Carolina workers who have lost jobs in Cabarrus, Cleveland, Cumberland, Edgecombe, Forsyth, Guilford, Rowan, and Rutherford Counties as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure.

SECTION 20.2.(b) Sections 20A.1(b), 20A.1(d), and 20A.1(e) of S.L. 2004-124 remain effective for the 2005-2006 fiscal year.

SECTION 20.2.(c) The agency shall, no later than May 1, 2006, report to the General Assembly on the effectiveness of the Program in accomplishing its purposes and provide any other information the Agency determines is pertinent or that the General Assembly requests.

PART XXI. DEPARTMENT OF INSURANCE

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

INSURANCE REGULATORY FUND TRANSFER TO GENERAL FUND

SECTION 21.1. The Commissioner of Insurance shall transfer funds quarterly from the Insurance Regulatory Fund to the General Fund to repay the funds appropriated to the Department of Insurance from the General Fund for each fiscal year, plus accrued interest at a rate determined by the State Treasurer.

PART XXII. DEPARTMENT OF REVENUE

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

DEPARTMENT OF REVENUE DEBT FEE FOR TAXPAYER LOCATER SERVICES AND COLLECTION

SECTION 22.1.(a) G.S. 105-243.1(e) reads as rewritten:

"(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The proceeds of the fee may not be used for any purpose that is not directly and primarily related to collecting overdue tax debts. The Department may apply the proceeds of the fee for the purposes listed in this subsection. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the costs of

collecting overdue tax debts. The Department and the Office of State Budget and Management must account for all expenditures using accounting procedures that clearly distinguish costs allocable to collecting overdue tax debts from costs allocable to other purposes and must demonstrate that none of the fee proceeds are used for any purpose other than collecting overdue tax debts.

The Department may apply the fee proceeds for the following purposes:

(1) To pay contractors for collecting overdue tax debts under subsection (b) of this section.

(2) To pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina.

(3) To pay for taxpayer locater services, not to exceed one hundred thousand dollars ($100,000) a year.

(4) To pay for postage or other delivery charges for correspondence directly and primarily relating to collecting overdue tax debts.

(5) To pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.

(6) To pay for expenses of the Examination and Collection Division directly and primarily relating to collecting overdue tax debts."

SECTION 22.1.(b) G.S. 105-243.1(f) reads as rewritten:

"(f) Reports. – The Department must report semiannually to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee on its efforts to collect tax debts. Each report must include a breakdown of the amount and age of tax debts collected by collection agencies on contract, the amount and age of tax debts collected by the Department through warning letters, and the amount and age of tax debts otherwise collected by Department personnel. The report must itemize collections by type of tax. Each report must also include a long-term collection plan, a timeline for implementing each step of the plan, a summary of steps taken since the last report and their results, and any other data requested by the Commission or the Committee.

The Department must report by April 1, 2006, and annually thereafter, to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly on the use of the fee proceeds for collecting overdue tax debts."

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

CHANGE PROPERTY TAX COMMISSION COMPENSATION

SECTION 22.2. G.S. 105-288(d) reads as rewritten:

"(d) Expenses. – The members of the Property Tax Commission shall receive travel and subsistence expenses in accordance with G.S. ~~138-5 and~~138-5. The members of the Property Tax Commission shall receive a salary ~~of two hundred dollars ($200.00) a day~~ when hearing cases, meeting to decide cases, and attending training or continuing education classes on property taxes or judicial procedure. The salary is four hundred fifty dollars ($450.00) a day for the Chair of the Property Tax Commission and four hundred dollars ($400.00) a day for other members of the Property Tax Commission. The Secretary of Revenue shall supply all the clerical and other services required by the Commission. All expenses of the Commission and the Department of Revenue in performing the duties enumerated in this Article shall be paid as provided in G.S. 105-501."

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

POSITIONS FOR REVENUE TAX EVASION PROJECT

SECTION 22.3. The 10 time-limited positions established in the Fuel Tax Compliance Division of the Department of Revenue for the Revenue Tax Evasion Project in S.L. 2004-124 are converted to permanent positions.

PART XXIII. SECRETARY OF STATE

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

SECRETARY OF STATE TO REASSIGN VACANT POSITION

SECTION 23.1. The Secretary of State shall reassign position 3222-0000-0000-361 from the Uniform Commercial Code Division to its General Administration Division to assist with investigations of trademark violations and training for other law enforcement personnel in the State and with investigations of violations of the Charitable Solicitation Licensing Act. The Secretary shall report to the Chairs of the Appropriations Subcommittees on General Government of the Senate and House of Representatives by December 1, 2005.

PART XXIV. OFFICE OF STATE BUDGET AND MANAGEMENT

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

NC HUMANITIES COUNCIL

SECTION 24.1. The North Carolina Humanities Council shall:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
   b. State fiscal year 2004-2005 itemized expenditures and fund sources;
   c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
   d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
   b. State fiscal year 2005-2006 itemized expenditures and fund sources;
   c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
   d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

PART XXV. OFFICE OF THE STATE CONTROLLER

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

OVERPAYMENTS AUDIT

SECTION 25.1.(a) During the 2005-2007 biennium, receipts generated by the collection of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors as required by G.S. 147-86.22(c) are to be deposited in the Special Reserve Account 24172.

SECTION 25.1.(b) For each fiscal year of the 2005-2007 biennium, two hundred thousand dollars ($200,000) of the funds transferred from the Special Reserve Account 24172 shall be used by the Office of the State Controller for data processing, debt collection, or e-commerce costs.

SECTION 25.1.(c) All funds available in the Special Reserve Account 24172 on July 1 of each year of the 2005-2007 biennium are transferred to the General Fund on that date.

SECTION 25.1.(d) Any unobligated funds in the Special Reserve Account 24172 that are realized above the allowance in subsection (b) of this section are subject to appropriation by the General Assembly in the 2006 Regular Session of the 2005 General Assembly.

SECTION 25.1.(e) The State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into the Special Reserve Account 24172 and the disbursement of that revenue.

PART XXVI. OFFICE OF STATE PERSONNEL

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

STUDY CAREER-BANDING/FAIR PAY

SECTION 26.1.(a) Of the funds appropriated to the Department of Administration, the sum of one hundred thousand dollars ($100,000) for the 2005-2006 fiscal year shall be allocated to the Office of State Personnel to conduct a study and to determine whether to implement a career-banding personnel system for all State employee job classifications.

SECTION 26.1.(b) In conducting the study, the Office of State Personnel shall evaluate the following issues:

(1) Inequities and disparities in job classifications with respect to race and gender.

(2) Whether the minimum annual salary for State employees is a livable salary and the impact of inflationary forces on that salary.

(3) Whether there is fair pay for equivalent jobs in State government, including the extent of wage disparities in State government employment between men and women.

(4) Any other matters relating to pay disparities in State government employment.

SECTION 26.1.(c) The Office of State Personnel shall report the findings and recommendations of the study as well as the findings and recommendations on inequities and disparities to the Chairs of the Appropriations Committees of the Senate and the House of Representatives and the Chairs of the Joint Appropriations Subcommittees on General Government by April 1, 2006.

PART XXVII. DEPARTMENT OF THE STATE TREASURER

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

REPORT OF THE STATUS OF THE TECHNOLOGY INFRASTRUCTURE ENHANCEMENTS

SECTION 27.1. The Department of State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees for the Senate and the House of Representatives on the status of the replacement of the multitude of information technology systems with an integrated system for all the retirement plans and other programs administered by the Retirement Systems Division. The Department shall report semiannually by October 1 and April 1 until the enhancements are fully implemented.

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

STAFFING ANALYSIS FOLLOW-UP

SECTION 27.2.(a) The Office of State Budget and Management shall conduct semiannual follow-up analyses to the Staffing Analysis that was completed in April 2003 on the Retirement Systems Division within the Department of State Treasurer by October 1 and April 1 of each year to assure that the staffing levels remain appropriate. The semiannual analyses shall be conducted throughout the implementation of the enhancements to the information technology infrastructure within the Retirement Systems Division that were authorized by this act. The follow-up analyses shall also continue for a reasonable time after the completion of the enhancements to ensure that the staffing levels are adjusted based on the increased efficiency provided by the enhancements.

SECTION 27.2.(b) The Retirement Systems Division shall maintain monthly workload statistics and productivity data for the various functions within the Division. The Department of State Treasurer shall report the workload statistics and productivity data to the Fiscal Research Division and to the Office of State Budget and Management on a quarterly basis.

Requested by: Senators Dorsett, Garrou, Dalton, Hagan

TREASURER REPORT ON STATE INVESTMENT OFFICER POSITION INCENTIVE BONUS

SECTION 27.3. G.S. 147-69.3 is amended by adding a new subsection to read:

"(i1) The State Treasurer shall report the incentive bonus paid to the Chief Investment Officer to the Joint Legislative Commission on Governmental Operations by October 1 of each year."

PART XXVIII. DEPARTMENT OF TRANSPORTATION

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

REMOVE GOV OPS CONSULTATION ON FEDERAL-AID ACTS

SECTION 28.1. G.S. 136-44.2 reads as rewritten:

"**§ 136-44.2. Budget and appropriations.**

The Director of the Budget shall include in the "Current Operations Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, urban, and State parks road systems. The State primary system shall include all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits. The State parks system shall include all State parks roads and parking lots which are not also part of the State highway system.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public

service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. ~~No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first consulted with the Joint Legislative Commission on Governmental Operations.~~ For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Current Operations Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year, the excess shall be used in accordance with this paragraph. The Director of the Budget may allocate part or all of the excess among reserves for access and public roads, for unforeseen events requiring prompt action, or for other urgent needs. The amount not allocated to any of these reserves by the Director of the Budget shall be credited to a reserve for maintenance. The Board of Transportation shall report monthly to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of funds in the maintenance reserve.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars ($100,000) before any other allocations from the appropriations for State maintenance for primary, secondary, and urban road systems are made, based upon the same proportion as is appropriated to each system."

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

TRANSPORTATION SERVICES FOR TRADE SHOWS

SECTION 28.2. The Department of Transportation, from funds available for public transportation in this act, may use up to one million two hundred thousand dollars ($1,200,000) in each year of the biennium for transportation services for annual or semiannual trade shows of international significance. The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee, annually on or before March 1, on the use of these funds.

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

CASH-FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS.

SECTION 28.3.(a) The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 2007-2008	$1,551.1 million
For Fiscal Year 2008-2009	$1,593.0 million
For Fiscal Year 2009-2010	$1,647.9 million
For Fiscal Year 2010-2011	$1,716.1 million

SECTION 28.3.(b) The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 2007-2008	$1,136.9 million
For Fiscal Year 2008-2009	$1,186.4 million
For Fiscal Year 2009-2010	$1,229.6 million
For Fiscal Year 2010-2011	$1,283.2 million

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

SMALL CONSTRUCTION AND CONTINGENCY FUNDS

SECTION 28.4. Of the funds appropriated in this act to the Department of Transportation:

(1) Twenty-one million dollars ($21,000,000) shall be allocated in each fiscal year for small construction projects reviewed and approved by the Division Engineer and the member of the Board of Transportation representing the district in which the project is to be constructed. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for small construction projects.

(2) Fifteen million dollars ($15,000,000) in fiscal year 2005-2006 and fifteen million dollars ($15,000,000) in fiscal year 2006-2007 shall be used statewide for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects, including pedestrian walkways that enhance highway safety. Projects funded pursuant to this subdivision shall be reviewed and approved by the member of the Board of Transportation representing the district in which the project is to be constructed.

None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

These funds are not subject to G.S. 136-44.7.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

USE OF EXCESS OVERWEIGHT/OVERSIZE FEES

SECTION 28.5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-119.1. Use of excess overweight and oversize fees.**

Funds generated by overweight and oversize permit fees in excess of the cost of administering the program, as determined pursuant to G.S. 20-119(e), shall be used for highway and bridge maintenance required as a result of damages caused from overweight/oversize loads."

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

FUNDS FOR UNSAFE OR OBSOLETE FIELD FACILITIES

SECTION 28.6. Of the funds appropriated in this act to the Department of Transportation, the Department may use funds not to exceed seventy-five hundredths of one percent (.75%) for maintenance and construction programs for major repair, renovation, or replacement of its field facilities that fail to meet safety standards or that are obsolete for current or future use. Prior to expending these funds, the Department shall submit its proposed budget for these expenditures to the Senate Appropriations Subcommittee on Transportation, the House of Representatives Appropriations

Subcommittee on Transportation, and the Joint Legislative Transportation Oversight Committee each year.

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

STATE USE OF NORTH CAROLINA RAILROAD DIVIDENDS

SECTION 28.7.(a) G.S. 124-5.1 is repealed.

SECTION 28.7.(b) The Department of Transportation shall use the annual dividends received by the State from its ownership of the stock of the North Carolina Railroad Company in each year of the biennium for track and signal improvements for passenger service, in accordance with G.S. 136-16.6(b)(1).

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

ANALYSIS AND APPROVAL OF RULES, POLICIES, OR GUIDELINES AFFECTING DEPARTMENT OF TRANSPORTATION PROJECTS

SECTION 28.8.(a) G.S. 150B-21.4 is amended by adding a new subsection to read:

"(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1)."

SECTION 28.8.(b) Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-44.7C. Analysis and approval of Department of Transportation environmental policies or guidelines affecting transportation projects.**

(a) Analysis Required. – The Department of Transportation shall conduct an analysis of any proposed environmental policy or guideline adopted by the Department that affects Department of Transportation projects to determine if the policy or guideline will result in an increased cost to Department of Transportation projects.

(b) Report of Analysis; Approval of Policy or Guideline Required. – The analysis of a proposed policy or guideline required by subsection (a) of this section shall be reported to the Board of Transportation at least 30 days prior to the proposed effective date of the policy or guideline, and shall not go into effect until approved by the Board of Transportation."

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

DEPARTMENT OF TRANSPORTATION PRODUCTIVITY PILOT PROGRAMS

SECTION 28.9.(a) The Department of Transportation may continue the productivity pilot programs in the road oil and bridge inspection units implemented under Section 29.3 of S.L. 2003-284.

SECTION 28.9.(b) The Department of Transportation may establish two additional pilot programs to test incentive pay for employees as a means of increasing efficiency and productivity.

One of the new pilot programs shall involve the Pavement Markings Unit. The other pilot program may be selected by the Department of Transportation. Up to

one-quarter of one percent (.25%) of the budget allocation for these programs may be used to provide employee incentive payments.

Incentive payments shall be based on quantifiable measures and production schedules determined prior to the implementation of the pilot programs. Pilot programs implemented under this subsection shall last no more than two years.

The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on the pilot programs developed under this subsection at least 30 days prior to their implementation.

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

DEPARTMENT OF TRANSPORTATION PERFORMANCE-BASED CONTRACTS

SECTION 28.10. The Department of Transportation may implement up to two performance-based contracts for routine maintenance and operations, exclusive of resurfacing. Selection of firms to perform this work shall be made using a best-value procurement process.

Prior to any advertisement for a proposed project the Department shall report to the Joint Legislative Transportation Oversight Committee on the contractor selection criteria to be used.

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

DEPARTMENT OF TRANSPORTATION REORGANIZATION

SECTION 28.11.(a) The Secretary of Transportation shall transfer the Program Development branch from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the Chief Financial Officer of the Department of Transportation.

SECTION 28.11.(b) The Secretary of Transportation shall transfer the Transportation Planning branch from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the State Highway Administrator.

SECTION 28.11.(c) The Secretary of Transportation shall transfer the Project Development and Environmental Analysis branch from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the State Highway Administrator.

SECTION 28.11.(d) The position of Deputy Secretary for Environmental, Planning and Local Government Affairs shall be eliminated.

SECTION 28.11.(e) The position of Special Assistant for Environmental, Planning and Local Government Affairs shall be eliminated.

SECTION 28.11.(f) All vacant positions in the Project Development and Environmental Analysis Branch as of April 15, 2005, shall be eliminated except for any vacant position associated with an employee on an approved leave without pay status. Once these positions are eliminated, the Department of Transportation shall not reinstate these positions without the authorization of the General Assembly.

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

CONTINUING AVIATION APPROPRIATIONS

SECTION 28.12. G.S. 136-16.4 reads as rewritten:

"**§ 136-16.4. Continuing aviation appropriations.**

~~There is appropriated from the General Fund to the Department of Transportation the sum of eight million four hundred thousand dollars ($8,400,000) for fiscal year 1993-94 and the sum of eight million nine hundred thousand dollars ($8,900,000) for fiscal year 1994-95.~~ There is appropriated from the Highway Fund to the Department of Transportation the sum of eleven million two hundred eighty-four thousand one hundred ninety-eight dollars ($11,284,198) for fiscal year 2005-2006 and the sum of twelve million nine hundred forty-five thousand sixty-six dollars ($12,945,066) for fiscal year 2006-2007. Each subsequent fiscal year, there is appropriated from the

~~General Fund~~ Highway Fund to the Department of Transportation the amount appropriated by this section to the Department of Transportation for the preceding fiscal year, plus or minus the percentage of the amount by which the collection of State sales and use taxes increased or decreased during the preceding fiscal year. The Department of Transportation may use funds appropriated under this section only for aviation purposes."

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

TRANSITIONAL TRAINING FOR MOTOR CARRIER ENFORCEMENT OFFICERS

SECTION 28.13.(a) The North Carolina State Highway Patrol is authorized to complete transitional training for 149 Motor Carrier Enforcement Officers to become State Troopers. This transition from Motor Carrier Enforcement Officer to State Trooper shall not relieve the State Highway Patrol of the responsibility of ensuring that all Motor Carrier Enforcement Officer positions and any positions that are transitioned to State Trooper are dedicated to motor carrier enforcement duties including, but not limited to, permanent weigh station operations, motor carrier inspections, and secondary road checking stations and enforcement.

SECTION 28.13.(b) Any Motor Carrier Enforcement Officer position that is not transitioned or approved for transition by section (a) of this Special Provision shall not be transitioned to the status of a State Trooper.

SECTION 28.13.(c) Of the 59 vacant sworn Motor Carrier Enforcement Officer positions as of April 28, 2005, all lapsed salary and benefits in the amount of two million five hundred forty-eight thousand nine hundred eighty-three dollars ($2,548,983) shall not be spent nor shall any position currently vacant be reclassified by any agency of the State.

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

DEPARTMENT OF TRANSPORTATION AUTHORITY TO PROVIDE WAY-FINDING SIGNS FOR THE ROANOKE VOYAGES CORRIDOR COMMISSION

SECTION 28.14. Chapter 1194 of the 1981 Session Laws is amended by adding a new section that reads:

"Sec. 7.2. At the request of the Roanoke Voyages Corridor Commission, the Department of Transportation is authorized to manufacture and install, on Roanoke Island and up to 30 miles off the island, way-finding signs that, by color, design, and lettering, do not comply with normal transportation signage standards. These signs shall be used to identify and give directions to historic, educational, and cultural attractions on the island. The Department of Transportation shall not erect any signage that would be impracticable, unfeasible, or that would result in an unsafe or hazardous condition."

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

REVENUE TAX EVASION PROJECT

SECTION 28.15. Of funds appropriated to Highway Trust Fund Administration, the sum of five hundred forty-eight thousand six hundred thirty-three dollars ($548,633) for the 2005-2006 fiscal year and the sum of four hundred seventy thousand seven hundred one dollars ($470,701) for the 2006-2007 fiscal year shall be used to establish and support nine positions in the Department of Revenue, Motor Fuels Tax Division, to fully implement the Revenue Tax Evasion Project.

Requested by: Senators Jenkins, Snow, Garrou, Dalton, Hagan

VISITOR CENTER FUNDS

SECTION 28.16. G.S. 20-79.7(c)(2) reads as rewritten:

"(c) Use of Funds in Special Registration Plate Account. –

...

(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this subsection, there is annually appropriated from the Special Registration Plate Account the sum of ~~nine hundred thousand dollars ($900,000)~~ one million dollars ($1,000,000) to provide operating assistance for the Visitor Centers:

a. on U.S. Highway 17 in Camden County, ($100,000);
b. on U.S. Highway 17 in Brunswick County, ($100,000);
c. on U.S. Highway 441 in Macon County, ($100,000);
d. in the Town of Boone, Watauga County, ($100,000);
e. on U.S. Highway 29 in Caswell County, ($100,000);
f. on U.S. Highway 70 in Carteret County, ($100,000);
g. on U.S. Highway 64 in Tyrrell County, ($100,000);
h. at the intersection of U.S. Highway 701 and N.C. 904 in Columbus County, ($100,000); ~~and~~
i. on U.S. Highway 221 in McDowell County, ~~($100,000).~~($100,000); and
j. on Staton Road in Transylvania County, ($100,000)."

Requested by: Senators Jenkins, Garrou, Dalton, Hagan

MODIFY GLOBAL TRANSPARK DEBT

SECTION 28.17. G.S. 147-69.2(b)(11) reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

...

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than ~~July 1, 2005.~~ October 1, 2007. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision."

Requested by: Senator Jenkins

BEAVER DAMAGE CONTROL PROGRAM FUNDS

SECTION 28.18. Of funds available to the Department of Transportation for maintenance, the sum of nine hundred thousand dollars ($900,000) for the 2005-2006 fiscal year and the sum of nine hundred thousand dollars ($900,000) for the 2006-2007 fiscal year shall be used to provide the State share necessary to support the beaver damage control program established in G.S. 113-291.10, provided the sum of at least twenty-five thousand dollars ($25,000) in federal funds is available each fiscal year of the biennium to provide the federal share.

PART XXIX. SALARIES AND EMPLOYEE BENEFITS

Requested by: Senators Garrou, Dalton, Hagan

GOVERNOR AND COUNCIL OF STATE/SALARY INCREASES

SECTION 29.1.(a) Effective July 1, 2005, G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred twenty-one thousand three hundred ninety-one dollars ($121,391)~~one hundred twenty-three thousand eight hundred nineteen dollars ($123,819) annually, payable monthly."

SECTION 29.1.(a1) Effective July 1, 2006, G.S. 147-11(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred twenty-three thousand eight hundred nineteen dollars ($123,819)~~ one hundred twenty-seven thousand five hundred thirty-three dollars ($127,533) annually, payable monthly."

SECTION 29.1.(b) Effective July 1, 2005, the annual salaries for the members of the Council of State, payable monthly, for the 2005-2006 and 2006-2007 fiscal years are:

Council of State	Annual Salary 2005-2006	Annual Salary 2006-2007
Lieutenant Governor	$109,279	$112,557
Attorney General	109,279	112,557
Secretary of State	109,279	112,557
State Treasurer	109,279	112,557
State Auditor	109,279	112,557
Superintendent of Public Instruction	109,279	112,557
Agriculture Commissioner	109,279	112,557
Insurance Commissioner	109,279	112,557
Labor Commissioner	109,279	112,557

Requested by: Senators Garrou, Dalton, Hagan

NONELECTED DEPARTMENT HEADS/SALARY INCREASES

SECTION 29.2. In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the 2005-2006 and 2006-2007 fiscal years are:

Council of State	Annual Salary 2005-2006	Annual Salary 2006-2007
Secretary of Administration	$106,765	$109,968
Secretary of Correction	106,765	109,968
Secretary of Crime Control and Public Safety	106,765	109,968
Secretary of Cultural Resources	106,765	109,968
Secretary of Commerce	106,765	109,968
Secretary of Environment and Natural Resources	106,765	109,968
Secretary of Health and Human Services	106,765	109,968
Secretary of Juvenile Justice and Delinquency Prevention	106,765	109,968
Secretary of Revenue	106,765	109,968
Secretary of Transportation	106,765	109,968

Requested by: Senators Garrou, Dalton, Hagan

CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES

SECTION 29.3. The annual salaries, payable monthly, for the 2005-2006 and 2006-2007 fiscal years for the following Executive Branch officials are:

Executive Branch Officials	Annual Salary 2005-2006	Annual Salary 2006-2007

Chairman, Alcoholic Beverage Control Commission	$97,175	$100,091
State Controller	135,997	140,076
Commissioner of Motor Vehicles	97,175	100,091
Commissioner of Banks	109,279	112,557
Chairman, Employment Security Commission	135,824	139,899
State Personnel Director	106,765	109,968
Chairman, Parole Commission	88,733	91,395
Members of the Parole Commission	40,960	42,189
Chairman, Utilities Commission	121,701	125,352
Members of the Utilities Commission	109,279	112,557
Executive Director, Agency for Public Telecommunications	81,921	84,379
Director, Museum of Art	99,573	102,561
Executive Director, North Carolina Agricultural Finance Authority	94,587	97,424
State Chief Information Officer	135,915	139,992

Requested by: Senators Garrou, Dalton, Hagan

JUDICIAL BRANCH OFFICIALS/SALARY INCREASES

SECTION 29.4.(a) The annual salaries, payable monthly, for specified Judicial Branch officials for the 2005-2006 and 2006-2007 fiscal years are:

Judicial Branch Officials	Annual Salary 2005-2006	Annual Salary 2006-2007
Chief Justice, Supreme Court	$123,819	$127,533
Associate Justice, Supreme Court	120,583	124,201
Chief Judge, Court of Appeals	117,568	121,095
Judge, Court of Appeals	115,559	119,026
Judge, Senior Regular Resident Superior Court	112,419	115,792
Judge, Superior Court	109,279	112,557
Chief Judge, District Court	99,231	102,208
Judge, District Court	96,091	98,974
Administrative Officer of the Courts	112,419	115,792
Assistant Administrative Officer of the Courts	102,684	105,765

SECTION 29.4.(b) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts or the Commission on Indigent Defense Services, respectively, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed sixty-two thousand nine hundred thirty dollars ($62,930), and the minimum salary of any assistant district attorney or assistant public defender is at least thirty-two thousand six hundred seventy-six dollars ($32,676), effective July 1, 2005.

SECTION 29.4.(b1) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts or the Commission on Indigent Defense Services, respectively, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed sixty-four thousand eight hundred eighteen dollars ($64,818), and the minimum salary of any assistant district attorney or assistant public defender is at least thirty-three thousand six hundred fifty-six dollars ($33,656), effective July 1, 2006.

SECTION 29.4.(c) Effective July 1, 2005, the annual salaries of permanent, full-time employees of the Judicial Department whose salaries are not itemized in this

act shall be increased by the greater of five hundred dollars ($500.00) or two percent (2%).

SECTION 29.4.(c1) Effective July 1, 2006, the annual salaries of permanent, full-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased three percent (3%).

SECTION 29.4.(d) Effective July 1, 2005, the annual salaries of permanent, part-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by pro rata amounts of five hundred dollars ($500.00) or two percent (2%), whichever is greater.

SECTION 29.4.(d1) Effective July 1, 2006, the annual salaries of permanent, part-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by three percent (3%).

Requested by: Senators Garrou, Dalton, Hagan

CLERK OF SUPERIOR COURT/SALARY INCREASES

SECTION 29.5.(a) Effective July 1, 2005, G.S. 7A-101(a) reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county as determined in subsection (a1) of this section, according to the following schedule:

Population	Annual Salary
Less than 100,000	~~$71,659~~ $73,092
100,000 to 149,999	~~80,413~~ 82,021
150,000 to 249,999	~~89,169~~ 90,952
250,000 and above	~~97,925.~~ 99,884.

The salary schedule in this subsection is intended to represent the following approximate percentage of the salary of a chief district court judge:

Population	Annual Salary
Less than 100,000	73%
100,000 to 149,999	82%
150,000 to 249,999	91%
250,000 and above	100%.

When a county changes from one population group to another, the salary of the clerk shall be changed, on July 1 of the fiscal year for which the change is reported, to the salary appropriate for the new population group, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

SECTION 29.5.(b) Effective July 1, 2006, G.S. 7A-101(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county as determined in subsection (a1) of this section, according to the following schedule:

Population	Annual Salary
Less than 100,000	~~$73,092~~ $75,285
100,000 to 149,999	~~82,021~~ 84,482
150,000 to 249,999	~~90,952~~ 93,681
250,000 and above	~~99,884.~~ 102,880.

The salary schedule in this subsection is intended to represent the following approximate percentage of the salary of a chief district court judge:

Population	Annual Salary
Less than 100,000	73%
100,000 to 149,999	82%
150,000 to 249,999	91%

250,000 and above 100%.

When a county changes from one population group to another, the salary of the clerk shall be changed, on July 1 of the fiscal year for which the change is reported, to the salary appropriate for the new population group, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

Requested by: Senators Garrou, Dalton, Hagan

ASSISTANT AND DEPUTY CLERKS OF COURT/SALARY INCREASES

SECTION 29.6.(a) Effective July 1, 2005, G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper	Annual Salary	
Minimum	~~$27,515~~	$28,065
Maximum	~~47,626~~	48,579

Deputy Clerks	Annual Salary	
Minimum	~~$23,565~~	$24,065
Maximum	~~36,934.~~	37,673."

SECTION 29.6.(b) Effective July 1, 2006, G.S. 7A-102(c1), as amended by subsection (a) of this section, reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper	Annual Salary	
Minimum	~~$28,065~~	$28,907
Maximum	~~48,579~~	50,036

Deputy Clerks	Annual Salary	
Minimum	~~$24,065~~	$24,787
Maximum	~~37,673.~~	38,803."

Requested by: Senators Garrou, Dalton, Hagan

MAGISTRATES' SALARY INCREASES

SECTION 29.7.(a) Effective July 1, 2005, G.S. 7A-171.1(a)(1) reads as rewritten:

"(1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.

Table of Salaries of Full-Time Magistrates

Step Level	Annual Salary	
Entry Rate	~~$27,889~~	$28,477
Step 1	~~30,525~~	31,136
Step 2	~~33,393~~	34,061

Step 3	~~36,523~~	37,253
Step 4	~~39,952~~	40,751
Step 5	~~43,789~~	44,665
Step 6	~~48,036.~~	48,997."

SECTION 29.7.(a1) Effective July 1, 2006, G.S. 7A-171.1(a)(1), as amended by subsection (a) of this section, reads as rewritten:

"(1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.

Table of Salaries of Full-Time Magistrates

Step Level	Annual Salary	
Entry Rate	~~$28,477~~	$29,300
Step 1	~~31,136~~	32,070
Step 2	~~34,061~~	35,083
Step 3	~~37,253~~	38,371
Step 4	~~40,751~~	41,974
Step 5	~~44,665~~	46,005
Step 6	~~48,997.~~	50,467."

SECTION 29.7.(b) Effective July 1, 2005, G.S. 7A-171.1(a1)(1) reads as rewritten:

"(1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

Less than 1 year of service	~~$22,325~~	$22,825
1 or more but less than 3 years of service	~~23,389~~	23,889
3 or more but less than 5 years of service	~~25,530.~~	26,041.

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a)."

SECTION 29.7.(b1) Effective July 1, 2006, G.S. 7A-171.1(a1)(1), as amended by subsection (b) of this section, reads as rewritten:

"(1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

Less than 1 year of service	~~$22,825~~	$23,510
1 or more but less than 3 years of service	~~23,889~~	24,606
3 or more but less than 5 years of service	~~26,041.~~	26,822.

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a)."

Requested by: Senators Garrou, Dalton, Hagan

GENERAL ASSEMBLY PRINCIPAL CLERKS/SALARY INCREASES

SECTION 29.8.(a) Effective July 1, 2005, G.S. 120-37(c), reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~ninety-thousand five hundred fourteen dollars ($90,514)~~ninety-two

thousand three hundred twenty-four dollars ($92,324) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

SECTION 29.8.(b) Effective July 1, 2006, G.S. 120-37(c), as amended by subsection (a) of this section, reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~ninety-two thousand three hundred twenty-four dollars ($92,324)~~ ninety-five thousand ninety-four dollars ($95,094) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

Requested by: Senators Garrou, Dalton, Hagan

SERGEANTS-AT-ARMS AND READING CLERKS

SECTION 29.9.(a) Effective July 1, 2005, G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~three hundred eleven dollars ($311.00)~~three hundred twenty-one dollars ($321.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

SECTION 29.9.(b) Effective July 1, 2006, G.S. 120-37(b), as amended by subsection (a) of this section, reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~three hundred twenty-one dollars ($321.00)~~ three hundred thirty dollars ($330.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

Requested by: Senators Garrou, Dalton, Hagan

LEGISLATIVE EMPLOYEES

SECTION 29.10.(a) Effective July 1, 2005, the Legislative Services Officer shall increase the salaries of nonelected employees of the General Assembly in effect June 30, 2005, by the greater of five hundred dollars ($500.00) or two percent (2%). Nothing in this act limits any of the provisions of G.S. 120-32.

SECTION 29.10.(b) Effective July 1, 2006, the Legislative Services Officer shall increase the salaries of nonelected employees of the General Assembly in effect June 30, 2006, by three percent (3%). Nothing in this act limits any of the provisions of G.S. 120-32.

Requested by: Senators Garrou, Dalton, Hagan

COMMUNITY COLLEGE PERSONNEL/SALARY INCREASES

SECTION 29.11.(a) The Director of the Budget shall transfer from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, funds to the North Carolina Community Colleges System Office necessary to provide an annual salary increase of the greater of five hundred dollars ($500.00) or two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all community college employees supported by State funds.

SECTION 29.11.(b) The Director of the Budget shall transfer from the Reserve for Compensation Increases, created in this act for fiscal year 2006-2007, funds to the North Carolina Community Colleges System Office necessary to provide an annual salary increase of three percent (3%), including funds for the employer's retirement and social security contributions, commencing July 1, 2006, for all community college employees supported by State funds.

Requested by: Senators Garrou, Dalton, Hagan

UNIVERSITY OF NORTH CAROLINA SYSTEM/EPA COMPENSATION

SECTION 29.12.(a) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, to provide an average annual salary increase of the greater of five hundred dollars ($500.00) or two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). The percentage annual salary increase of two percent (2%) authorized by this section shall be made on an aggregated average basis, and these funds shall be allocated to individuals according to the rules adopted by the Board of Governors of The University of North Carolina or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

SECTION 29.12.(a1) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal year 2006-2007, to provide an average annual salary increase of three percent (3%), including funds for the employer's retirement and social security contributions, commencing July 1, 2006, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Governors of The University of North Carolina or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

SECTION 29.12.(b) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, to provide an average annual salary increase of two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all teaching employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Trustees of the North Carolina School of Science and Mathematics and

may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

SECTION 29.12.(b1) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal year 2006-2007, to provide an average annual salary increase of three percent (3%), including funds for the employer's retirement and social security contributions, commencing July 1, 2006, for all teaching employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Trustees of the North Carolina School of Science and Mathematics and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

Requested by: Senators Garrou, Dalton, Hagan

MOST STATE EMPLOYEES/SALARY INCREASES

SECTION 29.13.(a) The salaries in effect June 30, 2005, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund shall be increased, effective July 1, 2005, by the greater of five hundred dollars ($500.00) or two percent (2%), unless otherwise provided by this act. The salaries in effect June 30, 2006, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund shall be increased, effective July 1, 2006, by three percent (3%), unless otherwise provided by this act.

SECTION 29.13.(b) Except as otherwise provided in this act, the salaries in effect June 30, 2005, for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by the greater of five hundred dollars ($500.00) or two percent (2%), effective July 1, 2005, unless otherwise provided by this act. Except as otherwise provided in this act, the salaries in effect June 30, 2006, for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by three percent (3%), effective July 1, 2006, unless otherwise provided by this act.

SECTION 29.13.(c) The salaries in effect June 30, 2005, for all permanent part-time State employees shall be increased, effective July 1, 2005, by pro rata amounts of five hundred dollars ($500.00) or two percent (2%), whichever is greater. The salaries in effect for June 30, 2006, for all permanent part-time State employees shall be increased, effective July 1, 2006, by three percent (3%).

SECTION 29.13.(d) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow a salary increase, effective July 1, 2005, and July 1, 2006, in accordance with subsection (a), (b), or (c) of this section, including funds for the employer's retirement and social security contributions, for the permanent full-time and part-time employees of the agency, provided the employing agency elects to make available the necessary funds.

SECTION 29.13.(e) Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts of the greater of the five hundred dollar ($500.00) or two percent (2%) increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 2005. Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable

basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by the three percent (3%) increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 2006.

Requested by: Senators Garrou, Dalton, Hagan

ALL STATE-SUPPORTED PERSONNEL/SALARY INCREASES

SECTION 29.14.(a) Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

SECTION 29.14.(b) The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

SECTION 29.14.(c) The salary increases provided in this act to be effective July 1, 2005, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, or whose last workday is prior to July 1, 2005. The salary increases provided in this act to be effective July 1, 2006, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, or whose last workday is prior to July 1, 2006.

Payroll checks issued to employees after July 1, 2005, which represent payment of services provided prior to July 1, 2005, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina. Payroll checks issued to employees after July 1, 2006, which represent payment of services provided prior to July 1, 2006, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

SECTION 29.14.(d) The Director of the Budget shall transfer from the Reserve for Compensation Increases in this act for fiscal years 2005-2006 and 2006-2007 all funds necessary for the salary increases provided by this act, including funds for the employer's retirement and social security contributions.

SECTION 29.14.(e) Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

SECTION 29.14.(f) For fiscal year 2005-2006, permanent full-time employees who work a nine-, ten-, or eleven-month work year schedule shall receive the five hundred dollars ($500.00) or two percent (2%) annual increase provided by this act, whichever is greater.

For fiscal year 2006-2007, permanent full-time employees who work a nine-, ten-, or eleven-month work year schedule shall receive the three percent (3%) annual increase provided by this act.

Requested by: Senators Garrou, Dalton, Hagan

SALARY ADJUSTMENT FUND

SECTION 29.15.(a) Any remaining appropriations in the Reserve for Compensation Increases authorized for employee salary increases not required for that purpose may be used to supplement the Salary Adjustment Fund.

SECTION 29.15.(b) Funds appropriated or otherwise transferred to the Salary Adjustment Fund by this act or any other provision of law shall be used to fund agency requests for the following purposes:

(1) Salary range revisions to provide competitive salary rates for affected job classifications in response to changes in labor market salary rates

as documented through data collection and analysis according to accepted human resource professional practices and standards.

(2) Reallocation of positions to higher-level job classifications to compensate employees for more difficult duties at competitive salary rates as documented through data collection and analysis according to accepted human resource professional practices and standards.

Priority funding shall be given to those salary range revisions previously approved by the State Personnel Commission and reallocations previously approved by the Office of State Personnel or designee.

SECTION 29.15.(c) The Director of the Budget shall consult with the Joint Legislative Commission on Governmental Operations prior to transferring any salary adjustment funds for any State agency.

SECTION 29.15.(d) The Director of the Budget may transfer to General Fund budget codes from the General Fund Salary Adjustment Fund and may transfer to Highway Fund budget codes from the Highway Fund Salary Adjustment Fund amounts required to support salary adjustments authorized by this section.

SECTION 29.15.(e) The Judicial Department is eligible for the funding authorized in subsection (a) of this section.

Requested by: Senators Garrou, Dalton, Hagan

TEMPORARY SALES TAX TRANSFER FOR WILDLIFE RESOURCES COMMISSION SALARY INCREASES

SECTION 29.16. For the 2005-2006 and 2006-2007 fiscal years, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund to fund the cost of any legislative salary increase for employees of the Wildlife Resources Commission.

Requested by: Senators Garrou, Dalton, Hagan

STATE AGENCY TEACHERS' COMPENSATION

SECTION 29.17. Funds in the Reserve for Compensation Increases shall be used for experience step increases for employees of schools operated by the Department of Health and Human Services, the Department of Correction, or the Department of Juvenile Justice and Delinquency Prevention, who are paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.

Requested by: Senators Garrou, Dalton, Hagan, Dorsett

STATE GOVERNMENT EMPLOYMENT FAIR MINIMUM WAGE

SECTION 29.18.(a) All permanent, full-time employees subject to the State Personnel Act shall be paid a minimum salary of at least twenty thousand one hundred twelve dollars ($20,112) per year. Permanent, full-time employees subject to the State Personnel Act working on a schedule requiring less than 12 months' service per year shall be paid the minimum salary pro rata.

SECTION 29.18.(b) Of the funds appropriated in this act from the General Fund to the Reserve for Compensation Increases, the sum of one hundred fifty-six thousand dollars ($156,000) for the 2005-2006 fiscal year and the sum of one hundred fifty-six thousand dollars ($156,000) for the 2006-2007 fiscal year shall be used to provide a fairer minimum wage to employees subject to the State Personnel Act.

SECTION 29.18.(c) In order to lessen salary compression and potential pay inequities, State agencies, departments, and institutions, and The University of North Carolina may, when increasing salaries pursuant to this section, make adjustments to the salaries of supervisors and other employees who have, when considering classification, significantly more experience and length of service compared to the employees

receiving this pay increase. These salary compression and pay equity determinations shall be made in consultation with the Office of State Personnel.

Of the funds appropriated in this act from the General Fund to the Reserve for Compensation Increases, the Office of State Budget and Management shall use funds in an amount not to exceed seven hundred fifty thousand dollars ($750,000) for the 2005-2006 fiscal year and not to exceed seven hundred fifty thousand dollars ($750,000) for the 2006-2007 fiscal year to implement this subsection. The Director of the Budget shall consult with the Joint Legislative Commission on Governmental Operations prior to the transfer of any funds pursuant to this subsection.

SECTION 29.18.(d) The fair minimum wage salary adjustment provided by this section shall be calculated and awarded after any across-the-board salary increases authorized by this act.

Requested by: Senators Garrou, Dalton, Hagan

SALARY SUPPLEMENTS FOR PERSONNEL EMPLOYED IN CERTAIN STATE AGENCIES

SECTION 29.19.(a) G.S. 143B-146.21 is amended by adding the following new subsection to read:

"(e) The Secretary of Health and Human Services, in consultation with the Office of State Personnel, shall set the salary supplement paid to personnel who are employed in the programs operated by the Department of Health and Human Services and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the LEA where the job site is located. Nothing in this subsection shall be construed to include "merit pay" under the term "salary supplement"."

SECTION 29.19.(b) G.S. 143B-516(b) is amended by adding the following new subdivision to read:

"(b) The Secretary shall have the following powers and duties:

...

(17a) Set, in consultation with the Office of State Personnel, the salary supplement paid to personnel who are employed at juvenile facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the LEA where the job site is located. Nothing in this subdivision shall be construed to include "merit pay" under the term "salary supplement".

...."

SECTION 29.19.(c) G.S. 148-22.1 is amended by adding the following new subsection to read:

"§ 148-22.1. Educational facilities and programs for selected inmates.

...

(c) The Secretary of Correction, in consultation with the Office of State Personnel, shall set the salary supplement paid to personnel who are Division of Prison employees that serve in youth facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the LEA where the job site is located. Nothing in this subsection shall be construed to include "merit pay" under the term "salary supplement"."

Requested by: Senators Garrou, Dalton, Hagan, Kerr, Hoyle, Berger of Franklin

INDUSTRIAL COMMISSION IN-RANGE SALARY ADJUSTMENTS

SECTION 29.20. Of the revenue generated by implementing a fee for the required review of Form 21 Agreements, the Industrial Commission may use up to one hundred seventy-one thousand nine hundred dollars ($171,900) in fiscal years

2005-2006 and 2006-2007 to provide in-range salary adjustments for Industrial Commission staff.

Requested by: Senators Garrou, Dalton, Hagan

COASTAL MANAGEMENT DIVISION SALARY INCREASES

SECTION 29.21. The Department of Environment and Natural Resources is authorized to, and shall, provide to the employees of the Division of Coastal Management an increase in annual salary of five percent (5%). This increase shall be in addition to any other increase authorized by this act.

Requested by: Senators Garrou, Dalton, Hagan, Kerr, Albertson

NCSU SALARY INCREASES FOR AGRICULTURAL PROGRAM EMPLOYEES

SECTION 29.22. Of the funds appropriated in this act to the Board of Governors of The University of North Carolina, the sum of two million dollars ($2,000,000) for the 2005-2006 fiscal year and the sum of two million dollars ($2,000,000) for the 2006-2007 fiscal year shall be used to support salary increases for Agricultural Program employees of North Carolina State University who are exempt from the State Personnel Act. These funds shall be allocated to individuals according to rules adopted by the Board of Governors of The University of North Carolina and may not be used for any other purpose other than for salary increases and the necessary employer contributions provided by this section.

Requested by: Senators Garrou, Dalton, Hagan, Clodfelter

LONGEVITY SERVICE DEFINITION

SECTION 29.23.(a) G.S. 7A-10(c) reads as rewritten:

"(c) In lieu of merit and other increment raises paid to regular State employees, the Chief Justice and each of the Associate Justices shall receive as longevity pay an annual amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as a justice or judge of the General Court of Justice or as a member of the Utilities Commission. Service shall also mean service as a district attorney or as a clerk of superior ~~court.~~court, or service as a member of the General Assembly."

SECTION 29.23.(b) G.S. 7A-18(b) reads as rewritten:

"(b) In lieu of merit and other increment raises paid to regular State employees, a judge of the Court of Appeals shall receive as longevity pay an annual amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as a justice or judge of the General Court of Justice or as a member of the Utilities Commission. Service shall also mean service as a district attorney or as a clerk of superior ~~court.~~court, or service as a member of the General Assembly."

SECTION 29.23.(c) G.S. 7A-44(b) reads as rewritten:

"(b) In lieu of merit and other increment raises paid to regular State employees, a judge of the superior court, regular or special, shall receive as longevity pay an annual amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as a justice or judge of the General Court of

Justice or as a member of the Utilities Commission or as director or assistant director of the Administrative Office of the Courts. Service shall also mean service as a district attorney or as a clerk of superior ~~court.~~court, or service as a member of the General Assembly."

SECTION 29.23.(d) G.S. 7A-144(b) reads as rewritten:

"(b) Notwithstanding merit, longevity and other increment raises paid to regular State employees, a judge of the district court shall receive as longevity pay an annual amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as a justice or judge of the General Court of Justice or as a member of the Utilities Commission or as director or assistant director of the Administrative Office of the Courts. Service shall also mean service as a district attorney or as a clerk of superior ~~court.~~ court, or service as a member of the General Assembly."

Requested by: Senators Garrou, Dalton, Hagan

SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 29.24.(a) Required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income benefits.

SECTION 29.24.(b) Effective July 1, 2005, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2005-2006 fiscal year are: (i) six and eighty-three hundredths percent (6.83%) – Teachers and State Employees; (ii) eleven and eighty-three hundredths percent (11.83%) – State Law Enforcement Officers; (iii) eleven and sixteen hundredths percent (11.16%) – University Employees' Optional Retirement System; (iv) eleven and sixteen hundredths percent (11.16%) – Community College Optional Retirement Program; (v) sixteen and thirty-nine hundredths percent (16.39%) – Consolidated Judicial Retirement System; and (vi) three and eight-tenths percent (3.8%) – Legislative Retirement System. Each of the foregoing contribution rates includes three and eight-tenths percent (3.8%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 29.24.(c) Effective July 1, 2006, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2006-2007 fiscal year are: (i) six and eighty-three hundredths percent (6.83%) – Teachers and State Employees; (ii) eleven and eighty-three hundredths percent (11.83%) – State Law Enforcement Officers; (iii) eleven and sixteen hundredths percent (11.16%) – University Employees' Optional Retirement System; (iv) eleven and

sixteen hundredths percent (11.16%) – Community College Optional Retirement Program; (v) sixteen and thirty-nine hundredths percent (16.39%) – Consolidated Judicial Retirement System; and (vi) three and eight-tenths percent (3.8%) – Legislative Retirement System. Each of the foregoing contribution rates includes three and eight-tenths percent (3.8%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 29.24.(d) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2005-2006 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare-eligible employees and retirees – two thousand nine hundred ten dollars ($2,910) and (ii) non-Medicare-eligible employees and retirees – three thousand eight hundred twenty-two dollars ($3,822).

SECTION 29.24.(e) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2006-2007 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare-eligible employees and retirees – three thousand ten dollars ($3,010) and (ii) non-Medicare-eligible employees and retirees – three thousand nine hundred fifty-four dollars ($3,954).

Requested by: Senators Garrou, Dalton, Hagan

PROVIDE COST-OF-LIVING INCREASES FOR RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, THE LOCAL RETIREMENT SYSTEM, AND THE LEGISLATIVE RETIREMENT SYSTEM

SECTION 29.25.(a) G.S. 135-5 is amended by adding a new subsection to read:

"(nnn) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005."

SECTION 29.25.(b) G.S. 135-65 is amended by adding a new subsection to read:

"(z) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005."

SECTION 29.25.(c) G.S. 120-4.22A is amended by adding a new subsection to read:

"(t) In accordance with subsection (a) of this section, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2005, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement

allowance to or on account of beneficiaries whose retirement commenced after January 1, 2005, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2005, and June 30, 2005."

SECTION 29.25.(d) G.S. 128-27 is amended by adding a new subsection to read:

"(ggg) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005."

SECTION 29.25.(e) It is the intent of the General Assembly to provide a cost-of-living increase, effective July 1, 2006, to retirees of the Teachers' and State Employees' Retirement System, the Judicial Retirement System, the Local Governmental Employees' Retirement System, and the Legislative Retirement System that is comparable to the increases given to State employees in this act, subject to available actuarial gains within each system.

Requested by: Senators Hoyle, Garrou, Dalton, Hagan, Kerr, Malone, Rand, Snow, Swindell, Thomas, Weinstein

INCREASE THE MONTHLY PENSION FOR MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND

SECTION 29.26. G.S. 58-86-55 reads as rewritten:

"§ 58-86-55. Monthly pensions upon retirement.

Any member who has served 20 years as an "eligible fireman" or "eligible rescue squad worker" in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of ~~one hundred sixty-one dollars ($161.00)~~ one hundred sixty-three dollars ($163.00) per month. Any retired fireman receiving a pension shall, effective ~~July 1, 2004,~~ July 1, 2005, receive a pension of ~~one hundred sixty-one dollars ($161.00)~~ one hundred sixty-three dollars ($163.00) per month.

Members shall pay ten dollars ($10.00) per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No "eligible rescue squad member" shall receive a pension prior to July 1, 1983. No member shall be entitled to a pension hereunder until the member's official duties as a fireman or rescue squad worker for which the member is paid compensation shall have been terminated and the member shall have retired as such according to standards or rules fixed by the board of trustees.

A member who is totally and permanently disabled while in the discharge of the member's official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of those official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of ~~one hundred sixty-one dollars ($161.00)~~ one hundred sixty-three dollars ($163.00) per month beginning the first month after the member's fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of ten dollars ($10.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

A member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member shall upon attaining the age of 55 years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application and annually thereafter.

A member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose volunteer department is taken over by a city or county, and because of such annexation or takeover is unable to perform as a fireman or rescue squad worker of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law."

Requested by: Senators Thomas, Garrou, Dalton, Hagan, Hoyle, Jenkins, Rand, Swindell, Weinstein

INCREASE THE MAXIMUM MONTHLY PENSION BENEFITS FOR RETIRED MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD

SECTION 29.27. G.S. 127A-40(a) reads as rewritten:

"(a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) per month for 20 years' creditable military service with an additional ~~five dollars ($5.00)~~ seven dollars and fifty cents ($7.50) per month for each additional year of such service; provided, however, that the total pension shall not exceed ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) per month. The requirements for such pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.

(3) Have received an honorable discharge from the North Carolina national guard."

Requested by: Senators Garrou, Dalton, Hagan

CONFORM RETIREE RETURN TO TEACHING BENEFIT TO IRS GUIDELINES/CLARIFY DEFINITION OF RETIREMENT

SECTION 29.28.(a) Subsection (d) of Section 28.24 of S.L. 1998-212, as amended by Section 31.18A of S.L. 2004-124, reads as rewritten:

"(d) This section becomes effective January 1, 1999, and expires June 30, ~~2005.~~ 2006."

SECTION 29.28.(b) The introductory language of Section 67 of S.L. 1998-217, as amended by Section 31.18A of S.L. 2004-124, reads as rewritten:

"**SECTION 67.** Effective January 1, 1999, through June 30, ~~2005,~~ 2006, G.S. 135-3(8)c., as rewritten by Section 28.24(a) of S.L. 1998-212 reads as rewritten:".

SECTION 29.28.(c) Subsection (b) of Section 67.1 of S.L. 1998-217, as amended by Section 31.18A of S.L. 2004-124, reads as rewritten:

"(b) This section becomes effective January 1, 1999, and expires June 30, ~~2005.~~ 2006."

SECTION 29.28.(d) Subsection (c) of Section 32.25 of S.L. 2001-424, as amended by Section 31.18A of S.L. 2004-124, reads as rewritten:

"**SECTION 32.25.(c)** This section becomes effective July 1, 2001, and expires June 30, ~~2005.~~ 2006."

SECTION 29.28.(e) G.S. 135-3(8)c. reads as rewritten:

c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any ~~capacity, except as a substitute teacher or a part-time tutor,~~ capacity with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach on a ~~substitute, interim, or~~ permanent basis in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

SECTION 29.28.(f) G.S. 115C-325(a)(5a) reads as rewritten:

"(5a) "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least six months, has not been employed in any ~~capacity, other than as a substitute teacher or a part-time tutor, with a local board of~~

~~education or a charter school~~ capacity for at least six months, immediately preceding the effective date of reemployment, is determined by a local board of education or a charter school to have had satisfactory performance during the last year of employment by a local board of education or a charter school, and who is employed to teach as provided in G.S. 135-3(8)c. A retired teacher at a school other than a charter school shall be treated the same as a probationary teacher except that (i) a retired teacher is not eligible for career status and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers."

SECTION 29.28.(g) Notwithstanding any other provision of law, each local school administrative unit shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy-hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit shall report monthly to the Retirement Systems Division on payments made pursuant to this subsection.

Notwithstanding any other provision of law, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution Rate, that exceeds the State-supported salary level for that position, shall be paid from local funds.

SECTION 29.28.(h) G.S. 135-1(20) reads as rewritten:

"(20) "Retirement" ~~shall mean~~ means the termination of employment and the ~~withdrawal~~ complete separation from active service with no intent or agreement, express or implied, to return to service. ~~a~~ A retirement allowance ~~granted~~ under the provisions of this ~~Chapter.~~ Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must render no ~~service~~ service, including part-time, temporary, substitute, or contractor service, at any time during ~~that month.~~ the six months immediately following the effective date of retirement."

SECTION 29.28.(i) Subsection (h) of this section becomes effective July 1, 2005, but does not apply to participants in The University of North Carolina Phased Retirement Program until June 30, 2007. The remainder of this section becomes effective June 30, 2005.

Requested by: Senators Garrou, Dalton, Hagan

OPTIONAL RETIREMENT PROGRAM VESTING

SECTION 29.29. G.S. 135-5.1(b) reads as rewritten:

"(b) Participation in the Optional Retirement Program shall be governed as follows:

(1) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, Session Laws of 1971, are deemed automatically enrolled in the Program as established by this section.

(2) Eligible employees initially appointed on or after July 1, 1985, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into eligible service.

(3) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.

(4) No election by an eligible employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a contract or contracts or trust participation under the Program.

(5) If any participant having less than ~~five years~~ one year of coverage under the Optional Retirement Program leaves the employ of The University of North Carolina and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program attributable to contributions of The University of North Carolina shall be forfeited and shall either (i) be refunded to The University of North Carolina and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund."

Requested by: Senators Thomas, Rand, Dalton, Garrou, Hagan

INCREASE BENEFIT/SHERIFFS' SUPPLEMENTAL PENSION FUND

SECTION 29.30.(a) G.S. 143-166.85(a) reads as rewritten:

"(a) An eligible retired sheriff shall be entitled to and receive an annual pension benefit, payable in equal monthly installments, equal to one share for each full year of eligible service as sheriff multiplied by his total number of years of eligible service. The amount of each share shall be determined by dividing the total number of years of eligible service for all eligible retired sheriffs on December 31 of each calendar year into the amount to be disbursed as monthly pension payments in accordance with the provisions of G.S., 143 166.83(b). In no event however shall a monthly pension under this Article exceed an amount, which when added to a retired allowance at retirement from the Local Governmental Employees' Retirement System or to the amount he would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions, is greater than seventy -five percent (75%) of a sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate, to a maximum amount of ~~one thousand two hundred dollars ($1,200).~~ one thousand five hundred dollars ($1,500)."

SECTION 29.30.(b) G.S. 7A-304(a)(3a) reads as rewritten:

"(3a) For the supplemental pension benefits of sheriffs, the sum of ~~seventy-five cents (75¢)~~ one dollar twenty-five cents ($1.25) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes."

Requested by: Senators Garrou, Dalton, Hagan, Rand

STATE HEALTH PLAN CHANGES

SECTION 29.31.(a) G.S. 135-40.5 reads as rewritten:

"§ 135-40.5. Benefits not subject to deductible or coinsurance.

(a) Repealed by Session Laws 1985, c. 192, s. 5.

(b) Repealed by Session Laws 1991, c. 427, s. 20.

(c) Preadmission Testing. – The Plan will pay one hundred percent (100%) of reasonable and customary charges for diagnostic, laboratory and x-ray examinations performed on an outpatient basis.

(d) Repealed by Session Laws 2001-253, s. 1(d), effective July 1, 2001.

(e) Routine Diagnostic Examinations. – The Plan will pay one hundred percent (100%) of allowable charges for routine diagnostic examinations and tests, including breast, colon, rectal, and prostate exams, X rays, ~~mammograms,~~ blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for covered individuals age 50 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. The Plan will pay one hundred percent (100%) of allowable charges for mammograms once per year for covered individuals age 40 years and over, and not more often than once every three years for covered individuals to age 40 years, when such charges are incurred in a medically supervised facility. Routine diagnostic examinations and tests covered under this subsection also include examinations and tests for the screening for the early detection of cervical cancer. The coverage shall be in accordance with the most recently published American Cancer Society guidelines or guidelines adopted by the North Carolina Advisory Committee on Cancer Coordination and Control for any covered female. For the purposes of this subsection, "examinations and laboratory tests for the screening for the early detection of cervical cancer" means conventional PAP smear screening, liquid-based cytology, and human papilloma virus (HPV) detection methods for women with equivocal findings on cervical cytologic analysis that are subject to the approval of and have been approved by the United States Food and Drug Administration. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities, or to comply with governmental licensing requirements. The maximum amount payable under this subsection for a covered individual is one hundred fifty dollars ($150.00) per fiscal year.

(f) Immunizations. – The Plan will pay one hundred percent (100%) of allowable charges for immunizations for the prevention of contagious diseases as generally accepted medical practices would dictate when directed by an attending physician.

(g) Prescription Drugs. – The Plan's allowable charges for prescription legend drugs to be used outside of a hospital or skilled nursing facility are to be determined by the Plan's Executive Administrator and Board of Trustees. The Plan will pay allowable charges for each outpatient prescription drug less a copayment to be paid by each covered individual equal to the following amounts: pharmacy charges up to ten dollars ($10.00) for each generic prescription, ~~twenty-five dollars ($25.00)~~thirty dollars ($30.00) for each branded prescription, and ~~thirty-five dollars ($35.00)~~forty dollars ($40.00) for each branded prescription with a generic equivalent drug, and ~~forty dollars ($40.00)~~ fifty dollars ($50.00) for each branded or generic prescription not on a formulary used by the Plan. Allowable charges shall not be greater than a pharmacy's usual and customary charge to the general public for a particular prescription. Prescriptions shall be for no more than a 34-day supply for the purposes of the copayments paid by each covered individual. By accepting the copayments and any remaining allowable charges provided by this subsection, pharmacies shall not balance bill an individual covered by the Plan. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though a prescription is not required. The Plan may use a pharmacy benefit manager to help manage the Plan's outpatient prescription drug coverage. In managing the Plan's outpatient prescription drug benefits, the Plan and its pharmacy benefit manager shall not provide coverage for erectile dysfunction, growth hormone, antiwrinkle, weight loss, and hair growth drugs unless such coverage

is medically necessary to the health of the member. The Plan and its pharmacy benefit manager shall not provide coverage for growth hormone and weight loss drugs and antifungal drugs for the treatment of nail fungus and botulinium toxin without approval in advance by the pharmacy benefit manager. Any formulary used by the Plan's Executive Administrator and pharmacy benefit manager shall be an open formulary. Plan members shall not be assessed more than two thousand five hundred dollars ($2,500) per person per fiscal year in copayments required by this subsection.

SECTION 29.31.(b) The first paragraph of G.S. 135-40.6 reads as rewritten:

"§ 135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).

The benefits provided in this section are subject to a deductible of three hundred fifty dollars ($350.00) per covered individual to an aggregate maximum of one thousand fifty dollars ($1,050) per employee and child(ren) or employee and family coverage contract per fiscal year and are payable on the basis of eighty percent (80%) by the Plan and twenty percent (20%) by the covered individual up to a maximum of ~~one thousand five hundred dollars ($1,500)~~ two thousand dollars ($2,000) out-of-pocket per fiscal year. The aggregate maximum out-of-pocket required of individuals covered by this section shall not be more than ~~four thousand five hundred dollars ($4,500)~~six thousand dollars ($6,000) per employee and child(ren) or employee and family coverage contract per fiscal year.

..."

SECTION 29.31.(c) G.S. 135-40.6(8)n. reads as rewritten:

"§ 135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).

...

(8) Other Covered Charges. –

...

n. Chiropractic Services: Limited to the alignment of the spine and releasing of pressure by manipulation in accordance with the definitions in G.S. 90-143. Covered services shall be provided only to Plan members over the age of five years. Maximum benefits for x-rays, manipulations, and modalities shall be two thousand dollars ($2,000) per fiscal year."

SECTION 29.31.(d) G.S. 135-40.8 reads as rewritten:

"§ 135-40.8. Out-of-pocket expenditures.

(a) For the balance of any fiscal year after each eligible employee, retired employee, or dependent satisfies the cash deductible, the Plan pays eighty percent (80%) of the eligible expenses outlined in G.S. 135-40.6. The remaining twenty percent (20%) is paid by the covered individual until ~~one thousand five hundred dollars ($1,500)~~ two thousand dollars ($2,000) per covered individual up to an aggregate of ~~four thousand five hundred dollars ($4,500)~~six thousand dollars ($6,000) per employee and child(ren) or employee and family coverage contract per fiscal year in excess of the deductible has been paid out of pocket. The Plan then pays one hundred percent (100%) of the remaining covered expenses.

(b) Repealed by Session Laws 2001-253, s. 1(m), effective July 1, 2001.

(c) Notwithstanding any other provision of this Article, on the first day of each confinement the Plan does not pay the first one hundred ~~dollars ($100.00)~~ fifty dollars ($150.00) of the room accommodation charge allowable under G.S. 135-40.6(1). Any readmission within 60 days after discharge for the same reason shall be considered the same confinement for the purpose of this subsection. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c1) Notwithstanding any other provision of this Article, the Plan does not pay the first ~~fifty dollars ($50.00)~~one hundred fifty dollars ($150.00) of the facility fees and ancillary charges for allowable charges exceeding five hundred dollars ($500.00) per

episode of care for hospital outpatient departments and ambulatory surgical facilities under G.S. 135-40.6(4). Readmission within 30 days after discharge for the same reason shall be considered the same episode of care for the purpose of this subsection. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c2) Notwithstanding any other provision of this Article, the Plan does not pay the first ~~one hundred dollars ($100.00)~~one hundred fifty dollars ($150.00) of allowable emergency room charges when admission to a hospital pursuant to the emergency room use does not immediately follow. This subsection shall apply only when less costly alternative means of emergency medical care are reasonably available as determined by the Executive Administrator and Board of Trustees. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c3) Notwithstanding any other provision of this Article, the Plan does not pay for the first fifteen dollars ($15.00) of allowable charges for each home, office, or skilled nursing facility visit under the provisions of G.S. 135-40.6(7)a. and b., G.S. 135-40.6(4), G.S. 135-40.6(8)i., j., k., n., r., and s., and G.S. 135-40.5(e). The co-payment assessed by this subsection shall be assessed only once per person per provider per day and shall not apply to laboratory, pathology, and radiology services, or to charges for injected medications. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c4) Notwithstanding any other provision of this Article, the Plan does not pay for the first twenty-five dollars ($25.00) of allowable charges for services provided by medical specialists. The co-payment assessed by this subsection shall be assessed only once per person per provider per day and shall not apply to laboratory, pathology, and radiology services, or to charges for injected medications. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(d) Where a network of qualified preferred providers of inpatient and outpatient hospital care is reasonably available for use by those individuals covered by the Plan, use of providers outside of the preferred network shall be subject to a twenty percent (20%) coinsurance rate up to five thousand dollars ($5,000) per fiscal year per covered individual up to an aggregate of fifteen thousand dollars ($15,000) per employee and child(ren) or employee and family coverage contract per fiscal year in addition to the general coinsurance percentage and maximum fiscal year amount specified by G.S. 135-40.4 and G.S. 135-40.6. The Plan then pays one hundred percent (100%) of the remaining covered expenses.

(e) Where qualified out-of-state preferred providers of medical care are not reasonably available in medical emergencies, the Plan pays the amounts covered by subsection (a) of this section. Any amount of charges for services under this section that exceeds the amount allowed by the Plan for the services of qualified preferred providers under this section shall be negotiated between the Plan and the provider of medical services, and the Plan shall ensure that the Plan member is not held financially responsible for the amount of these excess charges. If a Plan member is not capable of making a decision about choosing an in-State qualified preferred provider and emergency services personnel transport the Plan member to a provider outside of the Plan network, then the coverage under this subsection shall apply. As used in this section, a "medical emergency" is the sudden and unexpected onset of a condition manifesting itself by acute symptoms of sufficient severity that, in the absence of immediate medical care, could imminently result in injury or danger to self or others."

Requested by: Senators Dalton, Garrou, Hagan

FOREST CITY EMPLOYEES IN STATE HEALTH PLAN

SECTION 29.32. Section 31.26(j) of S.L. 2004-124 reads as rewritten:

"SECTION 31.26.(j) This section applies ~~to~~to:
(1) Bladen, Cherokee, Rutherford, Washington, and Wilkes Counties ~~only~~.only, and
(2) The Town of Forest City only."

PART XXX. CAPITAL APPROPRIATIONS.

Requested by: Senators Garrou, Dalton, Hagan

GENERAL FUND CAPITAL APPROPRIATIONS/INTRODUCTION

SECTION 30.1. The appropriations made by the 2005 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and acquiring buildings and land for State government purposes.

Requested by: Senators Garrou, Dalton, Hagan

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 30.2. There is appropriated from the General Fund for the 2005-2006 fiscal year the following amount for capital improvements:

Capital Improvements – General Fund	**2005-2006**
Department of Commerce – State Ports Authority	
Port of Wilmington – Container Cranes	$ 5,000,000
Department of Environment and Natural Resources	
Water Resources Development Projects	14,760,000
Department of Health and Human Services	
Division of Public Health	100,000
University of North Carolina System – Board of Governors	
UNC-Chapel Hill – Renaissance Computing Institute	500,000
UNC-Greensboro and NC A&T Joint Millennium Campus	5,000,000
Winston-Salem State University – Laboratory Facility Planning Funds	750,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**$ 26,110,000**

Requested by: Senators Garrou, Dalton, Hagan

WATER RESOURCES DEVELOPMENT PROJECT FUNDS

SECTION 30.3.(a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects to the following projects whose costs are as indicated:

	Name of Project	**2005-2006**
(1)	Wilmington Harbor Deepening	$1,300,000
(2)	Manteo (Shallowbag) Bay Channel Maintenance	50,000
(3)	Wilmington Harbor Maintenance Dredging	500,000
(4)	B. Everett Jordan Water Supply Storage	100,000
(5)	John H. Kerr Reservoir Operations Evaluation	600,000
(6)	Bogue Banks Shore Protection Study (Carteret County)	75,000
(7)	Surf City/North Topsail Beach Protection Study	250,000
(8)	West Onslow Beach (Topsail)	100,000
(9)	Wrightsville Beach Nourishment	580,000
(10)	Hurricane Stream Restoration – Western North Carolina	2,000,000
(11)	Swan Quarter (Hyde County) Flood Control Dikes	100,000

(12)	Ocracoke NCCAT Estuarine Shoreline Protection	1,500,000
(13)	Far Creek Maintenance Dredging	120,000
(14)	Belhaven Harbor Environmental Improvements	250,000
(15)	Lower Lockwoods Folly River	286,000
(16)	Walters Slough Maintenance Dredging	122,000
(17)	Hurricane Isabel Emergency Stream Cleanup – Northeast NC	1,370,000
(18)	State-Local Projects	2,000,000
(19)	Princeville Flood Control	250,000
(20)	Currituck Sound Water Management Study	300,000
(21)	Aquatic Weed Control, Lake Gaston and Statewide	375,000
(22)	Tar River and Pamlico Sound Feasibility Study	100,000
(23)	Deep Creek (Yadkin County) Water Management	2,000,000
(24)	North Carolina Oyster Habitat Restoration	50,000
(25)	Emergency Flood Control Projects	187,000
(26)	Projected Feasibility Studies	100,000
(27)	Planning Assistance to Communities	95,000
TOTALS		**$14,760,000**

SECTION 30.3.(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 2005-2006 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

(1) U.S. Army Corps of Engineers project feasibility studies.
(2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2005-2006.
(3) State-local water resources development projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 2006-2007 fiscal year.

SECTION 30.3.(c) The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

(1) All projects listed in this section.
(2) The estimated cost of each project.
(3) The date that work on each project began or is expected to begin.
(4) The date that work on each project was completed or is expected to be completed.
(5) The actual cost of each project.

The semiannual reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

Requested by: Senators Garrou, Dalton, Hagan

PROCEDURES FOR DISBURSEMENT OF CAPITAL FUNDS

SECTION 30.4. The appropriations made by the 2005 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating

appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 2005 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act. Capital improvement projects authorized by the 2005 General Assembly for the design phase only shall be designed within the scope of the project as defined by the approved cost estimate filed with the Director of the Budget, including costs associated with site preparation, demolition, and movable and fixed equipment.

Requested by: Senators Garrou, Dalton, Hagan

ENCUMBERED APPROPRIATIONS AND PROJECT RESERVE FUNDS

SECTION 30.5. When each capital improvement project appropriated by the 2005 General Assembly, other than those projects under the Board of Governors of The University of North Carolina, is placed under a construction contract, direct appropriations shall be encumbered to include all costs for construction, design, investigation, administration, movable equipment, and a reasonable contingency. Unencumbered direct appropriations remaining in the project budget shall be placed in a project reserve fund credited to the Office of State Budget and Management. Funds in the project reserve may be used for emergency repair and renovation projects at State facilities with the approval of the Director of the Budget. The project reserve fund may be used, at the discretion of the Director of the Budget, to allow for award of contracts where bids exceed appropriated funds, if those projects supplemented were designed within the scope intended by the applicable appropriation or any authorized change in it, and if, in the opinion of the Director of the Budget, all means to award contracts within the appropriation were reasonably attempted. At the discretion of the Director of the Budget, any balances in the project reserve fund shall revert to the original source.

REPAIR AND RENOVATION RESERVE ALLOCATION

SECTION 30.6. Of the funds in the Reserve for Repairs and Renovations for the 2005-2006 fiscal year, forty-six percent (46%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143-15.3A.

Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

Requested by: Senators Garrou, Dalton, Hagan

PROJECT COST INCREASE

SECTION 30.7. Upon the request of the administration of a State agency, department, or institution, the Director of the Budget may, when in the Director's opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution.

Requested by: Senators Garrou, Dalton, Hagan

NEW PROJECT AUTHORIZATION

SECTION 30.8. Upon the request of the administration of any State agency, department, or institution, the Director of the Budget may authorize the construction of a capital improvement project not specifically authorized by the General Assembly if such project is to be funded by gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, or self-liquidating indebtedness. Prior to authorizing the construction of a capital improvement project pursuant to this section, the Director shall consult with the Joint Legislative Commission on Governmental Operations.

Requested by: Senators Garrou, Dalton, Hagan

ADVANCE PLANNING OF CAPITAL IMPROVEMENT PROJECTS

SECTION 30.9. Funds that become available by gifts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly, or any other funds available to a State department or institution may be utilized for advance planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget.

Requested by: Senators Garrou, Dalton, Hagan

APPROPRIATIONS LIMITS/REVERSION OR LAPSE

SECTION 30.10. Except as permitted in previous sections of this act, the appropriations for capital improvements made by the 2005 General Assembly may be expended only for specific projects set out by the 2005 General Assembly and for no other purpose. Construction of all capital improvement projects enumerated by the 2005 General Assembly shall be commenced, or self-liquidating indebtedness with respect to them shall be incurred, within 12 months following the first day of the fiscal year in which the funds are available. If construction contracts on those projects have not been awarded or self-liquidating indebtedness has not been incurred within that period, the direct appropriation for those projects shall revert to the original source, and the self-liquidating appropriation shall lapse; except that direct appropriations may be placed in a reserve fund as authorized in this act. This deadline with respect to both direct and self-liquidating appropriations may be extended with the approval of the Director of the Budget up to an additional 12 months if circumstances and conditions warrant such extension.

PART XXXI. LOTTERY.

LOTTERY

SECTION 31.1.(a) If House Bill 1023, 2005 Regular Session, becomes law, then the title of House Bill 1023, 2005 Regular Session, is amended by deleting the following phrase "TO FUND COLLEGE AND UNIVERSITY SCHOLARSHIPS,".

SECTION 31.1.(b) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-103(4), as enacted by that act, reads as rewritten:

"§ 18C-103. Definitions.

As used in this Chapter, unless the context requires otherwise:

...

(4) 'Game' or 'lottery game' means any procedure or amusement authorized by the Commission where prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares that provide the opportunity to win those ~~prizes.~~prizes and does not utilize a video gaming machine as defined in G.S. 14-306.1(c).

...."

SECTION 31.1.(c) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-110, as enacted by that act, reads as rewritten:

"§ 18C-110. Establishment of the North Carolina State Lottery Commission to be a self-supporting agency of the State.

There is created the North Carolina State Lottery Commission to establish and oversee the operation of a Lottery. The Commission shall be located in the Department of ~~Commerce~~ Administration for budgetary purposes only; otherwise, the Commission shall be an independent, self-supporting, and revenue-raising agency of the State. The Commission shall reimburse other governmental entities that provide services to the Commission."

SECTION 31.1.(d) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-111, as enacted by that act, reads as rewritten:

"§ 18C-111. Commission membership; appointment; selection of chair; vacancies; removal; meetings; compensation.

(a) The Commission shall consist of nine members, ~~three~~ five of whom shall be appointed by the Governor, ~~three~~ two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and ~~three~~ two of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. The Governor shall select the initial chair of the Commission from among its membership, who shall serve as chair for one year from the date of appointment. Thereafter, the Commission shall select a chair from among its membership to serve at the pleasure of the Commission.

(b) Of the initial appointees of the Governor, ~~one member~~ three members shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the President Pro Tempore of the Senate, ~~one member shall serve a term of one year,~~ one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the Speaker of the House of Representatives, ~~one member shall serve a term of one year,~~ one member shall serve a term of two years, and one member shall serve a term of three years. All succeeding appointments shall be for terms of five years. Members shall not serve for more than two successive terms.

(c) Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur.

(d) The Commission shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

(e) Members of the Commission shall receive per diem, subsistence, and travel as provided in G.S. 138-5 and G.S. 138-6."

SECTION 31.1.(e) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-112, as enacted by that act, reads as rewritten:

"§ 18C-112. Qualifications of Commissioners.

(a) Of the members of the Commission appointed by the Governor, at least one member shall have a minimum of five years' experience in law ~~enforcement, and no more than two members shall be from the same political party as the Governor.~~enforcement.

(b) Of the members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall be a certified public ~~accountant, and no more than two members shall be from the same political party as the President Pro Tempore of the Senate.~~accountant.

(c) Of the members of the Commission appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall have ~~retail sales experience, and no more than two members shall be from the same political party as the Speaker of the House of Representatives.~~at least five years retail sales experience as an owner or manager.

(d) In making appointments to the Commission, the appointing authorities shall consider the composition of the State with regard to geographic representation and gender, ethnic, racial, and age composition."

SECTION 31.1.(f) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-114(a)(8) and G.S. 18C-114(a)(11), as enacted by that act, read as rewritten:

"(a) The Commission shall have the following powers and duties:

...

~~(8) To determine the salary of the Director and the terms and conditions for employment contracts for the Director.~~To charge a fee of lottery vendors not to exceed the cost of the criminal record check of the lottery vendor.

...

(11) ~~To approve and authorize the Director to enter into contracts with lottery game retailers upon terms and conditions as specified by the Commission.~~ To specify the authority, selection, and role of the Director and other employees of the Commission. All of the following apply to all employees of the Commission:

a. No employee of the Commission may have a financial interest in any lottery vendor or lottery contractor.

b. No employee of the Commission with decision-making authority shall participate in any decision involving the retailer or vendor with whom the employee has a financial interest.

c. No employee of the Commission who leaves the employment of the Commission may represent any vendor or retailer before the Commission for a period of two years following termination of employment with the Commission.

d. A background investigation shall be conducted on each applicant for employment with the Commission.

e. The Commission shall bond all employees with access to lottery funds or revenue and security."

SECTION 31.1.(g) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-120(b)(3) and G.S. 18C-120(b)(6), as enacted by that act, read as rewritten:

"(b) The Director shall have the following powers and duties, under the supervision of the Commission:

...

(3) To set the salaries of all Commission employees, subject to the approval of the ~~Commission, and to employ all personnel of the Commission.~~ Commission. Except for the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, all employees of the Commission shall be exempt from the State Personnel Act.

...

(6) To ~~receive reports of alleged violations of the law relating to the operation of the Lottery and report those violations to~~ coordinate and collaborate with the appropriate law enforcement ~~authority.~~authorities regarding investigations of violations of the laws relating to the operation of the Lottery and make reports to the Commission regarding those investigations.

...."

SECTION 31.1.(h) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-121, as enacted by that act, reads as rewritten:

"§ 18C-121. Accountability; books and records.

The Director shall ~~make and keep~~ have made and kept books and records that accurately and completely reflect each day's transactions, including the distribution of tickets or shares to lottery game retailers, receipt of funds, prize claims, prizes paid directly by the Commission, expenses, and all other financial transactions involving lottery funds necessary to permit preparation of financial statements that conform with generally accepted accounting principles."

SECTION 31.1.(i) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-122, as enacted by that act, reads as rewritten:

"§ 18C-122. Independent audits.

(a) At the beginning of each calendar year, the ~~Director~~ Commission shall engage an independent firm experienced in security procedures, including computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Commission and of the Lottery. At a minimum, such a security assessment should include a review of network vulnerability, application vulnerability, application code review, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness.

...

(d) Biennially at the end of the fiscal year, the ~~Director~~ Commission shall engage an independent auditing firm that has experience in evaluating the operation of lotteries to perform an audit of the Lottery. The results of this audit shall be presented to the Commission, to the Governor, and to the General Assembly."

SECTION 31.1.(j) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-130(e), as enacted by that act, reads as rewritten:

"(e) ~~The only advertising of the Lottery that shall be permitted is point-of-sale advertising and advertising on the premises of lottery retailers.~~ Lottery advertising shall be designed and presented in a manner to minimize the appeal of lottery games to minors. The use of cartoon characters or of false, misleading, or deceptive information in lottery advertising is prohibited. All advertising promoting the sale of lottery tickets or shares for a particular game shall include the actual or estimated overall odds of winning the game."

SECTION 31.1.(k) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-132, as enacted by that act, is amended by adding the following new subsection to read:

"(l) All prizes are subject to the State income tax."

SECTION 31.1.(l) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-140, as enacted by that act, reads as rewritten:

"§ 18C-140. Contracting with lottery game retailers.

The Commission may contract with lottery game retailers to sell tickets or shares for lottery games upon such terms and conditions as it considers appropriate. The contract entered into between the Commission and the lottery game retailer shall be considered a permit for purposes of Chapter 18B of the General Statutes. No contract to act as a lottery game retailer is assignable or transferable. All contracts with lottery game

retailers shall provide that the Director may terminate the contract if the lottery game retailer knowingly violates a provision of this Chapter."

SECTION 31.1.(m) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-141(b), as enacted by that act, reads as rewritten:

"(b) The Director may not recommend contracting with any of the following:

(1) A natural person under 21 years of age. This minimum age shall not prohibit employees of a lottery game retailer who are under 21 years of age from selling lottery tickets or shares during their employment.

(2) A person who would be engaged exclusively in the business of selling lottery tickets or shares or operating electronic computer terminals or other devices solely for entertainment.

(3) A person who is not current in filing all applicable tax returns to the State and in payment of all taxes, interest, and penalties owed to the State, excluding items under formal appeal under applicable statutes. Upon request of the Director, the Department of Revenue shall provide this information about a specific person to the Commission.

(4) A person who resides in the same household as a member of the Commission, the Director, or any other employee of the Commission."

SECTION 31.1.(n) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-142, as enacted by that act, reads as rewritten:

"**§ 18C-142. Compensation for lottery game retailers.**

The amount of compensation paid to lottery game retailers for their sales of lottery tickets or shares shall be ~~six percent (6%)~~ seven percent (7%) of the retail price of the tickets or shares sold for each lottery game. The Commission shall ~~authorize an incentive bonus of up to one percent (1%) of the retail price of the tickets or shares sold based on~~require submission of reports and remission of lottery revenues to the Commission on a timely basis."

SECTION 31.1.(o) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-143, as enacted by that act, reads as rewritten:

"**§ 18C-143. Responsibilities of lottery game retailers.**

(a) A lottery game retailer shall comply with all provisions of this Article and the contract with the Commission.

(b) A lottery game retailer shall sell no lottery tickets or shares unless the retailer conspicuously displays a certificate of authority, signed by the Director, to sell lottery tickets or shares. The Commission shall issue a certificate of authority to each lottery game retailer for purposes of display for each retail outlet owned or operated by the lottery game retailer. No certificate is assignable or transferable.

(c) A lottery game retailer shall furnish an appropriate bond or letter of credit, if so requested by the Director. The Commission may authorize the Director to purchase blanket bonds covering the activities of any or all lottery game retailers.

(d) The Commission shall adopt rules to establish procedures governing how the lottery game retailers:

(1) Account for all tickets or shares in their custody, including tickets and shares sold.

(2) Account for the money collected from the sale of tickets and shares.

(3) Remit funds to the Commission, provided that all payments shall be in the form of electronic fund transfers or other recorded financial instruments as authorized by the Commission and approved by the Director.

(e) No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars ($100.00) in any calendar year, to the Director, to any member or employee of the Commission, or to any member of the immediate family residing in the same household as one of these individuals."

SECTION 31.1.(p) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-151, as enacted by that act, reads as rewritten:

"§ 18C-151. Contracts.

(a) Except as otherwise provided in this subsection for contracts for the purchase of services, apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than seventy-five thousand dollars ($75,000), Article 8 of Chapter 143 of the General Statutes shall apply to ~~all~~ contracts entered into by the ~~Commission, including the provisions relating to minority participation goals, and the Commission shall be considered a political subdivision of the State for those purposes of contracting under Article 8 of Chapter 143 of the General Statutes.~~Commission. ~~Contracts for the provision of services to the Commission shall be treated as a contract for the purchase of apparatus, supplies, materials, or equipment. The bonding requirements of G.S. 143-129(b) for construction contracts shall apply to all contracts of the Commission and may be waived at the discretion of the Commission.~~ In recognition of the particularly sensitive nature of the Lottery and the competence, quality of product, experience, and timeliness, fairness, and integrity in the operation and administration of the Lottery and maximization of the objective of raising revenues, a contract for the purchase of services, apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than seventy-five thousand dollars ($75,000) may be awarded by the Commission only after the following have occurred:

(1) The Commission has invited proposals to be submitted by advertisement by electronic means or advertisement in a newspaper having general circulation in the State of North Carolina and containing the following information:
   a. The time and place where a complete description of the services, apparatus, supplies, materials, or equipment may be had.
   b. The time and place for opening of the proposals.
   c. A statement reserving to the Commission the right to reject any or all proposals.

(2) Proposals may be rejected for any reason determined by the Commission to be in the best interest of the Lottery.

(3) All proposals shall be accompanied by a bond or letter of credit in an amount equal to not less than five percent (5%) of the proposal and the fee to cover the cost of the criminal record check conducted under G.S. 114-19.6.

(4) The Commission has complied with G.S. 143-128.2 and G.S. 143-128.3.

(5) The Commission may not award a contract to a lottery vendor who has been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract, or employs officers and directors who have been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract.

(6) The Commission shall investigate and compare the overall business practices, ethical reputation, criminal record, civil litigation, competence, integrity, background, and regulatory compliance record of lottery vendors.

(7) The Commission may engage an independent firm experienced in evaluating government procurement proposals to aid in evaluating proposals for a major procurement.

(8) The Commission shall award the contract to the responsible lottery vendor who submits the best proposal that maximizes the benefits to the State.

(b) Upon the completion of the bidding process, a contract may be awarded to a lottery contractor with whom the Commission has previously contracted for the same purposes.

(c) Before a contract ~~required to be let under G.S. 143-129~~ is awarded, the Director shall conduct ~~an~~ a thorough background investigation of all of the following:

(1) The vendor to whom the contract is to be awarded.

(2) Any parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(3) All shareholders with a five percent (5%) or more interest in the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(4) All officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(d) The Commission may terminate the contract, without penalty, of a lottery contractor that fails to comply with the Commission's instruction to implement the recommendations of the State Auditor or an independent auditor in an audit conducted of Lottery security or operations.

(e) After entering into a contract with a lottery contractor, the Commission shall require the lottery contractor to periodically update the information required to be disclosed under G.S. 18C-149. Any contract with a lottery contractor who does not periodically update the required disclosures may be terminated by the Commission.

(f) No lottery system vendor nor any applicant for a major procurement contract may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars ($100.00) in any calendar year, to the Director, any member or employee of the corporation, or a member of the immediate family residing in the same household as any of these individuals."

SECTION 31.1.(q) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-152, as enacted by that act, reads as rewritten:

"**§ 18C-152. Investigation of lottery vendors.**

(a) Lottery vendors shall cooperate with the Director in completing any investigation required under G.S. 18C-151(c), including any appropriate investigation authorizations needed to facilitate these investigations.

(b) The Commission shall adopt rules that provide for disclosures of information required to be disclosed under subsection (c) of this section by lottery vendors to ensure that the vendors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery vendors. Information shall be disclosed for the following:

(1) If the vendor is a corporation, the officers, directors, and each stockholder in that corporation; however, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed.

(2) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust.

(3) If the vendor is an association, the members, officers, and directors.

(4) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.

(5) For any vendor, any person who can exercise control or authority, or both, on behalf of the vendor.

(c) For purposes of this subsection, the term "vendor" shall include the vendor and each of the persons applicable under subsection (b) of this section. At a minimum, the vendor required to disclose information for a thorough background investigation under G.S. 18C-151 shall disclose all of the following:

(1) A disclosure of the vendor's name, phone number, and address.

(2) A disclosure of all the states and jurisdictions in which the vendor does business and the nature of the business for each state or jurisdiction.

(3) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.

(4) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or permit of any kind or had fines or penalties assessed on a license, permit, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license, permit, or contract has been revoked or has not been renewed or any lottery or gaming license, permit, or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive that license shall be disclosed.

(5) A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the vendor for any felony or any other criminal offense other than a minor traffic violation.

(6) A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the vendor.

(7) If at least twenty-five percent (25%) of the cost of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a vendor.

(8) Any additional disclosures and information the Commission determines to be appropriate for the contract involved.

~~(c)~~(d) All documents compiled by the Director in conducting the investigation of the lottery vendors shall be held as confidential information under Chapter 132."

SECTION 31.1.(r) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-162, as enacted by that act, reads as rewritten:

"§ 18C-162. Allocation of revenues.

(a) To the extent practicable, the Commission shall allocate revenues to the North Carolina State Lottery Fund in the following manner:

(1) At least fifty percent (50%) of the total annual revenues, as described in this Chapter, shall be returned to the public in the form of prizes.

(2) At least ~~thirty-four percent (34%)~~ thirty-five percent (35%) of the total annual revenues, as described in this Chapter, shall be transferred as provided in G.S. 18C-164.

(3) No more than ~~sixteen percent (16%)~~ eight percent (8%) of the total annual revenues, as described in this Chapter, shall be allocated for payment of expenses of the Lottery.

(4) No more than seven percent (7%) of the total annual revenues, as described in this Chapter, shall be allocated for compensation paid to lottery game retailers.

(b) Unclaimed prize money held by the Commission in the North Carolina State Lottery Fund may be used by the Commission to enhance prizes in other lottery games.

(c) To the extent that the expenses of the Commission are less than ~~sixteen percent (16%)~~ eight percent (8%) of total annual revenues, the Commission may allocate any surplus funds:

(1) To increase prize payments; or

(2) To the benefit of the public purposes as described in this Chapter."

SECTION 31.1.(s) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-163(3), as enacted by that act, is repealed.

SECTION 31.1.(t) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-164(b), as enacted by that act, reads as rewritten:

"(b) ~~On June 30 of each year, the~~The Commission shall distribute the net revenue of the North Carolina State Lottery Fund as follows:

(1) ~~Fifty percent (50%)~~During the 2005-2006 fiscal year, seventy million dollars ($70,000,000) shall be transferred to the Public School Building Capital and Technology Fund created in Article 38A of Chapter 115C of the General Statutes and is appropriated for expenditure in accordance with that Article. The amounts transferred under this subdivision shall be transferred in four equal installments, one during each fiscal quarter. ~~It is the purpose of this subdivision for counties to appropriate funds generated under this subdivision to increase the level of county spending for public school capital outlay purposes other than the retirement of indebtedness. A county must continue to spend for public school capital outlay purposes the same amount of money it would have spent for those purposes if it had not received the monies appropriated under this subdivision~~.

(2) ~~Twenty five percent (25%) shall be transferred to the State Educational Assistance Authority and is appropriated to fund scholarships pursuant to Article 35A of Chapter 115C of the General Statutes.~~ Beginning with the 2006-2007 fiscal year and annually thereafter, one hundred fifty million dollars ($150,000,000) shall be transferred to a special revenue fund to be established by the State Treasurer and to be known as the County Assistance Fund. The amounts transferred under this subdivision shall be transferred in four equal installments, one during each fiscal quarter. Monies in this Fund shall be used to pay for school construction projects in local school administrative units and to retire indebtedness incurred for school construction projects incurred on or after January 1, 2003. Monies in this Fund shall be distributed based on average daily membership, the county's ability to pay, the county's tax rate, growth in average daily membership, the county's debt capacity, and an appropriate requirement for matching funds from the county.

(3) ~~Twenty five percent (25%)~~ Beginning with the 2005-2006 fiscal year, and annually thereafter, after the revenue is distributed as provided in subdivisions (1) and (2) of this subsection, the remainder shall be transferred to a special revenue fund to be established in the State treasury and to be known as the Education Enhancement Fund. This fund shall be subject to appropriation by the General Assembly and shall be used to further the goal of providing enhanced educational opportunities so that all students in the public schools can achieve their full potential. Initially, the Fund shall be used for the following primary purposes:

a. To support reduction of class size in early grades to class size allotments not exceeding 1:18 in order to eliminate achievement gaps.

b. To support academic prekindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.

c. To support other educational priorities identified by the General Assembly."

SECTION 31.1.(u) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-171, as enacted by that act, reads as rewritten:

"**§ 18C-171. Lawful activity.**

Other than this Chapter, any other State or local law, ordinance, or regulation providing any penalty, ~~disability,~~ restriction, regulation, or prohibition for the manufacture, transportation, storage, distribution, advertising, possession, or sale of any lottery tickets or shares or for the operation of any lottery game shall not apply to the operation of the Commission or lottery games established by this ~~Chapter.~~Chapter where the penalty, restriction, regulation, or prohibition applies only to the Lottery as operated by the North Carolina State Lottery Commission."

SECTION 31.1.(v) If House Bill 1023, 2005 Regular Session, becomes law, then Sections 2 and 4 of that act are repealed.

SECTION 31.1.(w) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 114-19.6, as enacted by that act, reads as rewritten:

"**§ 114-19.16. Criminal record checks for the North Carolina State Lottery Commission and its Director.**

The Department of Justice may provide to the North Carolina State Lottery Commission and to its Director from the State and National Repositories of Criminal Histories the criminal history of any prospective employee of the Commission and any ~~prospective lottery retailer or lottery contractor~~lottery vendor. The North Carolina State Lottery Commission or its Director shall provide to the Department of Justice, along with the request, the fingerprints of the prospective employee of the Commission, or of the ~~prospective lottery retailer or lottery contractor~~lottery vendor, a form signed by the prospective employee of the Commission, or of the ~~prospective lottery retailer or lottery contractor~~ lottery vendor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the prospective employee of the Commission, or ~~prospective lottery retailer or lottery contractor,~~lottery vendor, shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The North Carolina State Lottery Commission and its Director shall remit any fingerprint information retained by the Commission to alcohol law-enforcement agents appointed under Article 5 of Chapter 18B of the General Statutes and shall keep all information obtained pursuant to this section confidential. The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

SECTION 31.1.(x) G.S. 18B-101 is amended by adding a new subdivision to read:

"(8a) 'Lottery law' or 'Lottery laws' means any provision of Chapter 18C of the General Statutes and the rules issued by the Lottery Commission under the authority of Chapter 18C of the General Statues."

SECTION 31.1.(y) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18B-500(b) reads as rewritten:

"(b) Subject Matter Jurisdiction. – After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the ABC ~~laws~~ laws, lottery laws, and Article 5 of Chapter 90 (The Controlled Substances Act); however, an agent may perform any law-enforcement duty assigned by the Secretary of Crime Control and Public Safety or the Governor."

SECTION 31.1.(z) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18B-500(d) reads as rewritten:

"(d) Service of Commission Orders. – Alcohol law-enforcement agents may serve and execute notices, orders, or demands issued by the Alcoholic Beverage Control Commission or the North Carolina State Lottery Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law-enforcement agents shall have all the power and authority possessed by law-enforcement officers when executing an arrest warrant."

SECTION 31.1.(aa) If House Bill 1023, 2005 Regular Session, becomes law, then, effective for taxable years beginning on or after January 1, 2005, G.S. 105-134.5(b) reads as rewritten:

"(b) Nonresidents. – For nonresident individuals, the term "North Carolina taxable income" means the taxpayer's taxable income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross income, as adjusted, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this ~~State or~~ State, is derived from a business, trade, profession, or occupation carried on in this ~~State.~~State, or is derived from gambling activities in this State."

SECTION 31.1.(bb) If House Bill 1023, 2005 Regular Session, becomes law, then, effective for taxable years beginning on or after January 1, 2005, Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.2B. North Carolina State Lottery Commission must withhold taxes.**

The North Carolina State Lottery Commission, established by Chapter 18C of the General Statutes, must deduct and withhold State income taxes from the payment of winnings that are reportable to the Internal Revenue Service under section 3406 of the Code. The amount of taxes to be withheld is seven percent (7%) of the winnings less the amount wagered. The Commission must file a return and pay the withheld taxes in the time and manner required under G.S. 105-163.6 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary."

SECTION 31.1.(cc) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(32) To provide to the North Carolina State Lottery Commission the information required under G.S. 18C-141."

Requested by: Senators Albertson, Garrou, Dalton, Hagan

PROHIBIT THE POSSESSION OR OPERATION OF VIDEO GAMING MACHINES EXCEPT BY A FEDERALLY RECOGNIZED INDIAN TRIBE AS AUTHORIZED BY THE INDIAN GAMING REGULATORY ACT AND A VALID TRIBAL-STATE COMPACT

SECTION 31.2.(a) G.S. 14-306.1 is repealed.

SECTION 31.2.(b) Part 1 of Article 37 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-306.1A. Types of machines and devices prohibited by law; penalties.**

(a) Ban on Machines. – It shall be unlawful for any person to operate, allow to be operated, place into operation, or keep in that person's possession for the purpose of operation any video gaming machine as defined in subsection (b) of this section, except for the exemption for a federally recognized Indian tribe under subsection (e) of this section for whom it shall be lawful to operate and possess machines as listed in subsection (b) of this section if conducted in accordance with an approved Class III

Tribal-State Compact applicable to that tribe, as provided in G.S. 147-12(14) and G.S. 71A-8.

(b) Definitions. – As used in this section, a video gaming machine means a slot machine, as defined in G.S. 14-306(a), and other forms of electrical, mechanical, or computer games such as, by way of illustration:

(1) A video poker game or any other kind of video playing card game.
(2) A video bingo game.
(3) A video craps game.
(4) A video keno game.
(5) A video lotto game.
(6) Eight liner.
(7) Pot-of-gold.
(8) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.

For the purpose of this section, a video gaming machine is a video machine which requires deposit of any coin or token, or use of any credit card, debit card, or any other method that requires payment to activate play of any of the games listed in this subsection. The enumeration of games in the list in this subsection does not authorize the possession or operation of such game if it is otherwise prohibited by law.

For the purpose of this section, a video gaming machine includes those that are within the scope of the exclusion provided in G.S. 14-306(b)(2) unless conducted in accordance with an approved Class III Tribal-State Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8. For the purpose of this section, a video gaming machine does not include those that are within the scope of the exclusion provided in G.S. 14-306(b)(1).

(c) Exemption for Certain Machines. – This section shall not apply to assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming machines who assemble, repair, manufacture, sell, lease, or transport them for use out-of-state as long as the machines, while located in this State, cannot be used to play the prohibited games and does not apply to those who assemble, repair, manufacture, sell, or lease such machines for use only by a federally recognized Indian tribe if such machines may be lawfully used on Indian land under the Indian Gaming Regulatory Act.

(d) Ban on Warehousing. – It is unlawful to warehouse any video gaming machine except in conjunction with the activities permitted under subsection (c) of this section.

(e) Exemption for Activities Under IGRA. – Notwithstanding any other prohibitions in State law, the form of Class III gaming otherwise prohibited by subsections (a) through (d) of this section may be legally conducted on Indian lands which are held in trust by the United States government for and on behalf of federally recognized Indian tribes if conducted in accordance with an approved Class III Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8."

SECTION 31.2.(c) G.S. 14-306.2 reads as rewritten:

"§ 14-306.2. Violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A a violation of the ABC laws.

A violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A is a violation of the gambling statutes for the purposes of G.S. 18B-1005(a)(3)."

SECTION 31.2.(d) G.S. 147-12(14) reads as rewritten:

"(14) ~~To~~ Notwithstanding subsections (a) through (d) of G.S. 14-306.1A, to negotiate and enter into Class III Tribal-State gaming compacts, and amendments thereto, on behalf of the ~~State~~ State, consistent with State law (G.S. 14-306.1A(e) and G.S. 71A-8) and the Indian Gaming Regulatory Act, Public Law 100-497, as necessary to allow a federally recognized Indian tribe to operate gaming ~~activities~~ activities,

including those games allowed pursuant to G.S. 14-306.1A(e), in this State as permitted under federal law."

SECTION 31.2.(e) G.S. 71A-8 reads as rewritten:

"**§ 71A-8. Authorization for federally recognized Indian tribes.**

In recognition of the governmental relationship between the State, federally recognized Indian tribes and the United States, a federally recognized Indian tribe may conduct games consistent with the Indian Gaming Regulatory Act, Public Law 100-497, that are in accordance with a valid Tribal-State compact executed by the Governor pursuant to G.S. 147-12(14) and approved by the U.S. Department of Interior under the Indian Gaming Regulatory Act, and such ~~games~~ games, including those permitted under G.S. 14-306.1A(e), shall ~~not be unlawful or~~ be lawful and not against the public policy of the State ~~if the State permits such gaming for any purpose by any person, organization, or entity.~~ if conducted by a federally recognized Indian tribe on federal Indian Trust Lands within the State in accordance with a Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8."

SECTION 31.2.(f) G.S. 14-298 reads as rewritten:

"**§ 14-298. Seizure of illegal gaming items.**

Upon a determination that probable cause exists to believe that any gaming table prohibited to be used by G.S. 14-289 through G.S. 14-300, any illegal punchboard or illegal slot machine, or any video game machine prohibited to be used by G.S. 14-306 or ~~G.S. 14-306.1,~~ G.S. 14-306.1A, is in the illegal possession or use of any person within the limits of their jurisdiction, all sheriffs and law enforcement officers are authorized to seize the items in accordance with applicable State law. Any law enforcement agency in possession of that item shall retain the item pending a disposition order from a district or superior court judge. Upon application by the law enforcement agency, district attorney, or owner, and after notice and opportunity to be heard by all parties, if the court determines that the item is unlawful to possess, it shall enter an order releasing the item to the law enforcement agency for destruction or for training purposes. If the court determines that the item is not unlawful to possess and will not be used in violation of the law, the item shall be ordered released to its owner upon satisfactory proof of ownership. The foregoing procedures for release shall not apply, however, with respect to an item seized for use as evidence in any criminal action or proceeding until after entry of final judgment. This section does not prohibit any activities which are legally conducted by a federally recognized Indian tribe pursuant to G.S. 14-306.1A(e), 147-12(14), and 71A-8."

SECTION 31.2.(g) Effective with respect to offenses committed on or after December 1, 2005, G.S. 14-309(b) is repealed.

SECTION 31.2.(h) G.S. 105-256(d)(1) is repealed, but that repeal does not affect reports for activities prior to December 1, 2005.

SECTION 31.2.(i) G.S. 14-309 reads as rewritten:

"**§ 14-309. Violation made criminal.**

(a) Any person who violates any provision of G.S. 14-304 through 14-309 is guilty of a Class 1 misdemeanor for the first offense, and is guilty of a Class I felony for a second offense and a Class H felony for a third or subsequent offense.

(b) Notwithstanding the provisions of subsection (a) of this section, any person violating the provisions of ~~G.S. 14-306.1~~ G.S. 14-306.1A involving the operation of five or more machines prohibited by that section is guilty of a Class G felony."

SECTION 31.2.(j) This section becomes effective December 1, 2005, and applies to offenses committed on or after that date but also applies to compacts and amendments thereto executed before that date. If a court of competent jurisdiction in this State issues a stay to prohibit possession or operation of video gaming machines by a federally recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that activity is not allowed on non-Indian lands pursuant to this section, this section is suspended and shall not have the force of law until such time as the stay is dissolved or a final order is entered. If a court of competent jurisdiction in this State

issues a final order that prohibits the possession or operation of video gaming machines by a federally recognized Indian tribe, as authorized by a valid Tribal-State Compact, because that activity is not allowed on non-Indian lands, this section is void.

PART XXXII. STREAMLINED SALES TAX CHANGES

Requested by: Senators Hoyle, Kerr

STREAMLINED SALES TAX CHANGES

SECTION 32.1.(a) Subdivisions (4a) and (4b) of G.S. 105-164.3 are recodified as subdivisions (4b) and (4c) respectively.

SECTION 32.1.(b) G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(4a) Combined general rate. – The State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State.

...

(4d) Computer supply. – An item that is considered a 'school computer supply' under the Streamlined Agreement.

...

(10) Food. – Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco ~~products, product,~~ as defined in G.S. 105-113.4.

...

(37b) School supply. – An item that is commonly used by a student in the course of study and is considered a 'school supply', a 'school art supply', or 'school instructional material' under the Streamlined Agreement.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement adopted November 12, 2002, as amended on November 19, 2003, November 16, 2004, and April 16, 2005."

SECTION 32.1.(c) G.S. 105-164.4(a), as amended by Section 33.1(a) of this act, 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%).

...

(1b) The rate of three percent (3%) applies to the sales price of each ~~aircraft, boat, railway car, or locomotive~~ aircraft or boat sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

~~(1c) The rate of one percent (1%) applies to the sales price of the following articles:~~

~~a. Horses or mules by whomsoever sold.~~

~~b. Semen to be used in the artificial insemination of animals.~~

~~c. Sales of fuel, other than electricity, to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of fuel~~

~~purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed by this subdivision.~~

~~d. Sales of fuel, other than electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.~~

~~e. Sales of fuel, other than electricity, to commercial laundries or to pressing and dry cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.~~

~~f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.~~

~~(1d) The rate of one percent (1%) applies to the sales price of the articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars ($80.00) per article. As used in G.S. 105-164.4A and G.S. 105-187.51, the term "accessories" does not include electricity.~~

~~a. through k. Recodified as § 105-164.4A by Session Laws 1999-360, s. 3(a), effective August 4, 1999.~~

~~(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.~~

...

(4c) The ~~rate of six percent (6%)~~combined general rate applies to the gross receipts derived from providing telecommunications service. A person who provides telecommunications service is considered a retailer under this Article. Telecommunications service is taxed in accordance with G.S. 105-164.4C.

...

(6) The ~~rate of five percent (5%)~~combined general rate applies to the gross receipts derived from providing direct to home satellite service to subscribers in this State. A person engaged in the business of providing direct-to-home satellite service is considered a retailer under this Article.

(7) The ~~rate of six percent (6%)~~combined general rate applies to the sales price of spirituous liquor other than mixed beverages. As used in this subdivision, the terms 'spirituous liquor' and 'mixed beverage' have the meanings provided in G.S. 18B-101."

SECTION 32.1.(d) G.S. 105-164.4A is repealed.

SECTION 32.1.(e) G.S. 105-164.13 reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(1) ~~Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds~~Any of the following items sold to a farmer for

~~agricultural purposes.~~use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.

a. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds.

b. Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term 'machinery' includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.

c. A horse or mule.

d. Fuel other than electricity.

(1a) A container sold to a farmer, as defined in subdivision (1) of this section, used for a purpose set out in that subdivision or in packaging and transporting the farmer's product for sale.

...

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

a. Remedies, vaccines, medications, litter materials, and feeds for animals.

b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.

c. Defoliants for use on cotton or other crops.

d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

e. Semen.

...

(4c) Any of the ~~following:~~following items concerning the housing, raising, or feeding of animals:

a. Commercially manufactured facilities to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities.

b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities.

c. Commercially manufactured equipment, and parts and accessories for the equipment, used in a facility that is exempt from tax under this subdivision or in an enclosure or a structure whose building materials are exempt from tax under this subdivision.

(4d) Any of the following tobacco items:

a. The lease or rental of tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse.

b. A metal flue sold for use in curing tobacco, whether the flue is attached to a handfired furnace or used in connection with a mechanical burner.

c. A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.

(4e) A grain, feed, or soybean storage facility, and parts and accessories attached to the facility.

...

(5a) Mill ~~machinery and~~ machinery, mill machinery parts and ~~accessories~~ accessories, and manufacturing fuel that are subject to tax under Article 5F of this Chapter.

(5b) Sales to a telephone company regularly engaged in providing telephone service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, and parts and accessories for the equipment

(5c) Sales to a radio or television company regulated by the Federal Communications Commission of towers, broadcasting equipment, and parts and accessories for the equipment.

...

(10) Sales of the following to commercial laundries or to pressing and dry cleaning ~~establishments of articles~~establishments:

a. Articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.

b. Laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery.

c. Fuel, other than electricity, used in the direct performance of the laundering or the pressing and cleaning service.

(10a) Sales of the following to a major recycling ~~facility of (i) lubricants~~facility:

a. Lubricants and other additives for motor vehicles or machinery and equipment used at the ~~facility and (ii) materials,~~facility.

b. Materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

~~(10b)~~c. ~~Sales to a major recycling facility of electricity~~Electricity used at the facility.

d. Equipment that is subject to tax under Article 5F of this Chapter.

...

~~(18) Funeral expenses, including coffins and caskets, not to exceed one thousand five hundred dollars ($1,500). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the general rate of tax set in G.S. 105-164.4. However, "services rendered" shall not include those services which have been taxed pursuant to G.S. 105-164.4(4), or to those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of a deceased; and "funeral expenses" and "services rendered" shall not include death~~

~~certificates procured by or at the specific direction of the family or personal representative of a deceased. Where coffins, caskets or vaults are purchased direct and a separate charge is paid for services, the provisions of this subdivision shall apply to the total for both.~~

...

(45) Sales of the following items to an interstate passenger air carrier ~~or an interstate air courier~~ for use at its ~~hub: aircraft lubricants, aircraft repair parts, and aircraft accessories.~~hub:

a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.

b. Aircraft simulators for flight crew training.

...

(45b) Sales of the following items to an interstate air courier for use at its hub:

a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.

b. Materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility.

..."

SECTION 32.1.(f) G.S. 105-164.13C(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to the following items of tangible personal property if sold between 12:01A.M. on the first Friday of August and 11:59 P.M. the following Sunday:

(1) Clothing with a sales price of one hundred dollars ($100.00) or less per item.

(2) School supplies with a sales price of one hundred dollars ($100.00) or less per item.

(3) Computers with a sales price of three thousand five hundred dollars ($3,500) or less per item.

(3a) Computer supplies with a sales price of two hundred fifty dollars ($250.00) or less per item.

(4) Sport or recreational equipment with a sales price of fifty dollars ($50.00) or less per item."

SECTION 32.1.(g) G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories ~~purchased in this State~~ for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 32.1.(h) G.S. 105-164.28 reads as rewritten:

"**§ 105-164.28. Certificate of resale.**

(a) Seller's Responsibility. – A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) For a sale made in person, the certificate is signed by the ~~purchaser,~~ purchaser and states the purchaser's name, address, ~~and~~ registration number, and ~~describes the type of tangible personal property generally sold by the purchaser in the regular course of business.~~type of business.

(2) For a sale made in person, the ~~purchaser is engaged in the business of selling~~ tangible personal property ~~of the type sold.~~sold is typically used in the type of business stated on the certificate.

(3) For a sale made over the Internet or by other remote means, the sales tax registration number given by the purchaser matches the number on the Department's registry.

(b) ~~Liabilities.~~ Purchaser's Liability. – A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. ~~A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale.~~"

SECTION 32.1.(i) Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 32.1.(j) Part 7A of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.42K. Registration and effect of registration.**

Registration under the Agreement satisfies the registration requirements under this Article. A seller who registers under the Agreement within 12 months after the State becomes a member of the Agreement and who meets the following conditions is not subject to assessment for sales tax for any period before the effective date of the seller's registration:

(1) The seller was not registered with the State during the 12-month period before the effective date of this State's participation in the Agreement.

(2) When the seller registered, the seller had not received a letter from the Department notifying the seller of an audit.

(3) The seller continues to be registered under the Agreement and to remit tax to the State for at least 36 months."

SECTION 32.1.(k) Article 5F of Chapter 105 of the General Statutes is amended by adding new sections to read:

"§ 105-187.51A. Tax imposed on manufacturing fuel.

A privilege tax is imposed on a manufacturing industry or plant that purchases fuel to operate the industry or plant. The tax is one percent (1%) of the sales price of the fuel. The tax does not apply to electricity.

"§ 105-187.51B. Tax imposed on recycling equipment.

(a) Tax. – A privilege tax is imposed on a major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

(1) Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

(2) Port and dock facilities.

(3) Rail equipment.

(4) Material handling equipment.

(b) Rate. – The tax is one percent (1%) of the sales price of the tangible personal property. The maximum tax is eighty dollars ($80.00) per article."

SECTION 32.1.(l) G.S. 105-187.52 reads as rewritten:

"§ 105-187.52. Administration.

The privilege ~~tax this Article imposes on a person listed in G.S 105-187.51 is an additional~~taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of ~~this tax~~these taxes is the same as the State use tax imposed by Article 5 of this Chapter."

SECTION 32.1.(m) Section 18 of S.L. 2000-120, as amended by Section 44.1 of S.L. 2003-284, reads as rewritten:

"Section 18. Section 7 of this act becomes effective January 1, 2001. Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, ~~2005.~~2010. The remainder of this act is effective when it becomes law."

SECTION 32.1.(n) G.S. 105-151.21(b) reads as rewritten:

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

(1) Farm machinery. – Machinery ~~subject to~~ exempt from State sales tax ~~at the rate of one percent (1%)~~ under G.S. ~~105-164.4A.~~105-164.13(4e).

(2) Property taxes. – The principal amount of taxes levied and assessed by a taxing unit under Subchapter II of this Chapter. The term does not include costs, penalties, interest, or other charges that may be added to the principal amount.

(3) Taxing unit. – Defined in G.S. 105-273."

SECTION 32.1.(o) G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a) (4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is eighteen and ~~twenty-six hundredths percent (18.26%)~~three one-hundredths percent (18.03%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars ($2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the 'freeze deduction.' The Secretary must distribute the specified percentage of the proceeds, less the 'freeze deduction' among the cities in accordance with this section."

SECTION 32.1.(p) G.S. 105-164.6 reads as rewritten:

"§ 105-164.6. ~~Imposition of~~Complementary use tax.

(a) Tax. – An excise tax ~~at the following percentage rates is imposed on the storage, use, or consumption in this State of tangible personal property purchased inside~~

~~or outside the State for storage, use, or consumption in the State:~~at the applicable rate set in G.S. 105-164.4 is imposed on the items listed below. The applicable rate is the rate and maximum tax, if any, that would apply to the sale of the item.

(1) ~~At the applicable percentage rate of the purchase price of each item or article of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is stored, used, or consumed.~~Tangible personal property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.

(2) ~~At the applicable percentage rate of the monthly lease or rental price paid, contracted, or agreed to be paid by the lessee or renter to the owner of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a lease or rental of the property that is stored, used, or consumed.~~Tangible personal property leased or rented inside or outside this State for storage, use, or consumption in this State.

(3) Services sourced to this State.

(b) ~~An excise tax at the general rate of tax set in G.S. 105-164.4 is imposed on the purchase price of tangible personal property purchased inside or outside the State that~~Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or who purchases a service. If the property purchased becomes a part of a building or other structure in the ~~State. The purchaser of the property is liable for the tax. If the purchaser is a contractor, the contractor and owner are jointly and severally liable for the tax; if~~State and the purchaser is a ~~subcontractor, the subcontractor and contractor~~contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of ~~an owner or a contractor~~a contractor, a subcontractor, or an owner who did not purchase the property is satisfied ~~if the purchaser delivers to the owner or contractor before final settlement between them~~by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) ~~Where a retail sales tax has already been paid with respect to tangible personal property in this State by the purchaser thereof, the tax shall be credited upon the tax imposed by this Part. Where a retail sales and use tax is due and has been paid with respect to tangible personal property in another state by the purchaser for storage, use or consumption in this State, the tax shall be credited upon the tax imposed by this Part.~~Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales tax paid on the item to another State. If the amount of tax paid to ~~another~~the other state is less than the amount of tax imposed by this ~~Part, the purchaser shall pay to the Secretary an amount sufficient to make the tax paid to the other state and this State equal to the amount imposed by this Part. The Secretary of Revenue shall require such proof of payment of tax to another state as he deems necessary. No credit shall be given under this subsection for sales or use taxes paid in another state if that~~section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.

~~(d) Every person storing, using or otherwise consuming in this State tangible personal property purchased or received at retail either within or without this State shall be liable for the tax imposed by this Article and the liability shall not be extinguished until the tax has been paid to this State. Provided, however, that a receipt from a registered retailer engaged in business in this State given to the purchaser in accordance with the provisions of this Article shall be prima facie sufficient to relieve the purchaser from liability for the tax to which such receipt may refer and the liability of the purchaser shall be extinguished upon payment of the tax by any retailer from whom he has purchased the property.~~

~~(e) Except as provided herein the tax so levied is and shall be in addition to all other taxes whether levied in the form of excise, license, privilege or other taxes.~~

(f) Registration. – Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department.

The holder of the certificate of registration must pay the tax levied under this Article. A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

SECTION 32.1.(q) G.S. 105-164.13B(a) reads as rewritten:

"(a) State Exemption. – Food is exempt from the taxes imposed by this Article unless the food is included in one of the subdivisions in this subsection. The following food items are subject to tax:

~~(1) Alcoholic beverages, as defined in G.S. 105-113.68.~~
(2) Dietary supplements.
(3) Food sold through a vending machine.
(4) Prepared food.
(5) Soft drinks."

SECTION 32.1.(r) G.S. 105-164.42B(1) reads as rewritten:

"§ 105-164.42B. Definitions.

The following definitions apply in this Part:

(1) Agreement. – ~~The~~ Streamlined ~~Sales and Use Tax Agreement.~~Agreement, as defined in G.S. 105-164.3.

...."

SECTION 32.1.(s) Subdivision (b)(5) of Section 5 of Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws and S.L. 2001-347, reads as rewritten:

"(b) Definitions. The definitions in G.S. 105-164.3 apply to this Part insofar as they are not inconsistent with the provisions of this Part. In addition, the following definitions apply in this Part:

...

(5) Prepared Food and Beverages. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:

a. Prepared food, as defined in G.S. 105-164.3.
b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 32.1.(t) Subdivision (a)(2) of Section 2 of Chapter 413 of the 1993 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions; Sales and Use Tax Statutes. – (a) The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. In addition, the following definitions apply in this act:

...

(2) Prepared food and beverages. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:
a. Prepared food, as defined in G.S. 105-164.3.
b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 32.1.(u) Section 2 of Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws, Chapter 177 of the 1991 Session Laws, and S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply in this act. In addition, the following definitions apply in this act.

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax.
(2) Prepared food and beverages. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:
a. Prepared food, as defined in G.S. 105-164.3.
b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 32.1.(v) Subsection (b) of Section 1 of Chapter 449 of the 1993 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"(b) Definitions; Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section.~~In addition,~~ For the purposes of this section, the term 'prepared food and beverages' ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~ includes the following:

(1) Prepared food, as defined in G.S. 105-164.3.
(2) An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3.

~~The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section.~~"

SECTION 32.1.(w) Subdivision (3) of Section 2 of Chapter 594 of the 1991 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

...

(3) Prepared food and beverage. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:
a. Prepared food, as defined in G.S. 105-164.3.
b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 32.1.(x) Section 3.1 of S.L. 2001-347, as amended by Section 13 of S.L. 2003-416, reads as rewritten:

"**SECTION 3.1.** Part 1 of this act is effective when it becomes ~~law and expires January 1, 2006, unless one of the following occurs: (i) 15 states have adopted the Streamlined Sales and Use Tax Agreement, or (ii) states representing a combined resident population equal to at least ten percent (10%) of the national resident population, as determined by the 2000 federal decennial census, have adopted the Agreement.~~law."

SECTION 32.1.(y) Section 3.2 of S.L. 2001-347 reads as rewritten:

"SECTION 3.2. Section 2.8, G.S. 105-164.13(5a), as enacted by Section 2.12, and Section 2.17 of Part 2 of this act become effective ~~January 1, 2006.~~October 1, 2005. The remainder of Part 2 of this act becomes effective January 1, 2002."

SECTION 32.1.(z) This subsection and subsection (m) of this section are effective when they become law. Subsection (a) of this section, the changes made by subsection (b) of this section to G.S. 105-164.3(4a) and (45a), the changes made by subsection (c) of this section to G.S. 105-164.4(a)(4c) and (6), and subsection (i) of this section become effective July 1, 2005. The remainder of this section becomes effective October 1, 2005. Subsection (o) of this section applies to distributions for calendar quarters that begin on or after October 1, 2005.

PART XXXIII. SALES TAX CHANGES

Requested by: Senators Hoyle, Kerr

SALES TAX CHANGES

SECTION 33.1.(a) Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284, reads as rewritten:

"SECTION 34.13.(c) This section becomes effective October 16, 2001, and applies to sales made on or after that date. ~~This section is repealed effective for sales made on or after July 1, 2005.~~ 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 33.1.(b) G.S. 105-164.3 is amended by adding new subdivisions to read:

"(1a) Cable service. – The one-way transmission to subscribers of video programming or another programming service and any subscriber interaction required to select or use the service.

...

(37a) Satellite digital audio radio service. – A radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station."

SECTION 33.1.(c) G.S. 105-164.4(a), as amended by subsection (a) of this section and subsection (c) of Section 32.1 of this act, 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%).

...

(6) The combined general rate applies to the gross receipts derived from providing ~~direct to home satellite service to subscribers in this State.~~any of the following broadcast services to a subscriber in this State. A person engaged in the business of providing ~~direct to home satellite service~~any of these services is considered a retailer under this ~~Article.~~Article:

a. Direct-to-home satellite service.

b. Cable service.

c. Satellite digital audio radio service. For service received by a mobile or portable station, the service is sourced to the subscriber's business or home address.

...

(9) The general rate of tax applies to the sales price of a warranty agreement, a maintenance agreement, a repair contract, or a similar service agreement or contract by which the seller agrees to maintain or

repair tangible personal property. A person who sells a service agreement or contract is considered a retailer under this Article."

SECTION 33.1.(d) G.S. 105-164.4C(b)(2) reads as rewritten:

"(2) Charges for directory assistance, directory listing that is not yellow-page classified listing, call forwarding, call waiting, three-way calling, caller ID, voice mail, and other similar services."

SECTION 33.1.(e) G.S. 105-164.4C(c)(11) is repealed.

SECTION 33.1.(f) G.S. 105-164.13(1), as amended by Section 32.1(c) of this act, 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, 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 33.1.(g) G.S. 105-164.13B(a) reads as rewritten:

"(a) State Exemption. – Food is exempt from the taxes imposed by this Article unless the food is included in one of the subdivisions in this subsection. The following food items are subject to tax:

(1) Alcoholic beverages, as defined in G.S. 105-113.68.
(2) Dietary supplements.
(3) Food sold through a vending machine.
(4) Prepared food.
(5) Soft drinks.
(6) Repealed.
(7) Candy."

SECTION 33.1.(h) Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.21B. Credit for local cable television franchise taxes.**

A cable service retailer is allowed a credit against the tax imposed by this Article on cable service. The credit is for local cable television franchise taxes the retailer pays to a city under G.S. 160A-214 or to a county under G.S. 153A-154 based on the amount it receives from subscribers for cable service. The amount received from subscribers for cable service does not include receipts from the lease or rental of tangible personal property.

When making a payment or filing a return under G.S. 105-164.16, a cable service retailer may claim a credit for the applicable pro rata amount of local cable television franchise taxes for which this section allows a credit. The applicable pro rata amount is the creditable amount of local cable television franchise taxes the retailer paid for the most recent fiscal year divided by the number of sales tax payments the retailer is required to make under this Article."

SECTION 33.1.(i) G.S. 105-467(a) is amended by adding a new subdivision to read:

"(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the transactions listed in this subsection. The

sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection.

...

(7) The sales price of a service agreement or contract subject to the general rate of tax under G.S. 105-164.4(a)(9)."

SECTION 33.1.(j) Subsections (a) and (j) of this section are effective when they become law. The remainder of this section becomes effective October 1, 2005.

PART XXXIV. TOBACCO TAX RATE CHANGES

Requested by: Senators Hoyle, Kerr

TOBACCO TAX RATE CHANGES

SECTION 34.1.(a) G.S. 105-113.5 reads as rewritten:

"**§ 105-113.5. Tax on cigarettes.**

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of two ~~and one-half mills~~ cents (2¢) per individual cigarette."

SECTION 34.1.(b) G.S. 105-113.35(a) reads as rewritten:

"(a) Tax. – An excise tax is levied on tobacco products other than cigarettes at the rate of ~~two percent (2%)~~ four percent (4%) of the cost price of the products. This tax does not apply to the following:

(1) A tobacco product sold outside the State.

(2) A tobacco product sold to the federal government.

(3) A sample tobacco product distributed without charge."

SECTION 34.1.(c) G.S. 105-113.21(a1) reads as rewritten:

(a1) Discount. – A distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). The discount a distributor deducts on all reports filed for a 12-month period beginning July 1 may not exceed a maximum of one hundred twenty-five thousand dollars ($125,000). This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond."

SECTION 34.1.(d) This section becomes effective July 1, 2005.

PART XXXV. IRC UPDATE

Requested by: Senators Jenkins

IRC UPDATE

SECTION 35.1.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

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

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2004~~,January 1, 2005, including any provisions enacted as of that date which become effective either before or after that ~~date.~~date, but not including the amendments made to section 164 of the Code by section 501 of P.L. 108-357."

SECTION 35.1.(b) G.S. 105-130.5(a) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(16) The amount excluded from gross income under Subchapter R of Chapter 1 of the Code.

(17) The amount excluded from gross income under section 199 of the Code."

SECTION 35.1.(c) Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after May 1, 2004, that increase North Carolina taxable income for the 2004 taxable year become effective for taxable years beginning on or after January 1, 2005.

SECTION 35.1.(d) G.S. 105-228.90(b)(1b), as amended by subsection (a) of this section, reads as rewritten:

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

...

(1b) Code. – The Internal Revenue Code as enacted as of January 1, 2005, including any provisions enacted as of that date which become effective either before or after that ~~date, but not including the amendments made to Section 164 of the Code by Section 501 of P.L. 108-357.~~date."

SECTION 35.1.(e) G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax or as state or local general sales tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount the taxpayer is required to add to taxable income under subdivision (4) of this subsection.

...."

SECTION 35.1.(f) Notwithstanding any other provision of law, a taxpayer whose federal taxable income for 2004 is reduced due to a charitable contribution of cash made in January 2005 for Indian Ocean tsunami relief efforts in accordance with P.L. 109-1 is not required to add back the amount of the deduction related to that contribution in determining North Carolina taxable income for 2004.

SECTION 35.1.(g) Subsections (d) and (e) of this section become effective for taxable years beginning on or after January 1, 2005. The remainder of this section is effective when it becomes law.

PART XXXVI. INDIVIDUAL INCOME TAX CHANGES

Requested by: Senators Hoyle, Kerr

PHASE-OUT 8.25% INDIVIDUAL INCOME TAX RATE

SECTION 36.1.(a) Section 39.1 of S.L. 2003-284 is repealed.

SECTION 36.1.(b) Effective for taxable years beginning on or after January 1, 2006, G.S. 105-134.2(a) reads as rewritten:

"(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	$21,250	6%
$21,250	$100,000	7%
$100,000	$200,000	7.75%
$200,000	NA	~~8.25%~~8%

(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%

(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%

(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%".

SECTION 36.1.(c) Effective for taxable years beginning on or after January 1, 2007, G.S. 105-134.2(a), as amended by 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%~~

(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%~~

(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%~~

(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%~~".

SECTION 36.1(d). Except as otherwise provided, this section is effective when it becomes law.

PART XXXVII. CONFORM ESTATE TAX TO FEDERAL SUNSET

Requested by: Senators Hoyle, Kerr

CONFORM ESTATE TAX TO FEDERAL SUNSET

SECTION 37.1.(a) Section 30C.3(b) of S.L. 2002-126, as amended by Section 37A.4 of S.L. 2003-284 and Section 1 of S.L. 2004-170, reads as rewritten:

"**SECTION 30C.3.(b)** This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. ~~This section and Section 37A.5 of S.L. 2003-284 are repealed effective for the estates of decedents dying on or after July 1, 2005.~~"

SECTION 37.1.(b) This section is effective when it becomes law.

PART XXXVIII. CORPORATE INCOME TAX CHANGES

Requested by: Senators Hoyle, Kerr

CORPORATE INCOME TAX REDUCTION

SECTION 38.1.(a) G.S. 105-130.3 reads as rewritten:

"**§ 105-130.3. Corporations.**

A tax is imposed on the State net income of every C Corporation doing business in this State. An S Corporation is not subject to the tax levied in this section. The tax is a ~~percentage~~ six and four-tenths percent (6.4%) of the taxpayer's State net ~~income computed as follows:~~

~~Income Years Beginning~~	~~Tax~~
~~In 1997~~	~~7.5%~~
~~In 1998~~	~~7.25%~~
~~In 1999~~	~~7%~~
~~After 1999~~	~~6.9%.~~income."

SECTION 38.1.(b) G.S. 115C-546.1, as amended by Section 7.26 of this act, reads as rewritten:

"**§ 115C-546.1. Creation of Fund; administration.**

(a) There is created the Public School Building Capital and Technology Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs and their equipment needs under their local school technology plans.

(b) ~~Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital and Technology Fund an amount equal to the applicable fraction provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars ($2,500,000).~~ All funds deposited in the Public School Building Capital and Technology Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

~~Period~~	~~Fraction~~
~~10/1/97 to 9/30/98~~	~~One fifteenth (1/15)~~
~~10/1/98 to 9/30/99~~	~~Two twenty ninths (2/29)~~

~~10/1/99 to 9/30/00 One-fourteenth (1/14)~~
~~After 9/30/00 Five-sixty-ninths (5/69)~~

(c) The Fund shall be administered by the Department of Public Instruction."

SECTION 38.1.(c) This section is effective for taxable years beginning on or after January 1, 2007.

Requested by: Senators Hoyle, Kerr

CORPORATE THROWOUT RULE AND OUTER JURISDICTIONAL PROPERTY

SECTION 38.2.(a) G.S. 105-130.4(a) is amended by adding a new subdivision to read:

"(a) As used in this section, unless the context otherwise requires:

...

(5b) 'Outer-jurisdictional property' means tangible personal property that is not physically located in any state. The term includes orbiting satellites and undersea transmission cables."

SECTION 38.2.(b) G.S. 105-130.4(j)(1) reads as rewritten:

"(1) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year. Neither the numerator nor the denominator includes outer-jurisdictional property."

SECTION 38.2.(c) G.S. 105-130.4(l) reads as rewritten:

"(l) (1) The sales factor is a ~~fraction, the~~ fraction. The numerator of ~~which~~ the fraction is the total sales of the corporation in this State during the income year, and the denominator of ~~which is the total sales of the corporation everywhere~~ the fraction is the sum of sales to the United States government and sales other than those attributable to the United States government that are attributable to a state in which the taxpayer is taxable during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State."

SECTION 38.2(d). This section is effective for taxable years beginning on or after January 1, 2005.

PART XXXIX. FILM INDUSTRY JOBS INCENTIVES

Requested by: Senators Boseman, Hoyle

FILM INDUSTRY JOBS INCENTIVES

SECTION 39.1.(a) Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.47. Credit for qualifying expenses of a production company.**

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.

(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services purchased by the production company.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

(3) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least one million dollars ($1,000,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses that have been certified as required in subsection (c) of this section. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(c) Certification. – In order to be eligible for a credit under this section, a taxpayer must submit a detailed accounting of its qualifying expenses to the North Carolina Film Office of the Department of Commerce. The North Carolina Film Office, with the assistance of the regional film commission for the location of the production, must make a written certification of the amount of the qualifying expenses.

(d) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(e) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and the certification from the North Carolina Film Office of the qualifying expenses for which the credit is claimed.

(f) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(g) Limitation. – No credit is allowed under this section for any production that satisfies one of the following conditions:
(1) It is commercial or political advertising.
(2) It is a television production of a news program or sporting event.
(3) It contains material that is obscene, as defined in G.S. 14-190.1.
(h) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue or the regional film commissions. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit.
(i) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding April 1:
(1) The location of sites used in a production for which a credit was claimed.
(2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.
(3) The number of people employed in the State with respect to credits claimed.
(4) The total cost to the General Fund of the credits claimed.
(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

SECTION 39.1.(b) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-151.29. Credit for qualifying expenses of a production company.

(a) Definitions. – The following definitions apply in this section:
(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.
(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:
a. Goods and services purchased by the production company.
b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.
(3) Production company. – Defined in G.S. 105-164.3.
(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least one million dollars ($1,000,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses that have been certified as required in subsection (c) of this section. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.
(c) Certification. – In order to be eligible for a credit under this section, a taxpayer must submit a detailed accounting of its qualifying expenses to the North Carolina Film Office of the Department of Commerce. The North Carolina Film Office, with the assistance of the regional film commission for the location of the production, must make a written certification of the amount of the qualifying expenses.
(d) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If

a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(e) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and the certification from the North Carolina Film Office of the qualifying expenses for which the credit is claimed.

(f) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(g) Limitation. – No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is commercial or political advertising.

(2) It is a television production of a news program or sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(h) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue or the regional film commissions. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit.

(i) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding April 1:

(1) The location of sites used in a production for which a credit was claimed.

(2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits claimed.

(4) The total cost to the General Fund of the credits claimed.

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

SECTION 39.1.(c) G.S. 105-259(b), as amended by Section 30.1 of this act, is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(33) To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of the Department of Commerce and with the regional film commissions."

SECTION 39.1.(d) G.S. 143B-434.4 is repealed.

SECTION 39.1.(e) This section is effective for taxable years beginning on or after January 1, 2005.

PART XL. SET RATES FOR INSURANCE REGULATORY CHARGE AND PUBLIC UTILITIES FEES

Requested by: Senators Hoyle, Kerr

INSURANCE REGULATORY CHARGE

SECTION 40.1.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2005 calendar year.

SECTION 40.1.(b) This section is effective when it becomes law.

Requested by: Senators Hoyle, Kerr

REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 40.2.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2005.

SECTION 40.2.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2005-2006 fiscal year is two hundred thousand dollars ($200,000).

SECTION 40.2.(c) This section becomes effective July 1, 2005.

PART XLI. HEALTH AND HUMAN SERVICES FEES

Requested by: Senators Hoyle, Kerr

NEWBORN SCREENING FEE

SECTION 41.1. G.S. 130A-125(c) reads as rewritten:

"(c) ~~The Department may impose a fee for a laboratory test performed pursuant to this section by the State Public Health Laboratory. A fee for a test must be based on the actual cost of performing the test.~~ A fee of fourteen dollars ($14.00) applies to a laboratory test performed by the State Public Health Laboratory performed pursuant to this section. Fees collected shall remain in the Department to be used to offset the cost of the Newborn Screening Program."

PART XLII. NATURAL AND ECONOMIC RESOURCES FEES

Requested by: Senators Weinstein, Hoyle, Kerr

INCREASE VARIOUS FEES

SECTION 42.1.(a) G.S. 106-284.34(c) reads as rewritten:

"(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of ~~three dollars ($3.00)~~five dollars ($5.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of ~~ten dollars ($10.00)~~twelve dollars ($12.00) for each canned pet food shall accompany each request for registration."

SECTION 42.1.(b) G.S. 106-284.40(b)(4) reads as rewritten:

"(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of ~~thirty dollars ($30.00)~~forty dollars ($40.00) shall be paid in lieu of the inspection fee specified above."

SECTION 42.1.(c) G.S. 106-277.28(3) reads as rewritten:

"(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of ~~two cents (2¢)~~four cents (4¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection

fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown."

SECTION 42.1.(d) The Board of Agriculture shall charge the following fees for agronomic services:

Test/Service		Fee
(1)	Routine nematode samples	$ 3.00
(2)	Routine waste samples	$ 5.00
(3)	Research soil and nematode samples	$12.00
(4)	Research plant, waste, and solution samples	$12.00
(5)	Nonresident nematode samples	$14.00
(6)	Nonresident plant, waste, and solution samples	$26.00
(7)	Special services for plant, waste, and solution samples:	
	a. Heavy metals-soils	$25.00
	b. Nitrates-soils	$ 5.00
	c. Waste-heavy metals	$10.00
	d. Waste-N breakout	$10.00
	e. Waste-liming equivalent	$10.00
	f. Plant-chloride	$ 5.00
	g. Plant-molybdenum	$ 5.00
	h. Plant-petiole nitrates	$ 5.00

SECTION 42.1.(e) The Board of Agriculture shall charge the following fees for animal disease diagnostic tests and services:

Test/Service		Fee
(1)	Histopath	$30.00
(2)	Professional services-EIA	$ 6.00
(3)	Professional services-blood pour-off fees	$ 1.00
(4)	Vacuum tube handling fee	$ 0.04

SECTION 42.1.(f) G.S. 81A-52 reads as rewritten:

"**§ 81A-52. License.**

All public weighmasters shall be licensed. Any person not less than 18 years of age who wishes to be a public weighmaster shall apply to the Department on a form provided by the Department. The Board may adopt rules for determining the qualifications of the applicant for a license. Public weighmasters shall be licensed for a period of one year beginning the first day of July and ending on the thirtieth day of June, and a fee of ~~twelve dollars ($12.00)~~nineteen dollars ($19.00) shall be paid for each person licensed at the time of the filing of the application."

SECTION 42.1.(g) G.S. 81A-72 reads as rewritten:

"**§ 81A-72. Registration; certificate of registration; annual renewal.**

The Commissioner or his authorized agent shall register any person who has complied with the requirements of this Article by making a record of receipt of application, and the issuing of a certificate or card of registration to applicant, whereupon the applicant becomes a registered scale technician and shall be known thereafter as such. Such registration shall be in effect from date of registration until July 1 next and shall be renewed on the first day of July of each year thereafter. A fee of twenty dollars ($20.00) shall accompany each application for registration and each annual registration renewal."

SECTION 42.1.(h) G.S. 81A-11 is repealed.

SECTION 42.1.(i) Chapter 81A of the General Statutes is amended by adding the following new section to read:

"**§ 81A-12. Fee schedule.**

(a) The following fees apply to all weights that are tested and certified to meet tolerances less stringent than the American Society for Testing and Materials (ASTM) Standard E617 Class 4. This includes the National Institutes of Standards and Technology (NIST) Class F tolerance. If the weight error exceeds three-fourths of the

applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. No extra fee shall be charged for the normal adjustment of a weight cart. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-10 lb	$ 5.00	0-5 kg	$ 5.00
11-100 lb	$ 10.00	6-50 kg	$ 10.00
101-1000 lb	$ 20.00	51-500 kg	$ 20.00
1001-2500 lb	$ 30.00	501-1000 kg	$ 30.00
2501-6000 lb	$ 50.00	1001-2500 kg	$ 50.00
Weight Carts up to 6000 lb	$125.00 (includes adjustment)		

(b) The following fees apply to all weights that are tested and certified to meet ASTM Standard E617 Class 4 or the International Organization of Legal Metrology (IOLM) R111 Class F2 tolerances. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-10 lb	$ 10.00	0-5 kg	$ 10.00
11-100 lb	$ 20.00	6-50 kg	$ 20.00
101-1000 lb	$ 40.00	51-500 kg	$ 40.00
1001-2500 lb	$ 60.00	501-1000 kg	$ 60.00
2501-6000 lb	$100.00	1001-2500 kg	$100.00

(c) The following fees apply to all weights that are calibrated. Calibration means determining actual mass and conventional mass values with an assigned uncertainty specific to the test. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 1, 2, or 3 tolerances or IOLM Class E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-20 lb	$ 20.00	0-10 kg	$ 20.00
21-50 lb	$ 40.00	11-30 kg	$ 40.00
51-1000 lb	$ 70.00	31-500 kg	$ 70.00
1001-2500 lb	$130.00	501-1000 kg	$130.00
2501-6000 lb	$200.00	1001-2500 kg	$200.00

(d) The following fees apply to all weights that are calibrated using NIST weighing designs. These weights are tested in groups (typically either a 1, 2, 3, 5 series or a 1, 2, 2, 5 series) and are subject to the minimum per series fee shown. The best uncertainty possible from the North Carolina Standards Laboratory shall be assigned to the mass values of the weights. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 0, 1, 2, or 3 tolerances or IOLM Class E1, E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned.

Weight Range	Fee/Unit or Series
0-1 kg	$30.00 each, with a minimum charge of $90 (3 weights) per series
2-30 kg	$50.00 each, with a minimum charge of $150 (3 weights) per series
0-2 lb	$30.00 each, with a minimum charge of $90 (3 weights) per series
3-50 lb	$50.00 each, with a minimum charge of $150 (3 weights) per series

(e) The following fees apply to volumetric standard calibration.

Provers or Test Measures Tested By The Volume Transfer Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-5 gal	$30.00	0-20 liters	$30.00

Over 5 gal	Add $0.40 per each additional gallon	Over 20 liters	Add $0.10 per each additional liter

Volumetric Flasks, Graduates, Provers, Slicker Plate Standards, or Test Measures Tested By the Gravimetric Calibration Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-100 gal set-up fee	$50.00	0-500 liters set-up fee	$50.00
Calibration Fee	Add $2.00 per gallon	Calibration Fee	Add $0.50 per liter

Small Volume Provers (SVPs) Tested By The Gravimetric Calibration Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-100 gal set-up fee	$ 100.00	0-500 liters set-up fee	$100.00
Calibration Fee	Add $2.00 per gallon	Calibration Fee	Add $0.50 per liter

(f) The following fees apply to tape measures and rigid rules.

Set-Up Fee	$ 40.00 per instrument
Calibration Fee	$ 10.00 calibration interval

(g) The following fees apply to liquid-in-glass and electronic thermometers.

Set-Up Fee	$ 40.00/instrument
Calibration Fee	$ 20.00/calibration point
Resistance Thermometry Coefficient Calculation and Report	$ 100.00/ instrument

(h) Any special tests or weight cleaning shall be billed at the rate of seventy dollars ($70.00) per hour prorated to the nearest tenth of an hour, with a minimum charge of thirty-five dollars ($35.00).

(i) A minimum charge of twenty-five dollars ($25.00) per invoice shall apply.

(j) If travel is required in connection with the performance of any of these services, the Department shall be reimbursed at the rates provided in G.S. 138-6.

(k) The Department may refuse to accept for testing any weight or measure the Department deems unsuited for its intended use.

(l) The fee for tests performed on weights or measures that will be used primarily outside of the State of North Carolina shall be twice the amounts set forth in this section."

Requested by: Senators Hoyle, Kerr

LABOR COMMISSIONER FEE AUTHORITY FOR MINE INSPECTIONS

SECTION 42.2. G.S. 74-24.7 is amended by adding a new subsection to read:

"(h) An annual inspection and investigation fee of one thousand two hundred thirty dollars ($1,230) is imposed on an operator of a mine subject to an inspection or investigation under this section. The fee may be collected at the time of inspection or investigation. If the fee is not collected at the time of inspection or investigation, the Director must bill the operator of the mine for the amount of the fee and the amount of the fee is payable by the operator upon receipt of the bill. Fees collected under this subsection shall be credited to the Department of Labor and applied to the cost of administering this Article."

PART XLIII. JUSTICE AND PUBLIC SAFETY FEES

Requested by: Senators Thomas, Hoyle, Kerr

GENERAL COURT OF JUSTICE FEE INCREASES

SECTION 43.1.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be

assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of ~~seventy-six dollars ($76.00)~~ eighty-six dollars ($86.00) in the district court, including cases before a magistrate, and the sum of ~~eighty-three dollars ($83.00)~~ ninety-three dollars ($93.00) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 43.1.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ~~sixty-nine dollars ($69.00)~~ seventy-nine dollars ($79.00) in the superior court, and the sum of ~~fifty-four dollars ($54.00)~~ sixty-four dollars ($64.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~forty-three dollars ($43.00).~~ fifty-three dollars ($53.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 43.1.(c) G.S. 7A-306(a)(2) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

...

(2) For support of the General Court of Justice the sum of ~~thirty dollars ($30.00).~~ forty dollars ($40.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each ~~thirty-dollar ($30.00)~~ forty-dollar ($40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 43.1.(d) G.S. 7A-307(a)(2) and (2a) read as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust

proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ~~thirty dollars ($30.00),~~ forty dollars ($40.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed ~~three thousand dollars ($3,000).~~ six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each ~~thirty-dollar ($30.00)~~ forty-dollar ($40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed ~~three thousand dollars ($3,000),~~ six thousand dollars ($6,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars ($20.00) shall be assessed on the filing of each annual and final account."

SECTION 43.1.(e) G.S. 15A-145(e) reads as rewritten:

"(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~sixty-five dollars ($65.00)~~ one hundred twenty-five dollars ($125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 43.1.(f) G.S. 15A-1343(b1)(3c) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

...

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition ~~electronically.~~electronically and to pay a fee for the device as specified in subsection (c2) of this section."

SECTION 43.1.(g) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00) plus court costs in the sum of ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence."

Requested by: Senators Thomas, Hoyle, Kerr

DEVICE FEE FOR HOUSE ARREST WITH ELECTRONIC MONITORING

SECTION 43.2. G.S. 15A-1343 is amended by adding a new section to read:

"(c2) Electronic Monitoring Device Fee. – Any person placed on house arrest with electronic monitoring under subsection (b1) of this section shall pay a fee of ninety dollars ($90.00) for the electronic monitoring device. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on house arrest with electronic monitoring. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (g) of this section to determine the payment schedule. The fee must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

Requested by: Senators Thomas, Hoyle, Kerr

INCREASE BUTNER TAXES

SECTION 43.3.(a) Section 1 of Chapter 830 of the 1983 Session Laws reads as rewritten:

"Section 1. (a) The territorial jurisdiction of the Butner Police and Fire Protection District shall include: (i) any property formerly a part of the original Camp Butner reservation, including both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the State; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of said reservation and said sanitary district.

(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durham and Granville Counties shall annually collect ~~beginning with fiscal year 1983-84~~ a tax of ~~twenty cents (20¢)~~ twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in the portions of said district in their respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the State Treasurer for deposit in the General Fund."

SECTION 43.3.(b) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

Requested by: Senators Thomas, Hoyle, Kerr

FEE FOR POLICE INFORMATION NETWORK

SECTION 43.4.(a) G.S. 114-10.1 reads as rewritten:

"§ 114-10.1. Police Information Network.

(a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who represents a person in adjudicatory or dispositional proceedings for an infraction from obtaining the person's driving record or criminal history

(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. For agencies that possess desktop terminals, the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each terminal linked to the Police Information Network. The additional fee amount varies depending upon the type of terminal. For each desktop terminal after the first seven desktop terminals, the additional monthly fee is twenty-five dollars ($25.00). For each mobile terminal, the additional monthly fee is six dollars ($6.00). For agencies that possess only mobile terminals, the monthly fee for each mobile terminal is six dollars ($6.00). The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network."

SECTION 43.4.(b) G.S. 114-110.1(d), as enacted by this section, reads as rewritten:

(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. For agencies that possess desktop terminals, the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each terminal linked to the Police Information Network. The additional fee amount varies depending upon the type of terminal. For each desktop terminal after the first seven desktop terminals, the additional monthly fee is twenty-five dollars ($25.00). For each mobile terminal, the additional monthly fee is ~~six dollars ($6.00).~~ twelve dollars ($12.00). For agencies that possess only mobile terminals, the monthly fee for each mobile terminal is ~~six dollars ($6.00).~~ twelve dollars ($12.00). The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network."

SECTION 43.4.(c) Subsection (b) of this section becomes effective January 1, 2006. The remainder of this section is effective when it becomes law.

PART XLIV. DEPARTMENT OF TRANSPORTATION FEE CHANGES

Requested by: Senators Hoyle, Kerr

DOT FEE INCREASES

SECTION 44.1.(a) G.S. 20-7 reads as rewritten:

"§ 20-7. Issuance and renewal of drivers licenses.

...

(i) Fees. – The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

Class of Regular License	Fee For Each Year
Class A	~~$4.30~~ $4.00
Class B	~~4.30~~ 4.00
Class C	~~3.05~~ 4.00

The fee for a motorcycle endorsement is one dollar and seventy-five cents ($1.75) for each year of the period for which the endorsement is issued. The appropriate fee shall be paid before a person receives a regular drivers license or an endorsement.

(i1) Restoration Fee. – Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars ($10,000,000), and shall pay a restoration fee of ~~twenty-five dollars ($25.00)~~ fifty dollars ($50.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The ~~twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee,~~ fifty-dollar ($50.00) fee, and the first fifty dollars ($50.00) of the seventy-five dollar ($75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of ~~the fifty-dollar ($50.00) fee~~ the seventy-five dollar ($75.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars ($10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ten million dollars ($10,000,000).

...

(l) Learner's Permit. – A person who is at least 18 years old may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder."

SECTION 44.1.(b) G.S. 20-11(j) reads as rewritten:

"(j) Duration and Fee. – A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A limited learner's permit or limited provisional license

issued under this section that expires on a weekend or State holiday shall remain valid through the fifth regular State business day following the date of expiration. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). The fee for a full provisional license is the amount set under G.S. 20-7(i)."

SECTION 44.1.(c) G.S. 20-14 reads as rewritten:

"**§ 20-14. Duplicate licenses.**

A person may obtain a duplicate of a license issued by the Division by paying a fee of ten dollars ~~and five cents ($10.05)~~ ($10.00) and giving the Division satisfactory proof that any of the following has occurred:

(1) The person's license has been lost or destroyed.
(2) It is necessary to change the name or address on the license.
(3) Because of age, the person is entitled to a license with a different color photographic background or a different color border.
(4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired."

SECTION 44.1.(d) G.S. 20-16(e) reads as rewritten:

"(e) The Division may conduct driver improvement clinics for the benefit of those who have been convicted of one or more violations of this Chapter. Each driver attending a driver improvement clinic shall pay a fee of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00)."

SECTION 44.1.(e) G.S. 20-26(c) reads as rewritten:

"(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section in accordance with G.S. 20-43.1 to other persons for uses other than official upon prepayment of the following fees:

(1) Limited extract copy of license record, for period up to three years ~~$5.00~~$8.00
(2) Complete extract copy of license record ~~5.00~~8.00
(3) Certified true copy of complete license record ~~7.00.~~11.00.

All fees received by the Division under this subsection shall be credited to the Highway Fund."

SECTION 44.1.(f) G.S. 20-37.15 (a1) reads as rewritten:

"(a1) The application must be accompanied by a nonrefundable application fee of ~~twenty dollars ($20.00).~~ thirty dollars ($30.00). This fee does not apply in any of the following circumstances:

(1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.
(2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c)."

SECTION 44.1.(g) G.S. 20-37.16(d) reads as rewritten:

"(d) The fee for a Class A, B, or C commercial drivers license is ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) for each year of the period for which the license is issued. The fee for each endorsement is ~~one dollar and twenty-five cents ($1.25)~~ three dollars ($3.00) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner."

SECTION 44.1.(h) G.S. 20-42(b) reads as rewritten:

"(b) The Commissioner and officers of the Division designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any document of the Division for a fee. The fee for a document, other than an accident report under G.S. 20-166.1, is ~~five dollars ($5.00).~~ ten dollars ($10.00).

The fee for an accident report is ~~four dollars ($4.00).~~ five dollars ($5.00). A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. The certification fee does not apply to a document furnished for official use to a judicial official or to an official of the federal government, a state government, or a local government."

SECTION 44.1.(i) G.S. 20-50(b) reads as rewritten:

"(b) The Division may issue a temporary license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is ~~three dollars ($3.00).~~ five dollars ($5.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

(1) It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.
(2) It expires on midnight of the day set for expiration.
(3) It may be used only on the vehicle for which issued and may not be transferred, loaned, or assigned to another.
(4) If it is lost or stolen, the person who applied for it must notify the Division.
(5) It may not be issued by a dealer.
(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 that apply to license plates apply to temporary license plates insofar as possible."

SECTION 44.1.(j) G.S. 20-73(c) reads as rewritten:

"(c) Penalties. – A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) and is guilty of a Class 2 misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to apply for a title within the required time is subject to a civil penalty of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00). When a person to whom a vehicle is transferred fails to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose a civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund."

SECTION 44.1.(k) G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title ..... ~~$35.00~~$39.00
(2) Each application for duplicate or corrected certificate of title ..... ~~10.00~~14.00
(3) Each application of repossessor for certificate of title..... ~~10.00~~14.00
(4) Each transfer of registration..... ~~10.00~~15.00
(5) Each set of replacement registration plates..... ~~10.00~~15.00
(6) Each application for duplicate registration card ..... ~~10.00~~15.00
(7) Each application for recording supplementary lien ..... ~~10.00~~14.00

(8) Each application for removing a lien from a certificate of title .....~~10.00~~14.00

(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale .....~~10.00~~14.00

(10) Each application for a salvage certificate of title made by an insurer .....~~10.00~~15.00

(11) Each set of replacement Stock Car Racing Theme plates issued under G.S. 20-79.4 ..... 25.00."

SECTION 44.1.(l) G.S. 20-85.1 reads as rewritten:

"**§ 20-85.1. Registration by mail; one-day title service; fees.**

(a) The owner of a vehicle registered in North Carolina may renew that vehicle registration by mail. A postage and handling fee of one dollar ($1.00) per vehicle to be registered shall be charged for this service.

(b) The Commissioner and the employees of the Division designated by the Commissioner may prepare and deliver upon request a certificate of title, charging a fee of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) for one-day title service, in lieu of the title fee required by G.S. 20-85(a). The fee for one-day title service must be paid by cash or by certified check.

(c) The fee collected under subsection (a) shall be credited to the Highway Fund. The fee collected under subsection (b) shall be credited to the Highway Trust Fund."

SECTION 44.1.(m) G.S. 20-87 reads as rewritten:

"**§ 20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

(1) For-Hire Passenger Vehicles. – The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars ($78.00). The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15 passengers is one dollar and forty cents ($1.40) per hundred pounds of empty weight of the vehicle.

(2) U-Drive-It Vehicles. – U-drive-it vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00
Automobiles:	15 or fewer passengers	~~$41.00~~$51.00
Buses:	16 or more passengers	~~$1.40~~ $2.00 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00.

(3) Repealed by Session Laws 1981, c. 976, s. 3.

(4) Limousine Vehicles. – For-hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways, shall be taxed at the same rate as for-hire passenger vehicles under G.S. 20-87(1) but shall be issued appropriate registration plates to distinguish such vehicles from taxicabs.

(5) Private Passenger Vehicles. – There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than fifteen passengers ..... ~~$20.00~~$28.00

Private passenger vehicles over fifteen passengers ..... ~~23.00~~31.00

Provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(6) Private Motorcycles. – The base fee on private passenger motorcycles shall be ~~nine dollars ($9.00);~~ fifteen dollars ($15.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base fee shall be ~~sixteen dollars ($16.00).~~ twenty-two dollars ($22.00). An additional fee of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72.

(7) Dealer License Plates. – The fee for a dealer license plate is the regular fee for each of the first five plates issued to the same dealer and is one-half the regular fee for each additional dealer license plate issued to the same dealer. The "regular fee" is the fee set in subdivision (5) of this section for a private passenger motor vehicle of not more than 15 passengers.

(8) Driveaway Companies. – Any person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates.

(9) House Trailers. – In lieu of other registration and license fees levied on house trailers under this section or G.S. 20-88, the registration and license fee on house trailers shall be ~~seven dollars ($7.00)~~ eleven dollars ($11.00) for the license year or any portion thereof.

(10) Special Mobile Equipment. – The fee for special mobile equipment for the license year or any part of the license year is two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers.

(11) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(12) Low-Speed Vehicles. – The fee for a low-speed vehicle is the same as the fee for private passengers vehicles of not more than 15 passengers."

SECTION 44.1.(m) G.S. 20-88 reads as rewritten:

"§ 20-88. Property-hauling vehicles.

(a) Determination of Weight. – For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of 1,000 pounds or major fraction thereof, weights of over 500 pounds counted as 1,000 and weights of 500 pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in

conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for 6,000 pounds or less gross weight and the gross weight of such combination does not exceed 9,000 pounds, except wreckers as defined under G.S. 20-4.01(50). Those property-hauling vehicles registered for 4,000 pounds shall be permitted a tolerance of 500 pounds above the weight permitted under the table of weights and rates appearing in subsection (b) of this section.

(b) The following fees are imposed on the annual registration of self-propelled property-hauling vehicles; the fees are based on the type of vehicle and its weight:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	Farmer Rate
Not over 4,000 pounds	~~$0.23~~$0.29
4,001 to 9,000 pounds inclusive	~~.29~~ .40
9,001 to 13,000 pounds inclusive	~~.37~~ .50
13,001 to 17,000 pounds inclusive	~~.51~~ .68
Over 17,000 pounds	~~.58~~ .77

Rates Per Hundred Pound Gross Weight	General Rate
Not over 4,000 pounds	~~$0.46~~$0.59
4,001 to 9,000 pounds inclusive	~~.63~~ .81
9,001 to 13,000 pounds inclusive	~~.78~~ 1.00
13,001 to 17,000 pounds inclusive	~~1.06~~ 1.36
Over 17,000 pounds	~~1.20~~ 1.54

(1) The minimum fee for a vehicle licensed under this subsection is ~~seventeen dollars and fifty cents ($17.50)~~ twenty-four dollars ($24.00) at the farmer rate and ~~twenty-one dollars and fifty cents ($21.50)~~ twenty-eight dollars ($28.00) at the general rate.

(2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.

(3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.

(4) "Farm products" means any food crop, livestock, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term "farm products" also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.

(5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.

(5a) Notwithstanding any other provision of this Chapter, license plates issued pursuant to this subsection at the farmer rate may be purchased for any three-month period at one fourth of the annual fee.

construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

SECTION 46.2.(b) The budget enacted by the General Assembly for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2005-2007 fiscal biennium is a line item budget, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. This budget includes the appropriations made from all sources including the General Fund, Highway Fund, special funds, cash balances, federal receipts, and departmental receipts.

The Director of the Budget submitted the itemized budget requests to the General Assembly on February 23, 2005, in the documents, "North Carolina State Budget 2005-2007, Summary of Recommendations" and "State of North Carolina 2005-2007 Recommended Continuation Budget" volumes one through six. The beginning appropriation for the 2005-2006 fiscal year and the 2006-2007 fiscal year for the various departments, institutions, and other spending agencies of the State is referenced in Tables 12 and 13 of the Summary of Recommendations document as the recommended continuation budget.

The General Assembly adjusted the recommended continuation budget to incorporate all nonrecurring adjustments enacted by the 2003 General Assembly as required in S.L. 2004-124 and S.L. 2003-284. These adjustments affect the Division of Medical Assistance, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the Clean Water Management Trust Fund, the Department of Crime Control and Public Safety, the Judicial Department, the General Assembly, the Department of Revenue, the Office of State Budget and Management, the Community Colleges System Office, the University of North Carolina – Board of Governors, the Department of Transportation, and the Reserve for Death Benefit Trust, and the Reserve for Disability Income Plan. These adjustments to the recommended continuation budget are set out in the Senate Appropriations/Base Budget Committee Report on the Continuation, Expansion, and Capital Budgets, dated May 3, 2005. The recommended continuation budget submitted by the Director of the Budget, as adjusted by the General Assembly, is referred to as the adjusted continuation budget and represents the starting point for further legislative revisions.

The General Assembly revised the adjusted continuation budget for the 2005-2006 fiscal year and 2006-2007 fiscal year in accordance with the steps that follow, and the line item detail in the budget enacted by the General Assembly may be derived accordingly:

(1) The adjusted continuation budget was revised in accordance with reductions and additions that were set out in the Senate Appropriations/Base Budget Committee Report on the Continuation, Expansion and Capital Budgets, dated May 3, 2005, together with any accompanying correction sheets.

(2) Transfers of funds supporting programs were made in accordance with the Senate Appropriations/Base Budget Committee Report on the Continuation, Expansion and Capital Budgets, dated May 3, 2005, together with any accompanying correction sheets.

SECTION 46.2.(c) The budget enacted by the General Assembly shall also be interpreted in accordance with the special provisions in this act and in accordance with other appropriate legislation.

In the event that there is a conflict between the line item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

Requested by: Senators Garrou, Dalton, Hagan

MOST TEXT APPLIES ONLY TO THE 2005-2007 FISCAL BIENNIUM

SECTION 46.3. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium.

Requested by: Senators Garrou, Dalton, Hagan

EFFECT OF HEADINGS

SECTION 46.4. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part.

Requested by: Senators Garrou, Dalton, Hagan

SEVERABILITY CLAUSE

SECTION 46.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Senators Garrou, Dalton, Hagan

EFFECTIVE DATE

SECTION 46.6. Except as otherwise provided, this act becomes effective July 1, 2005.

SENATE FINANCE COMMITTEE
Tuesday, May 10, 2005 1:40 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met thirty minutes after session adjourned on May 10, 2005, in the room 544 of the Legislative Office Building. Twenty-five members of the committee were present. Senator David Hoyle presided. Hannah Lee of Goldsboro, Blair Milan of Greensboro, Melynda McLaurin of Fayetteville, Faith Wright of Dudley and Caroline Finch of Goldsboro served as pages.

SB 466 – Burlington/Gibsonville Boundary.

Senator Berger explained the proposed committee substitute. Senator Stevens moved to approve the proposed committee substitute and the motion carried. A copy of the bill, the proposed committee substitute, and the summary are attached.

SB 138 – Archdale Extraterritorial Jurisdiction.

Senator Tillman explained the proposed committee substitute. Senator Swindell moved to approve the proposed committee substitute and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

SB 206 – Salemburg Boundary Validation.

Senator Albertson explained the proposed committee substitute. Senator Dannelly moved to approve the proposed committee substitute and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

SB 339 – Town of Ahoskie Occupancy Tax.

Senator Holloman explained the proposed committee substitute. Senator Apodaca moved to approve the proposed committee substitute and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

HB 540 – Halifax and Roanoke Rapids Occupancy Taxes.

Representative Lucy Allen explained the proposed committee substitute. Senator Dannelly moved to approve the proposed committee substitute and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

HB 871 – Emerald Isle Canal Dredging Fee.

Senator Thomas explained the bill. Senator Dannelly moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

HB 986 – Various Satellite Annexations.

Senator Soles explained the proposed committee substitute. Senator Dannelly moved to approve the proposed committee substitute and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

SB 407 – Cabarrus Municipal Vehicle Registration.

Senator Hartsell explained the proposed committee substitute. Senator Dannelly moved to approve the proposed committee substitute and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

SB 341 – Modern Escheat Investment Program.

Senator Hoyle explained the bill. Professor Andrew Silton, Treasurer's Advisor, was recognized to answer questions. Senator Jenkins moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

The meeting adjourned at 2:30 pm.

Senator David W. Hoyle, Presiding

John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Wednesday, May 11, 2005

Senator HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**341**	Modern Escheat Investment Program.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**540**	Halifax Occupancy Tax.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**871**	Emerald Isle Canal Dredging Fee.	
		Sequential Referral:	None
		Recommended Referral:	None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B.	**206**	Town of Salemburg Local Act.	
		Draft Number:	65300
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

Senate Finance Committee
Tuesday, May 10, 2005, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

S466	Burlington/Gibsonville Boundary.	Senator Berger
S138	Archdale Extraterritorial Jurisdiction.	Senator Tillman
S407	Cabarrus Municipal Vehicle Registration.	Senator Hartsell
S206	Town of Salemburg Local Act.	Senator Albertson
S339	Town of Ahoskie Local Act-2.	Senator Holloman
H540	Halifax Occupancy Tax.	Rep. Allen
H871	Emerald Isle Canal Dredging Fee.	Rep. Preston
H986	Greenville/Surf City Satellite Annexations.	Rep. Williams Rep. Warren Rep. McLawhorn
S341	Modern Escheat Investment Program.	Senator Hoyle

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 466*
PROPOSED COMMITTEE SUBSTITUTE S466-CSSVx-22 [v.1]

Short Title: Burlington/Gibsonville Boundary. (Local)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF GIBSONVILLE AND ANNEX IT TO THE CITY OF BURLINGTON, AND TO REMOVE CERTAIN PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF BURLINGTON AND TO ANNEX IT TO THE TOWN OF GIBSONVILLE, ALL AS REQUESTED BY THE TWO MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Gibsonville and is added to the corporate limits of the City of Burlington:

Tract I

Beginning in Guilford County at an existing iron pipe, said existing iron pipe being located at the Southeast Intersection of Greeson Road & N.C. Hwy. #61; thence running along the Eastern Right-of-Way line of N.C. Hwy. #61 South 17 Degrees, 00 Minutes, & 01 Second West 382.28 Ft. to a point along same said Right-of-Way, also said point being on the Northern Right-of-Way line of Pace Drive; thence continuing along the Northern Right-of-Way of Pace Drive South 69 Degrees, 00 Minutes, & 44 Seconds East 1.74 Ft. to a point the P.C. of a curve to the right, the radius being 305 Ft., the chord being South 48 Degrees, 17 Minutes, & 20 Seconds East 215.85 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 27 Degrees, 33 Minutes, & 56 Seconds East 73.68 Ft. to a point the P.C. of a curve to the Left, the radius being 225 Ft., the chord being South 40 Degrees, 59 Minutes, & 09 Seconds East 104.44 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 54 Degrees, 24 Minutes, & 23 Seconds East 266.14 Ft. to a point the P.C. of a curve to the Left, the radius being 295 Ft., the chord being South 68

Degrees, 14 Minutes, & 35 Seconds East 141.10 Ft. to a point the P.T. of a curve; thence continuing along same said Right-of-Way South 82 Degrees, 04 Minutes, & 47 Seconds East 256.27 Ft. to a point the P.C. of a curve to the Left, the radius being 4,555.68 Ft., the chord being South 83 Degrees, 19 Minutes, & 47 Seconds East 198.76 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 84 Degrees, 34 Minutes, & 47 Seconds East 475.94 Ft. to a point; thence continuing North 04 Degrees, 38 Minutes, & 11 Seconds East 931.19 Ft. to an existing iron on the Southern Right-of-Way of Greeson Road; thence continuing along same said Right-of-Way South 89 Degrees, 42 Minutes, & 32 Seconds West 312.50 Ft. to an existing iron on same said Right-of-Way; thence continuing along same said Right-of-Way North 89 Degrees, 14 Minutes, & 31 Seconds West 616.11 Ft. to an existing iron pipe on same said Right-of-Way; thence continuing along same said Right-of-Way North 88 Degrees, 07 Minutes, & 24 Seconds West 175.78 Ft. to an existing iron pipe on same said Right-of-Way; thence continuing along same said Right-of-Way North 86 Degrees, 31 Minutes, & 49 Seconds West 397.88 Ft. to an existing iron pipe the point of beginning containing 28.051 acres more or less; the same being Lot 1 of the property of Pace Oil Company as recorded in Plat Book 89, Page 36; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3683, Page 765, Guilford County Registry.

Tract II

Beginning in Guilford County at a new iron pipe on the Eastern Right-of-Way line of N.C. 61, said new iron pipe being a common corner with G. H. Kirkpatrick, Jr.; thence running along the Northern line of Kirkpatrick South 30 Degrees, 47 Minutes & 49 Seconds East 336.12 Ft. to a new iron pipe in the Northern line of Thelma T. Wheeler, thence along the Northern line of Thelma T. Wheeler North 88 Degrees, 49 Minutes & 45 Seconds East 145.14 Ft. to a point along the Southern Right-of-Way of Pace Drive; thence continuing along the Southern Right-of-Way of Pace Drive North 54 Degrees, 24 Minutes & 23 Seconds West 68-31 Ft. to a point the P.C. of a curve to the Right, the radius being 275 Ft., the chord being North 40 Degrees, 59 Minutes & 10 Seconds West 127.65 Ft. to a point, the P.T. of the curve; thence continuing along the Southern Right-of-Way of Pace Drive North 27 Degrees, 33 Minutes & 56 Seconds West 73.68 Ft. to a point the P.C. of a curve to the Left the radius being 255 Ft., the chord being North 48 Degrees, 05 Minutes & 35 Seconds West 178.84 Ft. to a point the P.T. of the curve, said point being also on the Eastern Right-of-Way of N.C. Hwy. 61, thence continuing along said Right-of-Way South 17 Degrees, 00 Minutes & 01 Second West 36.73 Ft. to a new iron pipe, the point of beginning, containing 0.6754 acres more or less; also being Lot 2 of the Property of Pace Oil Company as recorded in Plat Book 89, Page 36; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3683, Page 765, Guilford County Registry.

Tract III

Beginning in Guilford County at an existing R/W monument, situated East of the intersection of the up-ramp from the Westbound lane of Interstate 85, and N.C. Highway 61, thence North 07 Degrees, 44 Minutes, & 52 Seconds West along said Right-of-Way of up-ramp 93.24 Ft. to a new iron pipe on the East Right-of-Way line of N.C. #61, thence North 27 Degrees, 13 Minutes & 12 Seconds East 87.78 Ft. to a new iron pipe along same said Right-of-Way; thence continuing along same said Right-of-Way North 21 Degrees, 12 Minutes & 24 Seconds East 83.53 Ft. to a new iron pipe a corner with Pace Oil Co.; thence running South 30 Degrees, 47 Minutes & 49 Seconds East 336.12 Ft. to a new iron pipe in the Northern line of Thelma T. Wheeler property; thence running along Thelma T. Wheeler's North line North 77 Degrees, 47 Minutes & 03 Seconds West 3.36 Ft. to a concrete Right-of-Way monument; thence continuing along Thelma T. Wheeler's North line South 87 Degrees, 16 Minutes & 03 Seconds West 191.97 Ft. to an existing iron pipe on the East side of the up-ramp leading from Interstate 85; thence continuing along said up-ramp North 41 Degrees, 11 Minutes, & 57 Seconds West 20.84 Ft. to an existing Right-of-Way Monument; thence continuing along up-ramp North 32 Degrees, 30 Minutes & 03 Seconds West 39.32 Ft. to an existing Right-of-Way monument, the Point of Beginning, containing 0.883 acres more or less; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3651, Page 704, Guilford County Registry; the same being that property deeded to Pace Oil Company, Inc. recorded in Book 3673, Page 20, Guilford County Registry.

Tract IV

BEGINNING in Guilford County at a new iron stake in the northern margin of the right of way of Interstate 85, a corner with Pace Oil Company, Inc. and running thence from said point of beginning with Pace Oil Company, Inc., North 17° 48' 29" East 1021.71 feet to an existing iron stake in the southern margin of the 60 foot right of way of Greeson Road (SR 3065), a corner with Pace Oil Company, Inc.; thence along the southern margin of the 60 foot right of way of Greeson Road, South 84° 36' 26" East 383.39 feet to an existing iron stake in the southern margin of Greeson Road; thence continuing along the southern margin of Greeson Road, South 83° 40' 30" East 175.56 feet to an existing iron stake in the southern margin of Greeson Road, a corner with Radcliffe, Rudd and Lanier, Jr., thence with Radcliffe, Rudd and Lanier, Jr., South 1° 53' 16" W. 241.74 feet to an existing stone corner with Radcliffe et al and Pace Oil Company, Inc.; thence with Pace Oil Company, Inc., South 29° 52' 50" West 828.41 feet to a new iron stake in the northern margin of the right of way of Interstate 85, a corner with Pace Oil Company, Inc.; thence along the northern margin of the right of way of Interstate 85, North 84° 34' 47" West 450 feet to the point and place of BEGINNING, containing 12.642 acres, more or less.

The foregoing description was taken from surveys of William L. Knight, Jr., dated December 28, 1988 and January 12, 1989.

Also included is a tract 60 feet in width and running along the southern boundary of Tract A, containing 11.770 acres, more or less, now or formerly owned by Pace Oil Company, Inc.; said property being adjacent to the northern margin of the right of way of Interstate 85. Said property is more particularly described on that certain survey of Pace Oil Company, Inc., dated January 12, 1989, a copy of which is attached to that certain deed from Pace Oil Company, Inc. to Scholl America, Inc., dated January 13, 1989, which deed is recorded in Deed Book 3713, at Page 1759 of the Guilford County Registry.

Tract V

BEGINNING in Guilford County at a crossmark in I-85 a corner with Springwood Church; running thence North 4° 39' East 1052 feet to a crossmark in the center of Springwood Church Road a corner with Robert E. Sheahan (after leaving I-85 the line runs to the center of Springwood Church Road) thence with the line of Robert E Sheahan North 88° 11' East 609.07 feet to an iron stake a corner with Sheahan (iron stake set in this line 30 feet from center of road) ; thence again with Sheahan North 4° 08' East 297.95 feet to an iron stake in the line of Carson T. Ingle (control corner set in this line 30.15 feet from the beginning point of the call) running thence with line of Ingle South 85° 51' East 1488.50 feet to an iron stake in the line of O.W. Williams (old stake in this line 279.77 feet from the corner); running thence with the line of O.W. Williams South 2° 50' West 977.02 feet to a crossmark in I-85 (iron stake set in this line at the right-of-way of I-85 which is 132.13 feet from a crossmark in I-85); thence in the right-of-way of I-85 South 82° 30' West 2169.74 feet to the Beginning point containing 53.28 acres, more or less, of which 6.47 acres is within the right-of-way of I-85. This conveyance is made subject to the right-of-way of I-85, the right-of-way of Springwood Church Road and the right-of-way of the power line as shown on the plat drawn by J. Mark McAdams on June 24, 1967.

SECTION 2. The following described property is removed from the corporate limits of the City of Burlington and is added to the corporate limits of the Town of Gibsonville:

A certain tract or parcel of land in Rock Creek Township, Guilford County, North Carolina, adjoining the lands of Billy D. Moser and Ethel H. Moser, Shirley M. Perry, H. Clay Hemric, Jr. and Nancy G. Hemric, US 70 – South Church Street, Randy Lynn Ingle and others and being more particularly described as follows:

BEGINNING at a point in the south right-of-way line of US 70 – South Church Street, said point lying N. 87° 22' 02" E. 324.45 feet from a common corner with Michael F. Turner and Victoria C. Tanner and Randy Lynn Ingle in the south right-of-way line of US 70 – South Church Street and running thence from said Beginning Point across US 70 and continuing with the line of Billy D. and Ethel H. Moser, N. 2° 45' 03" W. 433.21 feet to a point in the line of Shirley M. Perry; thence with the line of Shirley M. Perry the following courses and distances: S. 70° 13' 01" E.

106.33 feet to a point; thence S. 25° 54' 33" E. 30.55 feet to a point; thence S. 53° 27' 06" E. 49.46 feet to a point; thence S. 83° 17' 44" E. 80.51 feet to a point; thence S. 45° 39' 32" E. 85.22 feet to a point; thence S. 67° 54' 40" E. 68.64 feet to a point; thence N. 76° 18' 58" E. 30.37 feet to a point; thence N. 21° 23' 30" E. 158.99 feet to a point; thence N. 51° 01' 39" E. 154.14 feet to a corner with H. Clay Hemric, Jr. and Nancy G. Hemric; thence with the said Hemric the following courses and distances: S. 69° 26' 48" E. 113.50 feet to a point; thence S. 76° 11' 42" E. 108.93 feet to a point; thence S. 59° 10' 39" E. 186.25 feet to a point; thence S. 33° 03' 34" E. 188.62 feet to a point; thence S. 66° 28' 14" E. 59.85 feet to a point; thence S. 86° 44' 36" E. 82.83 feet to a point; thence with said Hemric and continuing across US 70 – South Church Street, S. 03° 05' 49" W. 96.43 feet to a point in the south right-of-way line of US 70 – South Church Street and in the line of Randy Lynn Ingle; thence with the south right-of-way line of US 70 – South Church Street and the line of said Ingle, S. 87° 22' 02" W. 1152.65 feet to the point of BEGINNING and containing 8.583 acres (0.0134 sq. mile) and being all of Lot No. 4 and the right-of-way of US 70 – South Church Street that adjoins Lot No. 4 as shown on a plat by Simmons Engineering and Surveying, Inc. entitled Property of City of Burlington and Randy Lynn Ingle, dated December 4, 2000, and recorded at Plat Book 140, page 101 in the Guilford County Register of Deeds.

SECTION 3. This act shall have no effect upon the validity of any liens of the Town of Gibsonville or the City of Burlington for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Gibsonville or the City of Burlington.

SECTION 4. This act becomes effective June 30, 2005.

SENATE BILL 466:
Burlington/Gibsonville Boundary

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 10, 2005
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S466-CSSVx-22		Committee Counsel

SUMMARY: ***Senate Bill 466 removes certain property from the corporate limits of the Town of Gibsonville and annexes it to the City of Burlington, and removes certain property from the corporate limits of the City of Burlington and annexes it to the Town of Gibsonville, as requested by the two municipalities.*** ***The PCS provides a more exact property description in Section 2 than was in the original bill.***

BILL ANALYSIS: Senate Bill 466 removes three satellite properties from the Town of Gibsonville and annexes them to the City of Burlington. These properties are commercial in nature and border I-85. The bill also deannexes certain property from the corporate limits of the City of Burlington and annexes it to the Town of Gibsonville. This property is zoned for office space but there are no structures on the property at present.

EFFECTIVE DATE: The act would become effective June 30, 2005.

BACKGROUND: Both municipalities have requested this legislation as part of an annexation agreement, which is designed in part to clarify and clean up the boundaries between the two municipalities.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 466*

Short Title:	Burlington/Gibsonville Boundary.	(Local)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Finance.	

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF GIBSONVILLE AND ANNEX IT TO THE CITY OF BURLINGTON, AND TO REMOVE CERTAIN PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF BURLINGTON, ALL AS REQUESTED BY THE TWO MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Gibsonville and is added to the corporate limits of the City of Burlington:

Tract I

Beginning in Guilford County at an existing iron pipe, said existing iron pipe being located at the Southeast Intersection of Greeson Road & N.C. Hwy. #61; thence running along the Eastern Right-of-Way line of N.C. Hwy. #61 South 17 Degrees, 00 Minutes, & 01 Second West 382.28 Ft. to a point along same said Right-of-Way, also said point being on the Northern Right-of-Way line of Pace Drive; thence continuing along the Northern Right-of-Way of Pace Drive South 69 Degrees, 00 Minutes, & 44 Seconds East 1.74 Ft. to a point the P.C. of a curve to the right, the radius being 305 Ft., the chord being South 48 Degrees, 17 Minutes, & 20 Seconds East 215.85 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 27 Degrees, 33 Minutes, & 56 Seconds East 73.68 Ft. to a point the P.C. of a curve to the Left, the radius being 225 Ft., the chord being South 40 Degrees, 59 Minutes, & 09 Seconds East 104.44 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 54 Degrees, 24 Minutes, & 23 Seconds East 266.14 Ft. to a point the P.C. of a curve to the Left, the radius being 295 Ft., the chord being South 68 Degrees, 14 Minutes, & 35 Seconds East 141.10 Ft. to a point the P.T. of a curve; thence continuing along same said Right-of-Way South 82 Degrees, 04 Minutes, & 47

Beginning in Guilford County at an existing R/W monument, situated East of the intersection of the up-ramp from the Westbound lane of Interstate 85, and N.C. Highway 61, thence North 07 Degrees, 44 Minutes, & 52 Seconds West along said Right-of-Way of up-ramp 93.24 Ft. to a new iron pipe on the East Right-of-Way line of N.C. #61, thence North 27 Degrees, 13 Minutes & 12 Seconds East 87.78 Ft. to a new iron pipe along same said Right-of-Way; thence continuing along same said Right-of-Way North 21 Degrees, 12 Minutes & 24 Seconds East 83.53 Ft. to a new iron pipe a corner with Pace Oil Co.; thence running South 30 Degrees, 47 Minutes & 49 Seconds East 336.12 Ft. to a new iron pipe in the Northern line of Thelma T. Wheeler property; thence running along Thelma T. Wheeler's North line North 77 Degrees, 47 Minutes & 03 Seconds West 3.36 Ft. to a concrete Right-of-Way monument; thence continuing along Thelma T. Wheeler's North line South 87 Degrees, 16 Minutes & 03 Seconds West 191.97 Ft. to an existing iron pipe on the East side of the up-ramp leading from Interstate 85; thence continuing along said up-ramp North 41 Degrees, 11 Minutes, & 57 Seconds West 20.84 Ft. to an existing Right-of-Way Monument; thence continuing along up-ramp North 32 Degrees, 30 Minutes & 03 Seconds West 39.32 Ft. to an existing Right-of-Way monument, the Point of Beginning, containing 0.883 acres more or less; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3651, Page 704, Guilford County Registry; the same being that property deeded to Pace Oil Company, Inc. recorded in Book 3673, Page 20, Guilford County Registry.

Tract IV

BEGINNING in Guilford County at a new iron stake in the northern margin of the right of way of Interstate 85, a corner with Pace Oil Company, Inc. and running thence from said point of beginning with Pace Oil Company, Inc., North 17° 48' 29" East 1021.71 feet to an existing iron stake in the southern margin of the 60 foot right of way of Greeson Road (SR 3065), a corner with Pace Oil Company, Inc.; thence along the southern margin of the 60 foot right of way of Greeson Road, South 84° 36' 26" East 383.39 feet to an existing iron stake in the southern margin of Greeson Road; thence continuing along the southern margin of Greeson Road, South 83° 40' 30" East 175.56 feet to an existing iron stake in the southern margin of Greeson Road, a corner with Radcliffe, Rudd and Lanier, Jr., thence with Radcliffe, Rudd and Lanier, Jr., South 1° 53' 16" W. 241.74 feet to an existing stone corner with Radcliffe et al and Pace Oil Company, Inc.; thence with Pace Oil Company, Inc., South 29° 52' 50" West 828.41 feet to a new iron stake in the northern margin of the right of way of Interstate 85, a corner with Pace Oil Company, Inc.; thence along the northern margin of the right of way of Interstate 85, North 84° 34' 47" West 450 feet to the point and place of BEGINNING, containing 12.642 acres, more or less.

The foregoing description was taken from surveys of Williams L. Knight, Jr., dated December 28, 1988 and January 12, 1989.

SECTION 4. This act becomes effective June 30, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 138
PROPOSED COMMITTEE SUBSTITUTE S138-CSSV-24 [v.2]

5/10/2005 11:42:32 AM

Short Title: Archdale Extraterritorial Jurisdiction. (Local)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING THE CITY OF ARCHDALE TO EXERCISE EXTRATERRITORIAL JURISDICTION OVER AN AREA EXTENDING TWO MILES FROM ITS LIMITS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the population provisions in G.S. 160A-360(a), the City of Archdale may exercise the extraterritorial jurisdiction powers granted in Article 19 of Chapter 160A of the General Statutes within a defined area extending not more than two miles beyond its corporate limits. Except as otherwise provided by this act, the extension of extraterritorial jurisdiction by the City of Archdale is subject to the provisions of G.S. 160A-360.

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

SENATE BILL 138:
Archdale Extraterritorial Jurisdiction

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Tillman
Date:	May 10, 2005	**Summary by:**	Trina Griffin
Version:	PCS to 1st Edition S138-CSSV-24		Committee Counsel

SUMMARY: ***Senate Bill 138 allows the city of Archdale to exercise extraterritorial jurisdiction over an area extending two miles from its limits. The act is effective when it becomes law. The Proposed Committee Substitute clarifies that the other provisions in G.S. 160A-360, such as providing notice and a public hearing to landowners and obtaining approval of the county commissioners, would still apply prior to extending the city's ETJ.***

CURRENT LAW: In North Carolina, as in most other states, a city may exercise jurisdiction in various planning-related matters over areas located outside its boundaries. In general, a city of any size may establish planning jurisdiction for one mile outside its boundaries. However, North Carolina law does not permit cities to exercise extraterritorial jurisdiction unilaterally unless there is evidence that the county has not taken initiative in land use planning. Specifically, a city may assume authority outside its limits on its own only if the county is not already enforcing three major types of development regulations in the target area: (1) zoning; (2) subdivision regulations; and (3) the State Building Code.

With the board of county commissioners' approval, a city with a population of more than 10,000 but less than 25,000 may extend its jurisdiction up to two miles beyond its limits. A city with a population of more than 25,000 may exercise these powers over an area extending not more than three miles beyond its limits.

The land use planning-related powers that may be exercised outside municipal boundaries include (1) zoning, (2) subdivision regulation, (3) enforcement of the State Building Code, (4) minimum housing code regulation, (5) historic district regulation, (6) historic properties designation and regulation, (7) community development projects, (8) jurisdiction of the community appearance commission, (9) acquisition of open space, (10) floodway regulation, and (11) soil erosion and sedimentation control regulation. No city may exercise in its ETJ area any power that it does no exercise within its city limits.

BILL ANALYSIS: Senate Bill 138 allows the city of Archdale to exercise extraterritorial jurisdiction over an area extending two miles from its limits. The Proposed Committee Substitute clarifies that the other provisions in G.S. 160A-360, such as providing notice and a public hearing to landowners and obtaining approval of the county commissioners where the county is already enforcing zoning and subdivision regulations and the State Building Code, would still apply prior to extending the city's ETJ.

The City of Archdale lies in both Randolph and Guildford Counties. The city plans to extend its ETJ only in Randolph County where it is experiencing significant growth.

BACKGROUND: The area into which Archdale is seeking to extend its ETJ is mostly residential, but urban in character with some commercial development as well. The city is seeking to extend its ETJ, in part, because it would like for development and zoning in the outlying area, which will likely be annexed to Archdale at some point in the future, to be consistent with the rest of the city. The city also believes it is in a better position than the county to monitor the rapid development in that area. Another reason for the request is that the outlying area has experienced some well and septic problems and will likely ask for

city water and sewer. Since the outlying areas will likely ask for both annexation and services at some point in the near future, the city would like for the development that's occurring to meet the city's own zoning regulations.

No city may extend its extraterritorial powers into any area for which the county at that time has adopted and is enforcing a zoning ordinance and subdivision regulations and within which it is enforcing the State Building Code. In this case, the counties are enforcing these types of regulations. However, a city may do so when the city and the county have agreed upon the area within which each will exercise these powers. Archdale has already discussed this matter with the Randolph County Board of Commissioners and plans to seek their approval if the legislation passes. Archdale does not plan to extend its ETJ into Guilford County at this time.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 138

Short Title:	Archdale Extraterritorial Jurisdiction.	(Local)
Sponsors:	Senator Tillman.	
Referred to:	Finance.	

February 16, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING THE CITY OF ARCHDALE TO EXERCISE EXTRATERRITORIAL JURISDICTION OVER AN AREA EXTENDING TWO MILES FROM ITS LIMITS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 160A-360(a), the City of Archdale may exercise the extraterritorial jurisdiction powers granted in Article 19 of Chapter 160A of the General Statutes within a defined area extending not more than two miles beyond its corporate limits.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 407
PROPOSED COMMITTEE SUBSTITUTE S407-CSSVx-10 [v.1]

4/13/2005 9:00:00 PM

Short Title: Cabarrus Municipal Vehicle Registration. (Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN INCREASE IN THE VEHICLE TAX IN MUNICIPALITIES LOCATED WHOLLY OR PARTLY IN CABARRUS COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ twenty dollars ($20.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose."

SECTION 2. This act applies only to municipalities located wholly or partially in Cabarrus County. Any funds generated by a tax of over five dollars ($5.00) under Section 1 of this act shall be placed into a separate fund for transportation uses within the municipality and shall not be expended for any other purpose.

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

Senate Bill 407:
Cabarrus Municipal Vehicle Registration

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	April 19, 2005
Introduced by:	Sen. Hartsell	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel
	S407-CSSVx-10		

SUMMARY: Senate Bill 407 would authorize the municipalities located in Cabarrus County to levy a tax of not more than $10.00 per year upon any vehicle resident in the city or town. The PCS would authorize those municipalities to levy a vehicle tax of up to $20.00.

CURRENT LAW: Cities and towns may levy a tax of not more than $5.00 per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose. (G.S. 20-97(b)). Approximately 25 localities currently have authority to levy a vehicle tax in excess of $5.00.

BILL ANALYSIS: Senate Bill 407 would authorize the municipalities located in Cabarrus County to levy a tax of up to $10.00 per year upon any vehicle resident[1] in the city or town. With this authority, a city or town may, but is not required to, levy the tax, and the amount of the tax represents the maximum tax that may be levied. The bill requires that any funds generated by the tax in excess of $5.00 be placed in a separate fund and used only for transportation uses within the municipality. The municipalities located wholly or in part in Cabarrus County are: Concord, Harrisburg, Kannapolis (part), Locust (part), and Mount Pleasant.

The PCS increases the maximum tax amount to $20.00.

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

BACKGROUND: The following localities have authority to levy a vehicle registration tax in excess of $5.00:

Durham; $10 (S.L. 2003-329)
Alleghany County; $10 (S.L. 1993-456)
Greensboro; $10 (S.L. 1991-31)
Henderson; $10 (S.L. 1987-1066)
Oxford; $10 (S.L. 1987-610)
Creedmoor; $10 (S.L. 1987-610)
Winston-Salem; $10 (S.L. 1993-56)
Ahoskie; $10 (S.L. 1989-893)
Chapel Hill; $10 (S.L. 1991-392)
Cary; $10 (S.L. 1993-325)
Hillsborough; $10 (S.L. 1991-822)
Gastonia; $15 (S.L. 1991-557)
Raleigh; $15 (S.L.1991-229)
Carrboro; $15 (S.L.1993-325)
Greenville; $20 (S.L.1993-200)
Cornelius; $20 (S.L. 1985-1009)
Davidson; $20 (S.L. 1985-1009)
Huntersville; $20 (S.L. 1985-1009)
Mint Hill; $20 (S.L. 1985-1009)
Pineville; $20 (S.L. 1985-1009)
Murfreesboro; $20 (S.L. 1987-953)
Charlotte; $30 (S.L. 1993-345)

[1] "A vehicle is 'resident' within a city or town when its owner or operator is a resident thereof and it is garaged therein, if it leaves therefrom and returns thereto in normal day to day operation or if used in common carrier or for hire operations and is based therein. Though a vehicle may be present in a city or town for extended periods of time, such as those of a parent used by a child while attending college, it would not become 'resident' as contemplated by G.S. 20-97(a)." 45 NCAG 185.

Kinston; $15 (S.L.1991-838)

Caswell County; $15 (S.L. 1987-334)

Town of Matthews; $30 (S.L. 1993-345)

S0407e1-SMSV-CSSVx-10

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 407

Short Title:	Cabarrus Municipal Vehicle Registration.	(Local)
Sponsors:	Senator Hartsell.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN INCREASE IN THE VEHICLE TAX IN MUNICIPALITIES LOCATED WHOLLY OR PARTLY IN CABARRUS COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ ten dollars ($10.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose."

SECTION 2. This act applies only to municipalities located wholly or partially in Cabarrus County. Any funds generated by a tax of over five dollars ($5.00) under Section 1 of this act shall be placed into a separate fund for transportation uses within the municipality and shall not be expended for any other purpose.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 407
PROPOSED COMMITTEE SUBSTITUTE S407-CSSVx-10 [v.1]

4/13/2005 9:00:00 PM

Short Title: Cabarrus Municipal Vehicle Registration. (Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN INCREASE IN THE VEHICLE TAX IN MUNICIPALITIES LOCATED WHOLLY OR PARTLY IN CABARRUS COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ twenty dollars ($20.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose."

SECTION 2. This act applies only to municipalities located wholly or partially in Cabarrus County. Any funds generated by a tax of over five dollars ($5.00) under Section 1 of this act shall be placed into a separate fund for transportation uses within the municipality and shall not be expended for any other purpose.

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

Senate Bill 407:
Cabarrus Municipal Vehicle Registration

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	April 19, 2005
Introduced by:	Sen. Hartsell	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel
	S407-CSSVx-10		

SUMMARY: Senate Bill 407 would authorize the municipalities located in Cabarrus County to levy a tax of not more than $10.00 per year upon any vehicle resident in the city or town. The PCS would authorize those municipalities to levy a vehicle tax of up to $20.00.

CURRENT LAW: Cities and towns may levy a tax of not more than $5.00 per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose. (G.S. 20-97(b)). Approximately 25 localities currently have authority to levy a vehicle tax in excess of $5.00.

BILL ANALYSIS: Senate Bill 407 would authorize the municipalities located in Cabarrus County to levy a tax of up to $10.00 per year upon any vehicle resident[1] in the city or town. With this authority, a city or town may, but is not required to, levy the tax, and the amount of the tax represents the maximum tax that may be levied. The bill requires that any funds generated by the tax in excess of $5.00 be placed in a separate fund and used only for transportation uses within the municipality. The municipalities located wholly or in part in Cabarrus County are: Concord, Harrisburg, Kannapolis (part), Locust (part), and Mount Pleasant.

The PCS increases the maximum tax amount to $20.00.

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

BACKGROUND: The following localities have authority to levy a vehicle registration tax in excess of $5.00:

Durham; $10 (S.L. 2003-329)
Alleghany County; $10 (S.L. 1993-456)
Greensboro; $10 (S.L. 1991-31)
Henderson; $10 (S.L. 1987-1066)
Oxford; $10 (S.L. 1987-610)
Creedmoor; $10 (S.L. 1987-610)
Winston-Salem; $10 (S.L. 1993-56)
Ahoskie; $10 (S.L. 1989-893)
Chapel Hill; $10 (S.L. 1991-392)
Cary; $10 (S.L. 1993-325)
Hillsborough; $10 (S.L. 1991-822)
Gastonia; $15 (S.L. 1991-557)
Raleigh; $15 (S.L.1991-229)
Carrboro; $15 (S.L.1993-325)
Greenville; $20 (S.L.1993-200)
Cornelius; $20 (S.L. 1985-1009)
Davidson; $20 (S.L. 1985-1009)
Huntersville; $20 (S.L. 1985-1009)
Mint Hill; $20 (S.L. 1985-1009)
Pineville; $20 (S.L. 1985-1009)
Murfreesboro; $20 (S.L. 1987-953)
Charlotte; $30 (S.L. 1993-345)

[1] "A vehicle is 'resident' within a city or town when its owner or operator is a resident thereof and it is garaged therein, if it leaves therefrom and returns thereto in normal day to day operation or if used in common carrier or for hire operations and is based therein. Though a vehicle may be present in a city or town for extended periods of time, such as those of a parent used by a child while attending college, it would not become 'resident' as contemplated by G.S. 20-97(a)." 45 NCAG 185.

Kinston; $15 (S.L.1991-838)

Caswell County; $15 (S.L. 1987-334)

Town of Matthews; $30 (S.L. 1993-345)

S0407e1-SMSV-CSSVx-10

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 407

Short Title:	Cabarrus Municipal Vehicle Registration.	(Local)
Sponsors:	Senator Hartsell.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN INCREASE IN THE VEHICLE TAX IN MUNICIPALITIES LOCATED WHOLLY OR PARTLY IN CABARRUS COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ ten dollars ($10.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose."

SECTION 2. This act applies only to municipalities located wholly or partially in Cabarrus County. Any funds generated by a tax of over five dollars ($5.00) under Section 1 of this act shall be placed into a separate fund for transportation uses within the municipality and shall not be expended for any other purpose.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 206
PROPOSED COMMITTEE SUBSTITUTE S206-PCS65300-LBx-21

Short Title: Salemburg Boundary Validation. (Local)

Sponsors:

Referred to:

February 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CORPORATE LIMITS OF THE TOWN OF SALEMBURG AND TO VALIDATE ELECTIONS AND ACTS OF THE TOWN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2.1 of the Charter of the Town of Salemburg, being Chapter 104, Session Laws of 1967, as amended by an annexation ordinance in 1977, reads as rewritten:

"Section 2.1. Existing Corporate Boundaries. The corporate boundaries of the Town of Salemburg shall be as follows until changed in accordance with law:

~~"Being located in the County of Sampson, and described by metes and bounds as follows: BEGINNING at a stake and a point in the center of N. C. Highway No. 242, said stake and point being located South 12 degrees 18 minutes West, 2750 feet from the center point of the intersection of College Street and Main Street in the Town of Salemburg; thence South 76 degrees East, 1989.5 feet to a stake; thence North 14 degrees East, 1612 feet to a stake in the center of Laurel Lake Road; thence the same course (North 14 degrees East) 1809 feet to a stake in the center of the Clinton-Salemburg Road; thence the same course (North 14 degrees East) 2579 feet to a stake; thence North 76 degrees West, 210.12 feet to a stake in the center of a road known as "Cemetery Road"; thence the same course (North 76 degrees West) 1923 feet to a stake in the center of N. C. Highway No. 242 leading to Dunn, North Carolina; thence the same course (North 76 degrees West) 1866.88 feet to a stake; thence South 14 degrees West 1032 feet to a stake in the center of Pine Street; thence the same course (South 14 degrees West) 2780.19 feet to a stake in the center of County Road No. 1233 which leads from Salemburg to Autryville; thence the same course (South 14 degrees West) 2187.81 feet to a stake; thence South 76 degrees East 1299 feet to a stake in the center of Fayetteville Street; thence the same course (South 76 degrees East) 711.5 feet to a stake in the center of N. C. Highway No. 242; the beginning point; said description~~

~~fully describing by metes and bounds the outside boundaries of the Town of Salemburg, North Carolina.~~

"BEGINNING at a stake located on the Southwestern side of N. C. Highway 242, which stake is located North 79 degrees 28 minutes 27 seconds West 231.98 feet from the CONTROL CORNER, NC GRID COORDINATES (NAD 83): N=458,194.08 feet, E=2,148,302.85 feet, COMBINED GRID CORRECTION FACTOR = 0.9998786; and runs thence from said Beginning Point North 79 degrees 28 minutes 27 seconds West 194.13 feet; thence North 79 degrees 28 minutes 27 seconds West 288.77 feet to an RRS in the centerline of South Fayetteville Street; thence North 79 degrees 28 minutes 27 seconds West 1,295.62 feet; thence North 10 degrees 31 minutes 33 seconds East 1,769.08 feet to a stake; thence South 82 degrees 32 minutes 15 seconds West 85.34 feet; thence South 83 degrees 00 minutes 38 seconds West 403.42 feet; thence South 83 degrees 48 minutes 38 seconds West 112.41 feet; thence South 86 degrees 27 minutes 38 seconds West 124.51 feet; thence North 89 degrees 22 minutes 22 seconds West 128.04 feet; thence North 85 degrees 44 minutes 22 seconds West 124.86 feet; thence North 82 degrees 27 minutes 22 seconds West 128.87 feet; thence North 77 degrees 42 minutes 22 seconds West 131.33 feet; thence North 73 degrees 44 minutes 22 seconds West 127.14 feet; thence North 70 degrees 09 minutes 22 seconds West 121.39 feet; thence North 67 degrees 47 minutes 22 seconds West 48.51 feet; thence North 22 degrees 12 minutes 38 seconds East 400 feet to an RRS in the center of West College Street; thence North 22 degrees 12 minutes 38 seconds East 300 feet to a stake; thence South 67 degrees 47 minutes 22 seconds East 34.05 feet; thence South 70 degrees 09 minutes 22 seconds East 85.03 feet; thence South 73 degrees 44 minutes 22 seconds East 81 feet; thence South 77 degrees 42 minutes 22 seconds East 78.06 feet; thence South 82 degrees 27 minutes 22 seconds East 79.78 feet; thence South 85 degrees 44 minutes 22 seconds East 82.60 feet; thence South 89 degrees 22 minutes 22 seconds East 80.37 feet; thence North 86 degrees 27 minutes 38 seconds East 82.86 feet; thence North 83 degrees 48 minutes 38 seconds East 91.33 feet; thence North 83 degrees 00 minutes 38 seconds East 494.83 feet; thence North 10 degrees 31 minutes 33 seconds East 2,529.20 feet; thence South 79 degrees 51 minutes 27 seconds East 90.98 feet to an RRS in the center of the Old Fayetteville Road (SR 1492); thence South 79 degrees 51 minutes 27 seconds East 109.02 feet to an RRS in the center of West Pine Street; thence North 11 degrees 01 minute 12 seconds East 369.53 feet to an IPS; thence South 79 degrees 47 minutes 31 seconds East 393.94 feet to an EIR; thence North 10 degrees 12 minutes 29 seconds East 496.85 feet to an IPS; thence South 88 degrees 32 minutes 14 seconds East 631.02 feet to an EIR; thence North 28 degrees 02 minutes 27 seconds East 65.09 feet to an IPS; thence South 79 degrees 28 minutes 27 seconds East 208.19 feet to an RRS in the centerline of North Fayetteville Street; thence South 79 degrees 28 minutes 27 seconds East 362.74 feet; thence North 10 degrees 31 minutes 33 seconds East 612.42 feet; thence North 07 degrees 59 minutes 09 seconds East 192.61 feet; thence North 06 degrees 50 minutes 42 seconds East 165.61 feet; thence North 72 degrees 55 minutes 38 seconds East 249.85 feet to a stake in the centerline of a 42 inch RCP culvert in the center of N C Highway 242; thence South 88 degrees 38 minutes 03 seconds East 230.60 feet; thence South 05 degrees 30 minutes 59 seconds West 88.57

feet; thence South 06 degrees 50 minutes 42 seconds West 204.96 feet; thence South 07 degrees 59 minutes 09 seconds West 207.39 feet; thence South 10 degrees 31 minutes 33 seconds West 622.62 feet; thence South 79 degrees 28 minutes 27 seconds East 1,694.52 feet to an RRS in the center of Northeast Main Street; thence South 79 degrees 28 minutes 27 seconds East 208.60 feet; thence South 10 degrees 31 minutes 33 seconds West 2,335.65 feet; thence North 83 degrees 34 minutes 21 seconds East 83.51 feet; thence North 85 degrees 08 minutes 21 seconds East 140.60 feet; thence South 04 degrees 51 minutes 39 seconds East 230 feet to an RRS in the center of Bonnettsville Road (SR 1233); thence South 07 degrees 46 minutes 39 seconds East 408.02 feet; thence South 82 degrees 41 minutes 21 seconds West 425.03 feet; thence South 10 degrees 31 minutes 33 seconds West 1,133.62 feet; thence North 83 degrees 10 minutes 33 seconds East 197.14 feet; thence North 88 degrees 22 minutes 33 seconds East 122.95 feet; thence South 86 degrees 13 minutes 27 seconds East 116.38 feet; thence South 84 degrees 03 minutes 27 seconds East 898.39 feet; thence South 81 degrees 05 minutes 27 seconds East 121.48 feet; thence South 74 degrees 08 minutes 27 seconds East 128.85 feet; thence South 67 degrees 46 minutes 27 seconds East 121.26 feet; thence South 63 degrees 51 minutes 56 seconds East 700.09 feet; thence South 26 degrees 08 minutes 04 seconds West 230 feet to a stake in the center of Laurel Lake Road as it passes over a 2-72 " CMP Culverts; thence South 16 degrees 02 minutes 04 seconds West 183.73 feet; thence South 43 degrees 07 minutes 25 seconds West 218.21 feet; thence South 10 degrees 51 minutes 25 seconds West 164.11 feet; thence South 31 degrees 11 minutes 25 seconds West 199.65 feet; thence North 57 degrees 35 minutes 35 seconds West 478.00 feet to an EIP; thence North 32 degrees 24 minutes 25 seconds East 174.99 feet to an EIP; thence North 32 degrees 24 minutes 25 seconds East 25.13 feet to an EIP; thence North 32 degrees 24 minutes 25 seconds East 66 feet; thence North 63 degrees 51 minutes 56 seconds West 225.61 feet; thence North 67 degrees 46 minutes 27 seconds West 62.03 feet; thence North 74 degrees 08 minutes 27 seconds West 52.06 feet; thence North 81 degrees 05 minutes 27 seconds West 64.31 feet; thence North 84 degrees 03 minutes 27 seconds West 876.61 feet; thence North 05 degrees 56 minutes 33 seconds East 199.85 feet; thence North 86 degrees 13 minutes 27 seconds West 81.98 feet; thence South 88 degrees 22 minutes 33 seconds West 80.37 feet; thence South 83 degrees 10 minutes 33 seconds West 319.97 feet; thence South 10 degrees 31 minutes 33 seconds West 845.89 feet to an IPS; thence North 79 degrees 43 minutes 02 seconds West 36.99 feet to an EIR; thence South 26 degrees 28 minutes 47 seconds West 53.15 feet to an EIR; thence South 26 degrees 38 minutes 01 seconds West 38.62 feet to an EIR; thence South 46 degrees 53 minutes 32 seconds West 73.80 feet to an EIR; thence South 61 degrees 32 minutes 42 seconds West 80.73 feet to an EIR; thence North 59 degrees 39 minutes 13 seconds West 28.58 feet to an EIR; thence North 53 degrees 50 minutes 45 seconds West 67.19 feet to an EIR; thence South 31 degrees 59 minutes 33 seconds West 392.66 feet to an IPS; thence North 79 degrees 28 minutes 27 seconds West 1,357.52 feet; thence South 03 degrees 02 minutes 27 seconds West 215.16 feet; thence South 00 degrees 27 minutes 33 seconds East 1,327.49 feet; thence North 89 degrees 32 minutes 27 seconds East 170 feet; thence South 00 degrees 27 minutes 33 seconds East 295 feet; thence South 89 degrees 32 minutes 27 seconds

West 170 feet; thence South 00 degrees 27 minutes 33 seconds East 738.43 feet; thence South 89 degrees 32 minutes 27 seconds West 230 feet to an RRS in the centerline of South Main Street (NC Hwy 242); thence South 89 degrees 32 minutes 27 seconds West 230 feet; thence North 00 degrees 27 minutes 33 seconds West 2,375 feet; thence North 03 degrees 02 minutes 27 seconds East 289.62 feet to the Point of Beginning. This being the REVISIONS TO TOWN LIMITS OF THE TOWN OF SALEMBURG, all as shown on a map entitled, "COMPOSITE MAP FOR TOWN OF SALEMBURG, SAMPSON COUNTY, NORTH CAROLINA, REVISIONS TO TOWN LIMITS", dated January 12, 2005, prepared by George Finch/Boney and Associates, P. A., 309 North Boylan Avenue, Raleigh, North Carolina 27603, reference to which is made for the purpose of incorporating the same herein."

SECTION 2. The territory described in Section 1 of this act is within the boundaries of the Honeycutts Fire District.

SECTION 3. Any and all official votes, acts, and actions of any member of the Board of Commissioners of the Town of Salemburg, prior to the enactment of this act, who has resided or who resides in any of the territory described in Section 1 of this act are hereby ratified, validated, and confirmed.

SECTION 4. All prior elections heretofore in which the qualified voters of the Town of Salemburg participated are validated, and the current Board of Commissioners are properly and legally acting as the Board of Commissioners of the Town.

SECTION 5. Any and all official acts, actions, expenditures, and levies of taxes or assessments by the Town of Salemburg prior to the enactment of this act, with respect to or affecting territories and properties described in Section 1 of this act are ratified, validated, and confirmed.

SECTION 6. Immediately upon this act becoming law, the Town Clerk shall cause an accurate map of the corporate limits to be filed in the offices of the Secretary of State, the Sampson County Register of Deeds, and the Sampson County Board of Elections. The Town Clerk shall cause to be placed on the face of the map the following certification, dated and signed by the Clerk, with the blanks filled in as appropriate: "The corporate limits of the Town of Salemburg shown in this map are as established by Act of the North Carolina General Assembly ratified on the ____ day of _____, 2005, as Session Law 2005-___." Immediately upon any subsequent alterations of the corporate limits, the appropriate filing of maps and ordinances shall be made, as required by general law.

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

SENATE BILL 206:
Town of Salemburg Local Act

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	April 26, 2005
Introduced by:	Sen. Albertson	**Summary by:**	Trina Griffin
Version:	PCS to First Edition		Committee Counsel
	S206-PCS65300-LBx-21		

SUMMARY: ***Senate Bill 206 clarifies the corporate limits of the Town of Salemburg and validates elections and acts of the Town.***

BILL ANALYSIS: Senate Bill 206 clarifies the exact location of the boundaries of the corporate limits of the Town of Salemburg based on a recent survey. The bill also validates and confirms any and all official votes, acts, and actions of any member of the Board of Commissioners of the Town who resides in the territory identified in the act as well as validates prior elections and levies of taxes or assessments.

The bill requires the Town Clerk to file a map of the corporate limits with the Secretary of State, the Sampson County Register of Deeds, and the Sampson County Board of Elections.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 206

Short Title:	Town of Salemburg Local Act.	(Local)
Sponsors:	Senator Albertson.	
Referred to:	Rules and Operations of the Senate.	

February 24, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE TOWN OF SALEMBURG.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates to the Town of Salemburg only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 339
PROPOSED COMMITTEE SUBSTITUTE S339-CSSVx-18 [v.2]

5/6/2005 10:11:38 AM

Short Title: Town of Ahoskie Occupancy Tax. (Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF AHOSKIE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Ahoskie Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Ahoskie shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Town of Ahoskie Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

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

SECTION 2. The Town of Ahoskie Tourism Development Authority. – (a) Appointment and Membership. – When the Ahoskie Town Council adopts a resolution levying a room occupancy tax under this Act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Act for the purposes provided in this Act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Ahoskie Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

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

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

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

SENATE BILL 339:
Town of Ahoskie Occupancy Tax

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 10, 2005
Introduced by:	Sen. Holloman	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S339-CSSVx-18		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 339[1] would authorize The Town of Ahoskie 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.***

CURRENT LAW: The Town of Ahoskie does not have authority to levy an occupancy tax. The town is located in Hertford County, which has authority to levy a 3% occupancy tax in the county.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 339 authorizes the Town of Ahoskie to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and one-third for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

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

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. 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.

[1] The original Senate Bill 339 was a blank local bill.

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.

S0339e1-SMSV-CSSVx-18

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 10, 2005

TO: Senator Holloman

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 339 (Unknown Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund			**No General Fund Impact**		
Town of Ahoskie	**$18,626**	**$19,054**	**$19,474**	**$19,863**	**$20,260**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Ahoskie

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

The Proposed Committee Substitute for Senate Bill 339 would authorize The Town of Ahoskie 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 proceeds must be remitted to a town Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and one-third for tourism-related expenditures.

ASSUMPTIONS AND METHODOLOGY:

According to the Ahoskie Chamber of Commerce, there are 3 motels in Ahoskie and 1 bed and breakfast. Assuming an average of 20 rooms each for the motels and 3 rooms for the bed and breakfast, an average room rate of $45 per night and a 60% rate of room occupancy, FRD

estimates the 3% occupancy tax would generate $18,626 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

SOURCES OF DATA: Ahoskie Chamber of Commerce

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 339

Short Title:	Town of Ahoskie Local Act-2.	(Local)
Sponsors:	Senator Holloman.	
Referred to:	Rules and Operations of the Senate.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE TOWN OF AHOSKIE.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates to the Town of Ahoskie only.

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

HOUSE BILL 540
Committee Substitute Favorable 4/5/05

Short Title: Halifax and Roanoke Rapids Occupancy Taxes. (Local)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE HALIFAX COUNTY TOURISM AND DEVELOPMENT TAX AND TO IMPLEMENT A TOURISM AND DEVELOPMENT TAX FOR THE CITY OF ROANOKE RAPIDS.

The General Assembly of North Carolina enacts:

PART I. HALIFAX COUNTY OCCUPANCY TAX

SECTION 1.1. Chapter 377 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. – The Halifax County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section must be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax~~

~~shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

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

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

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

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

~~(e)~~(c) Distribution and use of tax revenue. – Halifax County ~~shall~~must, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Authority ~~may spend funds remitted to it under this subsection only to promote travel and tourism in Halifax County, to sponsor tourist-oriented events and activities in Halifax County, and to finance tourist-related capital projects in Halifax County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.~~must use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and must use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred

thousand dollars ($500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

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

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

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Halifax County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

Sec. 2. Tourism Development Authority. (a) Appointment and membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~shall~~must also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~shall~~must provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The ~~Board of Commissioners~~Authority ~~shall~~must designate one member ~~of the Authority~~ as ~~chair and shall determine the compensation, if any, to be paid to members of the Authority.~~chair and one member as treasurer.

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

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority ~~shall~~must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~shall~~must report ~~quarterly and~~ at the close of the fiscal year to the Board of County Commissioners on its receipts and expenditures ~~for the preceding quarter and~~ for the year in such detail as the Board may require.

Sec. 3. This act is effective upon ratification."

SECTION 1.2. G.S. 153A-155(g) reads as rewritten:

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

PART II. CITY OF ROANOKE RAPIDS OCCUPANCY TAX

SECTION 2.1. Occupancy tax. – (a) Authorization and Scope. – The Roanoke Rapids City Council may levy a room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.2.(a) Distribution and Use of Tax Revenue. – The City of Roanoke Rapids shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Halifax County Tourism Development Authority must hold the funds in a separate account and administer them separately from proceeds of the Halifax County occupancy tax. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the City of Roanoke Rapids and shall use the remainder for tourism-related expenditures in the City of Roanoke Rapids.

The following definitions apply in this subsection:

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

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

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use

of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2.2.(b) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Roanoke Rapids City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

SECTION 2.3. G.S. 160A-215(g) reads as rewritten:

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

PART III. EFFECTIVE DATE

SECTION 3. This act is effective when it becomes law. Halifax County must ensure that the membership of the Tourism Development Authority is in compliance with the requirements of this act on or before January 1, 2006.

HOUSE BILL 540:
Halifax and Roanoke Rapids Occupancy Taxes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 10, 2005
Introduced by:	Rep. L.°Allen	**Summary by:**	Trina Griffin
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 540 authorizes an additional 2% occupancy tax for Halifax County, and authorizes a 1% occupancy tax for the City of Roanoke Rapids. The House Finance Subcommittee on Occupancy Taxes reviewed this bill and gave it a favorable recommendation.***

CURRENT LAW: Halifax County has had the authority to levy a 3% occupancy tax since 1987. The proceeds of the tax are remitted to the Halifax Tourism Development Authority and used by the Authority to promote travel and tourism in Halifax County. The City of Roanoke Rapids, located in Halifax County, currently does not have authority to levy an occupancy tax.

BILL ANALYSIS: House Bill 540 does the following:

- It authorizes an additional 2% occupancy tax for Halifax County.
- It modernizes the language of the County's current authority and conforms it to the guidelines adhered to by the House Finance Committee. It clarifies how the tax proceeds may be used and defines the terms 'net proceeds', 'promote travel and tourism', and 'tourism-related expenditures'. It also specifies the membership of the TDA to reflect its current composition: 1/5 of the members[1] must be affiliated with businesses that collect the tax and at least ¾ of the members must be individuals who are currently active in the promotion of travel and tourism in the county.
- It authorizes the City of Roanoke Rapids to levy a 1% occupancy tax. Two-thirds of the proceeds must be used to promote travel and tourism in the City and the remainder must be used for tourism-related expenditures. Rather than create a TDA for the City of Roanoke Rapids, the bill directs the net proceeds to be remitted to the Halifax County TDA. The Halifax County TDA must hold the funds from the 1% tax in a separate account and administer them separately from the proceeds of the county tax. The funds must be used to promote travel and tourism in the city and for tourism-related expenditures.

EFFECTIVE DATE: This act is effective when it becomes law. Halifax County must ensure that the membership of the TDA is in compliance with the requirements of this act by January 1, 2006.

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.

[1] The guidelines specify that 1/3 of the members must be affiliated with businesses that collect the tax. However, the 1/5 requirement in the bill reflects the local realities of the county's TDA.

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

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

H0540e2-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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DATE: March 30, 2005

TO: House Finance Subcommittee on Occupancy Tax

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 540 (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	*No General Fund Impact*				
Halifax County	$198,072	$204,014	$210,135	$216,439	$222,932
City of Roanoke Rapids	$38,753	$39,915	$41,113	$42,346	$43,617

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Halifax County and the City of Roanoke Rapids

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill allows Halifax County to increase its occupancy tax rate from 3% to 5% and allows the City of Roanoke Rapids to levy a 1% occupancy tax. The bill also makes changes to the distribution of occupancy taxes to require that the Halifax Tourism Development Authority use at least two-thirds of the proceeds to promote travel and tourism in the county and to use the remainder for tourism-related expenditures. The bill requires that at least one-fifth of members of

the Authority be affiliated with businesses that collect Halifax County occupancy taxes and at least three-fourths of members be active in travel and tourism promotion activities. The bill also makes technical and conforming changes and requires that the Authority membership be in compliance with the act by January 1, 2006.

ASSUMPTIONS AND METHODOLOGY:
In 2003-2004, the 3% room tax in Halifax County raised $279,343.

This bill increases the rate for Halifax County from 3% to 5%. Historically, Halifax County's collections have been as follows:

Year	Amount	Each 1%
2000-01	27,478	9,159
2001-02	262,558	87,519
2002-03	258,338	86,113
2003-04	279,343	93,114

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

Year	Amount	Each 1%
2005-06	198,072	99,036
2006-07	119,747	102,007
2007-08	123,339	105,067
2008-09	127,040	108,219
2009-10	130,851	111,466

To estimate the revenue generated by the Roanoke Rapids portion of the bill, the total collections for Halifax County was prorated by the percentage of lodging accommodations in Halifax County that are located in Roanoke Rapids. Finally, the revenue estimate for Roanoke Rapids is adjusted to reflect a 1% rate.

SOURCES OF DATA: North Carolina Department of Revenue, Halifax County website

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 871*
Second Edition Engrossed 4/14/05

Short Title:	Emerald Isle Canal Dredging Fee.	(Local)
Sponsors:	Representative Preston.	
Referred to:	Finance.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF EMERALD ISLE TO IMPOSE A CANAL DREDGING FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-104 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the ~~Town~~ Towns of Emerald Isle and Ocean Isle Beach."

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

HOUSE BILL 871:
Emerald Isle Canal Dredging Fee

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Preston
Date:	April 26, 2005	**Summary by:**	Trina Griffin
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 871 is a local bill that would allow the Town of Emerald Isle to create a fee-supported canal dredging district for all properties that are contiguous to a canal. The fee may not exceed the cost of dredging and will be imposed on owners of each dwelling unit or parcel that could or does benefit from water access through the canal system.***

BILL ANALYSIS: Last year, the General Assembly authorized the Town of Ocean Isle Beach to create a fee-supported canal dredging district for properties that are contiguous to a canal within the town limits (House Bill 1734; S.L. 2004-104). The legislation provided the following:

- The annual fee may not exceed the cost of providing for the dredging of canals, both natural and concrete.
- The fee would be imposed on owners of each dwelling unit or parcel of property that could or does benefit from water access through the canal system.
- The dredging fee may be included on the property tax bill and collected in the same manner as property taxes. The remedies for collection of taxes will also apply to the collection of these fees.
- The fees collected shall be placed in a separate fund to be used only to pay the bill for canal dredging.

This legislation was proposed to provide the means to remove the silt and sand that have flowed into the canals in the Town impeding the navigability of the canals. These canals provide water access from the Intracoastal Waterway to lots and rights-of-way within the Town limits.

House Bill 871 would authorize the Town of Emerald Isle to create a fee-supported canal dredging district in the same manner and under the same conditions that have already been authorized for the Town of Ocean Isle Beach.

This committee has already given a favorable report to Senate Bill 14, introduced by Sen. Soles, earlier this year extending this same authority to the Town of Holden Beach.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 986*
Committee Substitute Favorable 4/12/05
Third Edition Engrossed 4/18/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H986-CSSVx-21 [v.2]

5/9/2005 9:19:31 AM

Short Title: Various Satellite Annexations. (Local)

Sponsors:

Referred to:

March 30, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE CITIES OF GREENVILLE AND ELIZABETH CITY AND THE TOWNS OF AYDEN, SURF CITY AND WINDSOR.

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, 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, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Surf City, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, and Zebulon."

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

HOUSE BILL 986:
Various Satellite Annexations.

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 10, 2005
Introduced by:	Reps. McLawhorn, Warren, Williams	**Summary by:**	Trina Griffin
Version:	PCS to Third Edition H986-CSSVx-21		Committee Counsel

SUMMARY: House Bill 986 would add Greenville, Surf City, and Windsor to the list of municipalities that may annex satellite areas without meeting the standard that limits the size of the area within the satellite corporate limits, effective when it becomes law. The Proposed Committee Substitute would also add Elizabeth City and the Town of Ayden.

CURRENT LAW: G.S. 160A-58.1 and 160A-58.7 govern the voluntary annexation by a municipality of noncontiguous property.

G.S. 160A-58.1 provides that all property owners in the satellite area may petition a city for voluntary annexation of the noncontiguous property if the property meets all of the following five standards:

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

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

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 986 would remove the requirement that the area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits when noncontiguous property is annexed by the cities of Greenville and Elizabeth City and the towns of Ayden, Surf City, and Windsor.

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

BACKGROUND: 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 from this 10% rule by local act. The municipalities of Angier, Bladenboro, Calabash, Catawba, Claremont, Concord, Conover, Creswell, Dallas, Fuquay-Varina, Garner, Gastonia, Godwin, Hickory, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Locust, Louisburg, Maiden, Marion, Mayodan, Midland, Mocksville, Morrisville, Mount Airy, Mount Holly,

New Bern, Newton, Oxford, Pembroke, Pine Level, Randleman, Ranlo, Rockingham, Rolesville, Rutherfordton, Sanford, Salisbury, Southport, Statesville, Swansboro, Troy, Wallace, Warsaw, Washington, Waynesville, Wendell, and Zebulon have already eliminated the 5th standard for all annexations by the municipality.

H0986e3-SMSV-CSSVx-21

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 986*
Committee Substitute Favorable 4/12/05
Third Edition Engrossed 4/18/05

Short Title: Greenville/Surf City Satellite Annexations. (Local)

Sponsors:

Referred to:

March 30, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE CITY OF GREENVILLE AND THE TOWNS OF SURF CITY AND WINDSOR.

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 341

Short Title:	Modern Escheat Investment Program.	(Public)
Sponsors:	Senators Hoyle; and Atwater.	
Referred to:	Finance.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A MODERN INVESTMENT PROGRAM FOR THE PRUDENT AND APPROPRIATE MANAGEMENT OF THE ESCHEAT FUND, FOR THE BENEFIT OF "NEEDY AND WORTHY" STUDENTS AS PROVIDED FOR IN THE STATE CONSTITUTION.

Whereas, the State Constitution mandates that proceeds of the Escheat Fund shall be utilized to aid needy and worthy North Carolina students enrolled in public institutions of higher education; and

Whereas, continued tuition increases are intensifying the demand on the Escheat Fund to provide North Carolina students with loans and tuition assistance to offset tuition hikes; and

Whereas, adoption of a proactive investment policy for the Escheat Fund will enable the State to realize a greater benefit from existing capital, thereby enhancing the Escheat Fund's constitutionally provided purpose; and

Whereas, the assets of the Escheat Fund have grown to nearly $600,000,000, necessitating the establishment of a modern investment allocation strategy for these funds; and

Whereas, such a policy will enable the State Treasurer to invest in those types of investments considered prudent for the Escheat Fund; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-69.2(b) is amended by adding a new subdivision to read:

"(12) With respect to assets of the Escheat Fund, in addition to those investments authorized by subdivisions (1) through (6) of this subsection, up to twenty percent (20%) in the investments authorized under subdivisions (7) through (9) of this subsection, notwithstanding the limitations imposed on the retirement funds under those subdivisions."

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

SENATE BILL 341:
Modern Escheat Investment Program

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	April 26, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 341 would authorize the State Treasurer to invest up to 20% of the Escheat Fund in three new classes of investment vehicles: (1) insurance contracts, trusts, limited partnerships, and LLCs whose primary purpose is investing in or owning real estate or related debt financing; (2) certain corporate stock; and (3) limited partnerships and LLCs whose primary purpose is to invest in public or private debt, public or private equity, or corporate buyout transactions.

CURRENT LAW:

Escheat Fund – Property to which the State assumes ownership under Chapter 116B of the General Statutes, either because the property is determined to be abandoned or the property was owned by a person who died and had no heirs, is held by the State in the Escheat Fund.

Investment of Escheat Fund Assets – Funds in the Escheat Fund are administered by the State Treasurer and must be invested in accord with G.S. 147-69.2. The types of instruments in which these funds may be invested is limited, but generally include the following:

1. Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
2. Obligations of certain specifically named entities.
3. Repurchase agreements with respect to securities issued or guaranteed by the United States government or its agencies or other securities eligible for investment under G.S. 147-69.1 by a bank or trust company or by primary or other reporting dealers to the Federal Reserve Bank of New York.
4. Obligations of the State of North Carolina.
5. Time deposits of financial institutions with a physical presence in this State for the purpose of receiving commercial or retail deposits.
6. Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.
7. General obligations of other states in the United States or of any city, county or special district in North Carolina.
8. Obligations of any legal entity that bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized service that rates the particular security.
9. Asset-backed securities, whether considered debt or equity that meet the requirements of item number 8 above.

Constitutional Mandate on Use of Escheat Fund Assets – Article IX, Section 10 of the North Carolina Constitution requires property in the Escheat Fund to be used to "aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State." The income derived from investment or deposit of the Escheat Fund is distributed annually on or before July 15 to the State Education Assistance Authority for grants or loans to aid worthy and needy students. An amount determined in the annual budget is transferred annually from the Escheat Fund to the Department of Administration to partially fund the program of Scholarships for Children of War Veterans.

Additional Classes of Investments Authorized for Retirement Systems – Currently, G.S. 147-69.2(b)(7), (8), and (9) authorize the State Treasurer to invest assets of the following retirement systems in three additional classes of investment vehicles: Teacher's and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, The Local Governmental Employees' Retirement System, the Legislative Retirement System, and the North Carolina National Guard Pension Fund.

These subdivisions specify the investment option and any particular requirements and limitations on the investment.

Currently, none of the Escheat Fund assets may be invested in the options provided under G.S. 147-69.2(b)(7)-(9).

Appointment of Investment Advisory Committee – G.S. 147-69.2(b1) requires the State Treasurer to appoint a five-member Investment Advisory Committee for the investments authorized in G.S. 147-69.2(b)(8) and (9).

BILL ANALYSIS: Senate Bill 341 would allow the State Treasurer to invest up to 20% of the funds in the Escheat Fund in the investment options authorized by G.S. 147-69.2(b)(7), (8), and (9), which provide for the following:

- *G.S. 147-69.2(b)(7)* – (i) insurance contracts, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, and (iv) limited liability partnerships and limited liability companies.[1]
- *G.S. 147-69.2(b)(8)* – preferred or common stocks invested directly or invested through individual, common, or collective trust funds of banks, trust companies, and group trust funds of advisory companies.[2]
- *G.S. 147-69.2(b)(9)* – limited partnerships interests or interests in a limited liability company if the primary purpose of the partnership or company is to invest in public or private debt, public or private equity, or corporate buyout transactions.[3]

[1] The Treasurer may only invest up to 10% of the market value of all invested assets of the Retirements Systems in investments authorized by G.S. 147-69.2(b)(7).

[2] The Treasurer may only invest up to 65% of the market value of all invested assets of the Retirement Systems in investments authorized by G.S. 147-69.2(b)(8). Moreover, no more than 1½% of the market value of the Retirement Systems' assets may be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed 8% of the issued and outstanding stock of that corporation.

[3] The Treasurer may only invest up to 5% of the market value of all invested assets of the Retirements Systems in investments authorized by G.S. 147-69.2(b)(9).

The investments authorized in this bill do not contain the limitations currently placed upon the investment of assets of the retirement systems. The investment of Escheat Fund assets in the above options is limited by the 20% cap.

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

S0341e1-SMSV

Investments Authorized for Special Funds Held by State Treasurer
G.S. 147-69.2(b)(7), (8), and (9)

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, and (v) limited partnerships, whether described as limited liability partnerships or limited liability companies; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, and the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), they may be invested in preferred or common stocks issued by any company incorporated or otherwise created or located within or outside the United States provided the investments meet the conditions of this subdivision.

The investments authorized under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of the Retirement Systems. Up to five percent (5%) of the amount that may be invested under this subdivision may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" that has total assets of at least fifty million dollars ($50,000,000).

The assets authorized under this subdivision can be invested through individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies so long as the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

The assets authorized under this subdivision can also be invested directly, if all of the following conditions are met:

a. The common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system.

b. The corporation has paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of

the corporation for the whole of that period have been at least equal to the amount of the dividends paid.

c. In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, if the corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision have been complied with.

No more than one and one-half percent (1 1/2%) of the market value of the Retirement Systems' assets that may be invested under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.

d. to f. Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in limited partnership interests in a partnership or in interests in a limited liability company if the primary purpose of the partnership or limited liability company is to invest in public or private debt, public or private equity, or corporate buyout transactions, within or outside the United States. The amount invested under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Shirley Fowler	State Treasurer
Brett Joyal	DST
Stacey Phipps	DST
Andy Sitton	DST
Paul Stahl	NC Bankers
DAVID DUNN	UNC CHARLOTTE
Ken Melton	DOR.
GEORGE LAWRENCE	COHL & ASSOC.

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ron Ayrock	County Com Assoc.
Alice Garland	NC DOC
Lori Medlen	HCTDA P.O. Box 144 Roanoke Rapids, NC 27870
Rick Brantley	City of Roanoke Rapids
Ben Hartsell	Sen. Hagan
D.M. Beale	City of Roanoke Rapids
John Phelps	NCLM
Chris Killian	Nelson Mullins
Susan Palumbi	Nationwide

Senate Finance Committee
Wednesday, May 11, 2005, Noon
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 92	Watauga County Local Act.	Senator Garwood
SB 442	Blowing Rock Off-Street Parking Fund.	Senator Garwood
HB 125	West Jefferson Occupancy Tax.	Rep. Wilson
SB 450	Rutherford Airport Authority Leases.	Senator Dalton
HB 278	Walkertown Deannexations.	Rep. Folwell Rep. Brown
HB 478	Tobaccoville Deannexation.	Rep. Folwell
HB 498	Taylorsville Satellite Annexations.	Rep. Hollo
HB 843	Duplin Occupancy Tax.	Rep. Tucker
SB 1087	Limited Driving Privilege for DWLR.	Senator Kerr

Adjournment

SENATE FINANCE COMMITTEE
Wednesday, May 11, 2005 Noon
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at noon on May 11, 2005, in the room 544 of the Legislative Office Building. Twenty-four members of the committee were present. Senator John Kerr presided. Hannah Lee of Goldsboro, Faith Wright of Dudley, Caroline Finch of Goldsboro, Ben Carr of Raleigh, and Josiah Wright of Goldsboro served as pages.

SB 92 – Watauga District U Occupancy Tax.

Senator Garwood was recognized to explain the proposed committee substitute. Senator Jenkins moved to approve the proposed committee substitute and the motion carried. A copy of the bill, the proposed committee substitute, and the summary are attached.

S442 – Blowing Rock Off-Street Parking Fund.

Senator Garwood was recognized to explain the bill. Senator Dannelly moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

HB 125 – West Jefferson Occupancy Tax.

Senator Garwood was recognized to explain the bill. Senator Dannelly moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

SB 450 – Rutherford Airport Authority Leases.

Senator Dalton was recognized to explain the bill. Senator Dannelly moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

HB 278 – Walkertown Deannexations.

Representative Brown was recognized to explain the bill. Senator Berger moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

HB 478 – Tobaccoville Deannexation.

Representative Folwell was recognized to explain the bill. Senator Dalton moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

HB 498 – Taylorsville Satellite Annexations.

Representative Hollo was recognized to explain the bill. Senator Dannelly moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

HB 843 – Duplin Occupancy Tax.

Representative Tucker was recognized to explain the bill. Senator Albertson moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

SB 1087 – Ltd. Driving Privileges/Certain Rvk'd Licenses.

Senator Soles acted as chair, so Senator Kerr could be recognized to explain the bill. Kathy Matthews, DMV Chief Hearing Officer; Matt Osborne, Attorney with AOC; Jim Drennan, Institute of Government; and Judge Walker were available to answer questions. After much discussion, Senator Kerr requested that the bill be held for further dialogue.

The meeting adjourned at 1:15 pm.

Senator David W. Hoyle, Presiding

John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

Thursday, May 12, 2005

Senator KERR,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**442**	Blowing Rock Off-Street Parking Fund.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**450**	Rutherford Airport Authority Leases.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**125**	West Jefferson Occupancy Tax.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**278**	Walkertown Deannexations.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**478**	Tobaccoville Deannexation.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**498**	Taylorsville Satellite Annexations.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**843**	Duplin Occupancy Tax.	
		Sequential Referral:	None
		Recommended Referral:	None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B.	**92**	Watauga County Local Act.	
		Draft Number:	65307
		Sequential Referral:	None
		Recommended Referral:	None

Long Title Amended: Yes

S.B. **138** Archdale Extraterritorial Jurisdiction.

Draft Number:	35223
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **339** Town of Ahoskie Local Act-2.

Draft Number:	75308
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **407** Cabarrus Municipal Vehicle Registration.

Draft Number:	65315
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **466** Burlington/Gibsonville Boundary.

Draft Number:	85244
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **986** Greenville/Surf City Satellite Annexations.

Draft Number:	70465
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 13

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Drennan	DOC
Cathy Matthews	DMV
Portia Manley	NCDOT / DMV
Matt Osborne	AOC
Jeffrey Edwards	DOJ
Beth Hathcock	DOJ
Chuck Stone	SEANC
Lee Hoyle	KCLL
John Cyrus	NCSG
Ralph Campbell	AOC
Richard Little	AOC

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Susan Booth	NCSA

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawkins	Progress Energy
Amy Hobbs	Hobbs & Co

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 11, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	D.O.R.
Paul Fogleman	Impact Inc.
Tom Eden	CNA
[illegible]	NCPA
Susan Martin	NC Home Builders
Andy Romanet	NCLM
Kim Hibbard	NCLM
Evelyn Hawthorne	ETSR
Butch Bunnell	NCSDA
Erica Peterson	NC Agribusiness Council
Sandy Sanders	WCSR

Sen. Garwood recognized to explain
Sen. Weinstein adopt comm sub for discussion
Sen Jenkins fav. report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 92
PROPOSED COMMITTEE SUBSTITUTE S92-PCS65307-MBx-7

Short Title: Watauga District U Occupancy Tax. (Local)

Sponsors:

Referred to:

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE WATAUGA COUNTY TO LEVY AN OCCUPANCY TAX IN A TAX DISTRICT COMPRISING THE UNINCORPORATED AREAS OF THE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Watauga County District U Created. – Watauga County District U is created as a taxing district. Its jurisdiction consists of that part of Watauga County that is located outside of incorporated areas within the county. Watauga County District U is a body politic and corporate and has the power to carry out the provisions of this act. The Watauga County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Authorization and Scope. – The governing body of Watauga County District U may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by charitable, educational, or religious institutions or nonprofit organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3. Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155 as if Watauga County District U were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 4. Distribution and Use of Tax Revenue. – Watauga County District U shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to

the Watauga County District U Tourism Development Authority created pursuant to Section 5 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of Watauga County District U. None of the proceeds may be used to promote travel or tourism in areas within Watauga County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this act:

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

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

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

SECTION 5.(a) Watauga County District U Tourism Development Authority. – Appointment and membership. – The Watauga County Board of Commissioners shall adopt a resolution creating the Watauga County District U Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the district. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 5.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4 of this act. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 5.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Watauga County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 6. G.S. 153A-155(g) reads as rewritten:

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

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

SENATE BILL 92:
Watauga District U Occupancy Tax

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 11, 2005
Introduced by:	Sen. Garwood	**Summary by:**	Trina Griffin
Version:	PCS to First Edition		Committee Counsel
	S92-PCS65307-MBx-7		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 92[1] would create a new taxing district in Watauga County consisting of the unincorporated areas of the county and authorize that district to levy a room occupancy tax of up to 6%.***

CURRENT LAW: Watauga County does not currently have authority to levy a room occupancy tax. However, the towns of Beech Mountain, Blowing Rock, and Seven Devils, which are partly located in Watauga County, and Boone, which is entirely located in Watauga County, do have authority to levy a room occupancy tax.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 92 would create a new taxing district in Watauga County consisting of the unincorporated areas of the county to be named "Watauga County District U." The Watauga County Board of Commissioners would serve ex officio as the governing body of the district. The district would be authorized to levy a room occupancy tax of up to 6% and remit the net proceeds, on a quarterly basis, to a Tourism Development Authority established under this act. The Authority would be required to use at least two-thirds of the proceeds to promote travel and tourism and to use the remainder for tourism-related expenditures. The tax proceeds may be used only for the direct benefit of the Watauga County District U. The administrative and use provisions of this bill conform to the guidelines adopted by the House Finance Committee for occupancy tax legislation.

This bill creates a new taxing district, rather than authorizing the county to levy the tax, because several of the towns located in Watauga County already levy a 6% occupancy tax. Thus, if the county were authorized to levy occupancy tax, then the combined city and county tax rate would exceed the 6% cap that the General Assembly has historically adhered to when enacting occupancy tax legislation. By creating a new taxing district that excludes the incorporated areas, Watauga can levy an occupancy tax in certain parts of the county without violating the 6% rate cap. A similar taxing district was created for Beech Mountain in S.L. 2001-434, although subsequent legislation has rendered the taxing district unnecessary.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. 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.

[1] The original bill was a blank local bill.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 92

Short Title:	Watauga County Local Act.	(Local)
Sponsors:	Senator Garwood.	
Referred to:	Rules and Operations of the Senate.	

February 9, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE COUNTY OF WATAUGA.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates to Watauga County only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 11, 2005

TO: Senator Garwood

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 92 (Unknown Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No General Fund Impact**				
Watauga District U	**$262,800**	**$268,844**	**$274,759**	**$280,254**	**$285,859**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Watauga District U

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
The Proposed Committee Substitute for Senate Bill 92 would create a new taxing district in Watauga County consisting of the unincorporated areas of the county and authorize that district to levy a room occupancy tax of up to 6%. The district would be authorized to levy a room occupancy tax of up to 6% and remit the net proceeds, on a quarterly basis, to a Tourism Development Authority established under this act. The Authority would be required to use at least two-thirds of the proceeds to promote travel and tourism and to use the remainder for tourism-related expenditures. The tax proceeds may be used only for the direct benefit of the Watauga County District U.

ASSUMPTIONS AND METHODOLOGY:
According to the Watauga County Manager, the area that would comprise Watauga District U includes approximately 600 rooms in bed and breakfasts, cabins and condominiums that are for rent. Because many of these are rented on a seasonal basis, the average occupancy rate is assumed to be 20%. Assuming an average room rental rate of $100 suggests the following revenue stream:

Year	Amount	Each 1%
2005-06	$262,800	43,800
2006-07	$268,844	44,807
2007-08	$274,759	45,793
2008-09	$280,254	46,709
2009-10	$285,859	47,643

Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts.

SOURCES OF DATA: Watauga County

TECHNICAL CONSIDERATIONS: None

Sen. Garwood rec.
Sen. Donnelly fav. report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 442

Short Title:	Blowing Rock Off-Street Parking Fund.	(Local)
Sponsors:	Senator Garwood.	
Referred to:	Finance.	

March 9, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF BLOWING ROCK TO ESTABLISH AN OFF-STREET PARKING FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, the governing body of a municipality may establish a fund into which payments from individual firms, persons, corporations, or property owners shall be deposited for the purpose of providing off-street parking facilities, and from which appropriations shall be made exclusively for the purpose of organizing, establishing, developing, or enlarging off-street parking facilities within the municipality. The governing board may provide in the municipality's land-use ordinance that all developers must either provide adequate off-street parking (on-site or off-site) to serve their developments or pay a fee to the municipality's off-street parking facilities fund based on the number of required parking spaces not provided.

SECTION 2. This act applies to the Town of Blowing Rock only.

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

SENATE BILL 442:
Blowing Rock Off-Street Parking Fund

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 11, 2005
Introduced by:	Sen. Garwood	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 442 would allow the Town of Blowing Rock to establish a fund to help provide revenues for a municipal parking facility. Both Chapel Hill (1969) and Carrboro (1985) have similar authority. The bill is effective when it becomes law.

BILL ANALYSIS: Municipalities have the authority to regulate parking and to provide off-street parking facilities. A municipality may impose fees and charges for the use of the facilities through any feasible means. [1]

The Town of Blowing Rock has an ordinance requiring businesses to provide a minimum number of parking spaces. A business may meet the minimum parking space requirement through on-site parking or satellite parking that is within 400 feet of the business. A business may not use the public parking along the streets to meet its minimum parking space requirements.

To help alleviate the scarcity of parking in the Town of Blowing Rock, the Town has purchased property on which it plans to construct a municipal parking deck. Business owners have approached the Town about assisting it in the cost of the facility as a way to meet the minimum parking space requirements. The Town anticipates that the parking facility will be constructed within the next five years.

Senate Bill 442 would allow the Town of Blowing Rock to establish a fund to be used exclusively to establish a municipal parking facility. The Town may by ordinance set forth a fee schedule that would allow businesses and developers to contribute towards the cost of the facility based on the number of required parking spaces. The Town anticipates that the fee would be a one-time capital cost. Although current law may be sufficient authority to allow the Town to construct and finance the parking facility in the manner the Town envisions, the Town decided to seek specific legislative authority. Chapel Hill received this authority in 1969 and Carrboro received the same authority in 1985.

S0442e1-SMRB

[1] G.S. 160A-301 and G.S. 160A-302. See also G.S. 160A-536.

Sen. Garwood recog
Sen. Donnelly moved

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 125*

Short Title:	West Jefferson Occupancy Tax.	(Local)
Sponsors:	Representative Wilson.	
Referred to:	Finance.	

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF WEST JEFFERSON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The West Jefferson Board of Aldermen may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of West Jefferson shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the West Jefferson Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in West Jefferson and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

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

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Aldermen adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Aldermen shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Board of Aldermen on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Aldermen may require.

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

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

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

HOUSE BILL 125:
West Jefferson Occupancy Tax

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Wilson
Date:	May 11, 2005	**Summary by:**	Cindy Avrette
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 125 authorizes the town of West Jefferson to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.***

CURRENT LAW: Currently, the town of West Jefferson does not have authority to levy a room occupancy tax. West Jefferson is located in Ashe County, which does have authority to levy a 3% occupancy tax. The proceeds of the county tax are distributed as follows: 1/3 goes to the Ashe County Chamber of Commerce for travel and tourism and 2/3 goes to the general fund to be used for any public purpose.

BILL ANALYSIS: House Bill 125 authorizes the town of West Jefferson to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and one-third for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

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

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 125 (First Edition)

SHORT TITLE: West Jefferson Occupancy Tax.

SPONSOR(S): Representative Wilson

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	*No General Fund Impact*				
Town of West Jefferson	$17,500	$18,200	$18,928	$19,685	$20,473

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of West Jefferson

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill allows the Town of West Jefferson to levy a 3% occupancy tax. The bill requires the proceeds to go to the West Jefferson Tourism Development Authority. At least two-thirds of the funds are to be used to promote travel and tourism in West Jefferson and the remainder is to be used for travel-related expenditures.

ASSUMPTIONS AND METHODOLOGY:
There is currently one hotel in the city limits of West Jefferson. Based on hotel receipts, the town estimates that the occupancy tax will generate between $15,000 and $20,000 annually. For the purposes of this analysis, an estimate of $17,500 is used for the first year. An annual rate of increase of 4% is used to project revenues for future years.

Year	Amount	Each 1%
2005-06	17,500	5,833
2006-07	18,200	6,066
2007-08	18,928	6,309
2008-09	19,685	6,561
2009-10	20,473	6,824

SOURCES OF DATA: Town of West Jefferson, NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) **733-4910**

PREPARED BY: Rodney Bizzell



APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: March 30, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

Sen. Dalton recog.
Sen. Dannelly Moved

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 450

Short Title:	Rutherford Airport Authority Leases.	(Local)
Sponsors:	Senator Dalton.	
Referred to:	Finance.	

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE RUTHERFORD AIRPORT AUTHORITY TO LEASE PROPERTY FOR FIFTY YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 1971-335 reads as rewritten:

"**Sec. 4.** The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate airports or landing fields for the use of airplanes and other aircraft within the limits of the County and for any of such purposes, to purchase, improve, own, hold, lease and/or operate real or personal property.

(2) To borrow money and to issue bonds and to secure the same by mortgages, with the consent of the Rutherford Board of County Commissioners upon any property held or to be held by it.

(3) To sue or be sued in the name of said Airport Authority, to acquire by purchase and to hold lands for the purpose of constructing, maintaining or operating any airport within the limits of said County, and to make such contracts and to hold such personal property as may be necessary for the exercise of the powers of the Airport Authority. The Airport Authority may acquire by purchase, or otherwise, any existing lease, leasehold right or other interest in any existing airport located in the County.

(4) To charge and collect reasonable and adequate fees and rents for the use of the airport property or for services rendered in the operation thereof.

(5) To make all reasonable rules and regulations as it deems necessary for the proper maintenance and operation of the airport and provide penalties for the violation of such rules and regulations; provided, said rules and regulations and schedules of fees be not in conflict with the laws of the State of North Carolina, and the rules and regulations of the Civil Aeronautics Administration of the Federal Government.

(6) To issue revenue bonds or other securities and obligations for the purpose of providing funds for the construction, maintenance, purchase, improvement and

operation of the airports, landing fields or other facilities. The bonds, if and when so issued, shall be denominated "Rutherford Airport Authority Bonds", shall be issued in such form and denomination and shall mature at such time or times, not exceeding fifty (50) years after their date, and shall bear such rate of interest, payable annually or semi-annually, as the Airport Authority may determine. The bonds shall be signed by the chairman of the Airport Authority and the corporate seal affixed or impressed upon each bond, and attested by the secretary of the board. The coupons to be attached to said bonds shall bear the facsimile signature of the chairman of the Airport Authority. Such bonds, notes or securities issued for the purpose, or purposes above set out, may be issued and sold with the approval of the County Commissioners, but the sale shall be made under the supervision, and with the approval of the Local Government Commission.

Bonds and notes issued under this act shall be exempt from all State, Federal, County, or Municipal taxes or assessments, direct or indirect, general or special, and the interest paid on such bonds or notes shall not be subject to taxation as income. The bonds, notes or other securities shall not be obligations of the County of Rutherford, but the Airport Authority is authorized and empowered to pledge the revenues, rents, income and tolls arising out of the use of any airport property or any specific part of said airport property until such time as the sums borrowed therefor are fully amortized and repaid. The bonds or other securities which the Airport may incur shall be issued and incurred upon such other terms, covenants and conditions as the Airport Authority may deem proper.

(7) To sell, or otherwise dispose of, any property, real or personal, belonging to the Airport Authority, but no sale of real property shall be made without the approval of the Board of County Commissioners.

(8) To purchase such insurance as the Airport Authority shall deem necessary.

(9) To invest or reinvest, subject to the approval of the Local Government Commission, any of its funds in either bonds, notes or certificates of indebtedness of the United States of America, or in bonds or notes of any agency or instrumentality of the United States of America, the payment of principal and interest of which is guaranteed by the United States of America, or in bonds or notes of the State of North Carolina, or in bonds of any county, city or town of North Carolina, which have been approved by the Local Government Commission.

(10) To purchase any of its outstanding bonds or notes.

(11) To operate, own, lease, control, regulate or grant to others the right to operate on any airport premises, restaurants, agricultural fair, motion picture shows, and other amusements.

(12) To lease for a term not to exceed ~~twenty-five (25) years,~~ fifty (50) years, and for purposes not inconsistent with the grants and agreements under which the airport is held, real or personal property under the supervision of or administered by the Airport Authority.

(13) To contract with persons, firms or corporations for terms not to exceed twenty-five (25) years, for the operation of airline-scheduled passenger and freight flights, non-scheduled flights, and any other airplane activities not inconsistent with said

grant agreements under which the airport property is held, and to charge and collect reasonable and adequate fees, charges and rents for the use of such property or for services rendered in the operation thereof.

(14) To erect and construct buildings, hangars, shops and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease the same for a term or terms not to exceed ~~twenty-five (25) years;~~ fifty (50) years; to borrow money for use in making or paying for such improvements and facilities, secured by and on the credit only of the lease agreements in respect thereto, to pledge and assign such leases and lease agreements as security for loans herein authorized."

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

SENATE BILL 450:
Rutherford Airport Authority Leases

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 11, 2005
Introduced by:	Sen. Dalton	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 450 increases the length of time for which the Rutherford Airport Authority may lease real or personal property from 25 to 50 years.

CURRENT LAW: In 1971, the General Assembly authorized Rutherford County to establish an airport authority for the maintenance of airport facilities in the county. The Airport Authority has the following powers:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate airports or landing fields for the use of airplanes and other aircraft within the limits of the County and for any of such purposes, to purchase, improve, own, hold, lease and/or operate real or personal property.

(2) To borrow money and to issue bonds and to secure the same by mortgages, with the consent of the Rutherford Board of County Commissioners upon any property held or to be held by it.

(3) To sue or be sued in the name of said Airport Authority, to acquire by purchase and to hold lands for the purpose of constructing, maintaining or operating any airport within the limits of said County, and to make such contracts and to hold such personal property as may be necessary for the exercise of the powers of the Airport Authority.

(4) To charge and collect reasonable and adequate fees and rents for the use of the airport property or for services rendered in the operation thereof.

(5) To make all reasonable rules and regulations as it deems necessary for the proper maintenance and operation of the airport and provide penalties for the violation of such rules and regulations.

(6) To issue revenue bonds or other securities and obligations for the purpose of providing funds for the construction, maintenance, purchase, improvement and operation of the airports, landing fields or other facilities.

(7) To sell, or otherwise dispose of, any property, real or personal, belonging to the Airport Authority, but no sale of real property shall be made without the approval of the Board of County Commissioners.

(8) To purchase such insurance as the Airport Authority shall deem necessary.

(9) To invest or reinvest, subject to the approval of the Local Government Commission, any of its funds in either bonds, notes or certificates of indebtedness of the United States of America, or in bonds or notes of any agency or instrumentality of the United States of America, the payment of principal and interest of which is guaranteed by the United States of America, or in bonds or notes of the State of North Carolina, or in bonds of any county, city or town of North Carolina, which have been approved by the Local Government Commission.

(10) To purchase any of its outstanding bonds or notes.

(11) To operate, own, lease, control, regulate or grant to others the right to operate on any airport premises, restaurants, agricultural fair, motion picture shows, and other amusements.

(12) To lease for a term not to exceed twenty-five (25) years, and for purposes not inconsistent with the grants and agreements under which the airport is held, real or personal property under the supervision of or administered by the Airport Authority.

(13) To contract with persons, firms or corporations for terms not to exceed twenty-five (25) years, for the operation of airline-scheduled passenger and freight flights, non-scheduled flights, and any other airplane activities not inconsistent with said grant agreements under which the airport property is held, and to charge and collect reasonable and adequate fees, charges and rents for the use of such property or for services rendered in the operation thereof.

(14) To erect and construct buildings, hangars, shops and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease the same for a term or terms not to exceed twenty-five (25) years; to borrow money for use in making or paying for such improvements and facilities, secured by and on the credit only of the lease agreements in respect thereto, to pledge and assign such leases and lease agreements as security for loans herein authorized.

BILL ANALYSIS: Senate Bill 450 would increase the length of time for which the Rutherford Airport Authority may lease real and personal property from 25 to 50 years. It would also increase from 25 to 50 years the time period for leasing buildings, hangars, shops, and other improvements and facilities located on real property owned by the airport.

Currently, the airport owns land that it leases to individuals for the purpose of building hangars. The hangars are owned by the individuals and, as leasehold improvements on the land, must be removed at the end of the lease term. Under current law, the maximum lease term the airport may extend for this purpose is 25 years. The Airport Authority is seeking this legislation so that it may offer longer lease periods. Longer lease periods are likely to result in larger, better quality hangars being built and pilots keeping their airplanes stored there longer, rather than using or building hangars at other airports.

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

Rep Brown recog.
Sen. Berger moved

Sen Berger will handle on the floor.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 278

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

February 17, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

HOUSE BILL 278:
Walkertown Deannexations

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Brown and Folwell
Date:	May 11, 2005	**Summary by:**	Trina Griffin*
Version:	1st Edition		Committee Counsel

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

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

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

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

**Martha Walston, counsel to the House Finance Committee, substantially contributed to this summary.*

Rep. Folwell recognized
Sen. Dalton made fav. report

Sen. Hartsell or Sen. Berger

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 478

Short Title:	Tobaccoville Deannexation.	(Local)
Sponsors:	Representative Folwell.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE VILLAGE OF TOBACCOVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Village of Tobaccoville:

BEGINNING at a stone, said stone being known as Annie H. Kapp's southeast corner as described and recorded in Deed Book 1168, Page 901 in the Forsyth County Register of Deeds, North Carolina and also being known as the northeast corner of Lot #9 of Lelia M. Spears Estate as recorded in Plat Book 32, Page 134; thence running from said point of beginning along the current Tobaccoville City Limits and near an existing fence the following three bearing and distances: 1) South 02°07'39" West 325.37 feet to a existing iron pipe; 2) South 01°52'27" West 874.34 feet to a existing iron pipe; 3 South 18°28'56" West 272.94 feet to a existing rebar, said rebar being located on the northern right-of-way of Shore Road; thence running with the northern right-of-way of Shore Road North 65°37'47" West 149.14 feet to a point; thence running with eastern property line of Lloyd Nelson & wife property as described and recorded in Deed Book 1901, Page 1544 North 18°52'00" East 211.88 feet to a point; thence running with the northern line of the above said Nelson property North 86°39'10" West 154.66 feet to a point, said point also being known as the northeastern corner of George B. Drauszewski & wife property as described and recorded in Deed Book 2002, Page 2448; thence running with the eastern line of the George B. Drauszewski & wife property as described and recorded in Deed Book 2002, Page 2448, Deed Book 1997, Page 1932 and Deed Book 2002, Page 2443 the following two bearing and distances: 1) North 18°50'00" East 136.16 feet to a point; 2) North 01°52'17" East 550.86 feet to a point; thence running, with the northeastern line of the above said Drauszewski property South 88°12'24" West 30.74 feet to a point near the Beaver Dam Creek; thence running with the eastern property line of the above said Drauszewski property the following thirteen (13) bearing and distances along the above

said creek: 1) North 11°35'43" East 26.80 feet to a point; 2) North 32°55'55" West 67.02 feet to a point; 3) North 10°02'39" East 30.98 feet to a point; 4) North 30°25'28" East 31.85 feet to a point; 5) North 05°05'05" West 16.54 feet to a point; 6) North 67° 18'23" West 51.25 feet to a point; 7) North 19°16'05" West 24.44 feet to a point; 8) North 30°55'54" East 34.28 feet to a point; 9) North 60°16'49" East 35.60 feet to a point; 10) North 29°41'31" East 100.30 feet to a point; 11) North 00°00'00" East 49.63 feet to a point; 12) North 27°52'18" West 66.13 feet to a point; 13) North 04°08'13" West 57.18 feet to a point; thence running, with the southern property line of the above said Kapp North 88°21'40" East 321.00 feet to a the point and place of beginning, containing 8.767 acres, more or less, and being the same property known as Forsyth County Tax Lots 009 of Block 4968C and 045 of Block 4968 as is shown on the Forsyth County Tax Map #606898 as is presently constituted.

SECTION 2. This act does not affect the duty to pay taxes for any prior year and does not eliminate any liens for taxes for prior years.

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

HOUSE BILL 478:
Tobaccoville Deannexation

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Folwell
Date:	May 11, 2005	**Summary by:**	Trina Griffin*
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 478 de-annexes two lots, totaling approximately 8.767 acres, from the corporate limits of the village of Tobaccoville. The act would become effective June 30, 2005.***

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

BILL ANALYSIS: House Bill 478 de-annexes two lots, totaling approximately 8.767 acres, from the corporate limits of the village of Tobaccoville. The act would become effective June 30, 2005, and would not affect the duty to pay taxes for any prior year and would not eliminate any liens for taxes for prior years.

BACKGROUND: The two lots described in House Bill 478 were annexed to the village of Tobaccoville pursuant to a voluntary annexation. At the time of annexation, the lots were owned as separate parcels. Later, the lots were combined with other land outside Tobaccoville's limits to create a proposed new subdivision. The two lots constitute less than 5% of the area of the subdivision. The remainder of the subdivision is located within the jurisdiction of Forsyth County and in an area that can only be annexed by the City of Winston-Salem under an annexation agreement between Tobaccoville and Winston-Salem.

On February 23, 2005, the Tobaccoville Village Council adopted a resolution approving a bill to de-annex the two lots. In the resolution, the Village administrator and Council expressed their concern that, given the location of the two lots and the limited area they cover, the potential split of jurisdiction for the provision of services and other governmental matters would be confusing and constitute an unnecessary administrative burden for the Village, the County, the City and the Subdivision. After consulting with Winston-Salem and Forsyth County, the Village Council has determined that it is in the best interests of Tobaccoville to avoid such confusion and to permit the provision of services and the administration of other governmental matters on a uniform basis within the Subdivision.

**Martha Walston, counsel to the House Finance Committee, substantially contributed to this summary.*

Rep. Hollo recognized
Sen. Donnelly moved for fav. report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 498*

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

March 7, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

HOUSE BILL 498:
Taylorsville Satellite Annexations

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Hollo
Date:	May 11, 2005	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 498 would exempt the town of Taylorsville from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. The Senate companion bill, SB 350, was passed in Senate Finance on March 15th and passed the Senate floor on March 21st.***

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

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

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

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

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities (at least 30) from this 10% rule by local act.

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

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

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

Sen. Albertson handle on floor

Rep. Tucker
Sen. Albertson ~~for~~ moved for report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 843
Committee Substitute Favorable 4/5/05

Short Title: Duplin Occupancy Tax. (Local)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE DUPLIN COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 377 of the 1987 Session Laws reads as rewritten:

"**Section 1.** Occupancy tax. (a) Authorization and scope. The Duplin County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Duplin County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Duplin County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(a2) Administration. A tax levied under this section must be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by~~

~~the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

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

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

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

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

(e) Distribution and ~~Use~~ use of tax revenue. Except as otherwise provided in this act, Duplin County ~~may~~ shall use the net proceeds of a tax levied under this section in accordance with this subsection. ~~only~~ It shall use at least two-thirds of the funds to promote travel and tourism in Duplin ~~County.~~County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

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

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

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

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

"**Section 1.1.** Duplin County Tourism Development Authority. (a) Appointment and Membership. When the annual net proceeds of the occupancy tax exceed two hundred thousand dollars ($200,000), the Duplin County Board of Commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filing of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to the members of the Authority.

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

"**Section 1.2.** Duties. If the board of commissioners establishes a Tourism Development Authority as provided in Section 1.1 of this act, then Duplin County shall, on a quarterly basis, remit the net proceeds of the tax to the Tourism Development Authority. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.

"**Section 1.3.** Reports. If the board of commissioners establishes a Tourism Development Authority as provided in Section 1.1 of this act, then the Authority shall report quarterly and at the close of the fiscal year to the Duplin County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

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

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

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

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

HOUSE BILL 843:
Duplin Occupancy Tax

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Tucker
Date:	May 11, 2005	**Summary by:**	Cindy Avrette
Version:	2nd Edition		Committee Counsel

SUMMARY: House Bill 843 would allow Duplin County to increase its occupancy tax rate from 3% to 6% and it would conform the administrative provisions and defined terms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee. Duplin County's current authorization does not provide for a travel and tourism development authority to oversee the use of the tax proceeds; however, the bill would provide that the county must create a TDA to oversee the use of the tax proceeds once the annual net proceeds of the tax exceed $200,000.

CURRENT LAW: Duplin County has had the authority to levy a 3% occupancy tax since 1987. The County may use the proceeds of the tax only to promote travel and tourism. The current authority does not require the establishment of a Tourism Development Authority to administer the proceeds, and it does not define the terms 'travel and tourism', 'tourism-related expenditures', or 'net proceeds'.

BILL ANALYSIS: House Bill 843 would do several things:

- It would authorize Duplin County to increase its occupancy tax rate from 3% to 6%.
- Under current law, the county can only use the proceeds from the occupancy tax proceeds to promote travel and tourism. Although the bill does not substantively change this law, it would amend it to follow the guidelines by defining the term 'net proceeds' and providing that at least 2/3 of the net proceeds must be used to promote travel and tourism and the remainder for tourism-related expenditures.
- Under current law, the county determines the use of the tax proceeds. The original authorization did not create a tourism development authority to oversee the use of the tax proceeds. The bill would provide that Duplin County must establish a TDA to oversee the use of the occupancy tax proceeds once the annual net proceeds exceed $200,000. The House Finance Committee adopted, and the General Assembly enacted, a similar provision for Alleghany County in 2004.
- The bill also makes technical and conforming changes to the county's current authorization.

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 30, 2005

TO: Representative Tucker

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 843 (Unknown Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund		*No General Fund Impact*			
Duplin Co.	$95,931	$99,768	$103,759	$107,909	$112,226

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

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill authorizes Duplin County to increase its occupancy tax rate from 3% to 6%. The tax proceeds may be used to promote travel and tourism in Duplin County.

ASSUMPTIONS AND METHODOLOGY:
In 2003-2004, the 3% room tax in Duplin County raised $88,974.

This bill doubles the rate to 6%. Historically, Duplin County's collections have been as follows:

Year	Amount	Each 1%
1999-00	77,617	25,872
2000-01	84,578	28,193
2001-02	79,392	26,464
2002-03	81,186	27,062
2003-04	88,974	29,658

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

Year	Amount	Each 1%
2005-06	95,931	31,977
2006-07	99,768	33,256
2007-08	103,759	34,586
2008-09	107,909	35,970
2009-10	112,226	37,409

SOURCES OF DATA: NC Department of Revenue, NC Dept of State Treasurer

TECHNICAL CONSIDERATIONS: None

Sen. Soles - chairs
Sen. Kerr moves for PCS adoption
Sen. Jenkins moved for fav. report.

Kathy Matthews
Chief Hearing Officers for DMV was available answer questions
to answer questions.

Matt Osborne, AOC, was available

Judge Walker

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

D

SENATE BILL 1087
Judiciary II Committee Substitute Adopted 4/19/05
PROPOSED COMMITTEE SUBSTITUTE S1087-CSRC-30 [v.7]

5/11/2005 9:11:30 AM

Short Title: Ltd Driving Privileges/Certain Rvk'd Licenses. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN PERSONS WHOSE DRIVERS LICENSES HAVE BEEN REVOKED TO OBTAIN A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 is amended by adding anew section to read:

"**§ 20-20.1. Limited driving privilege for certain revocations.**

(a) Definitions. – As used in this section, the following definitions apply:

(1) Impaired driving license revocation. – Defined in G.S. 20-28.2(a).

(2) Limited driving privilege. – A judgment issued by a court authorizing a person with a revoked drivers license to drive under the terms and conditions authorized under this section.

(3) Nonfleet private passenger motor vehicle. – Defined in Article 40 of Chapter 58 of the General Statutes.

(4) Nonstandard working hours. – Any time other than 6 A.M. until 8 P.M. on Monday through Friday.

(5) Standard working hours. – Any time from 6 A.M. until 8 P.M. on Monday through Friday.

(b) Eligibility. – A person whose licensing privileges have been revoked is eligible for a limited driving privilege issued under this section if all of the following apply:

(1) The person has no unresolved or outstanding motor vehicle offenses or charges.

(2) The person has complied with the revocation of the applicant's licensing privileges for at least six months immediately preceding the application for a limited privilege under this section.

(3) The person is not disqualified under subdivision (2) of this subsection.

(4) The court, in its discretion, finds good cause to issue a limited driving privilege.

(c) Ineligibility. – The following persons are not eligible to receive a limited driving privilege under this section:

(1) A person who is eligible to receive limited driving privileges under any other provision of law.

(2) A person whose license is revoked for any impaired driving license revocation.

(3) A person whose license is revoked for an impaired driving license revocation offense and who has subsequently been found guilty of violating G.S. 20-28.

(4) A person whose license is revoked under G.S. 20-17.1.

(5) A person whose license is revoked in another state for any reason.

(6) A person to whom the Division has refused to issue a license under G.S. 20-9(e).

(d) Scope of limited driving privilege. –

(1) A limited driving privilege must restrict the holder to essential driving related the following purposes.

a. The person's employment.

b. Necessary maintenance of the person's household.

c. Emergency medical care for the person or for an immediate family member of the person who resides in the same household with the person.

(2) Any driving that is not related to the purposes authorized in subdivision (1) of this subsection is unlawful even though done at times and upon routes that may be authorized by the privilege. Except as provided in subdivision (3) of this subsection, all driving must be for a purpose and done within the restrictions specified in the privilege.

(3) If a privilege is granted for emergency medical care, driving related to that privilege is authorized at any time and without restriction as to routes.

(e) Jurisdiction. – An application for a limited driving privilege made under this section shall be a civil action, shall be filed in district court in the county of the person's residence as reflected by the Division's records, and shall be a separate action from any action that resulted in the revocation.

(f) Application for limited driving privileges. – The application for a limited driving privilege requested under this section must include information regarding all of the convictions or violations that resulted in the revocation of the person's driving privileges. The application must also include a sworn statement that there are no outstanding or unresolved charges or violations that could result in the revocation of the person's driving privileges, and that the person has complied with the most recent order of revocation for at least the six months immediately preceding the person's application for a limited driving privilege under this section.

(g) Driving for employment-related purposes in standard working hours. – The court may authorize driving for employment-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the person is not required to drive for essential employment-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (i) of this section. The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(h) Driving for employment-related purposes during nonstandard working hours. – If the person is required to drive during nonstandard working hours for an essential employment-related purpose, the person must provide to the court documentation of that fact before the court may authorize the person to drive for that purpose during those hours. If the person is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the court determines that it is necessary for the person to drive during nonstandard working hours for an employment-related purpose, the court may authorize the person to drive subject to these limitations:

(1) If the person is required to drive to and from a specific place of employment at regular times, the limited driving privilege must specify the general times and routes in which the person will be driving to and from work, and restrict driving to those times and routes.

(2) If the person is required to drive to and from work at a specific place, but is unable to specify the times during which the driving will occur, the limited driving privilege must specify the general routes which the person will be driving to and from work, and restrict the driving to those general routes.

(3) If the person is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the person will be driving, and restrict driving to those times and within those boundaries.

(4) If the person can specify neither the times nor places in which the person will be driving to and from work, or if the person is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which the person will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the person's place of employment or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(i) Driving for other than employment-related purposes. – A limited driving privilege may not allow driving for maintenance of the household except during

standard working hours. The limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court.

(j) Proof of financial responsibility required. –

(1) A person applying for limited driving privileges under this section must provide to the court proof of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

a. A written certificate or electronically-transmitted facsimile of the certificate issued by an insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

b. A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

(2) Subdivision (1) of this subsection shall not apply to persons who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. If this subdivision applies, the person shall sign a written certificate to that effect. The Division shall furnish the certificate. Any material misrepresentation made by the person on the certificate shall be grounds for the court to revoke the limited driving privileges granted under this section.

(3) The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

(4) A limited driving privilege shall be conditioned upon the maintenance of financial responsibility during the period of the limited driving privilege.

(5) Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(k) Other mandatory and permissive conditions or restrictions. – The court shall include in all limited driving privileges a restriction that the holder of the privilege not consume alcohol while driving or drive at any time while the holder has remaining in

the holder's body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The court may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(l) Copy of limited driving privilege to Division; action taken if privilege invalid. – The clerk of court must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section or that does not contain the limitations required by law is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege.

(m) Term of privilege. – The term of a limited driving privilege issued under this section shall not be less than six months nor more than twelve months at the court's discretion. The court shall determine the length of the term based upon the severity of the charges or violations that resulted in the revocation, the number of charges or violations that resulted in the revocation, and whether the person's driving privileges have been revoked on other occasions prior to the revocation that is the subject of this application.

(n) Modification or termination of privileges. – A court may modify or revoke a person's limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege. The judge must indicate in the order of modification or revocation the reasons for the order, or the judge must make specific findings indicating the reason for the order and those findings must be entered in the record of the case. The court shall issue an order of modification or revocation and the clerk shall send a copy of the order to the Division

(o) Effect of violation of restriction. – Any violation of the limited driving privilege issued under this section shall constitute the offense of driving while license has been suspended under G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege shall be suspended pending the final disposition of the charge.

(p) Reinstatement of driving privileges. – A person who receives a limited driving privilege under this section and who also complies with all the requirements of the privilege for the entire term of the privilege may, upon the completion of the term of the privilege, apply to the court for an order stating the same. If the court issues an order under this subsection, the clerk shall send a copy to the Division. The Division shall reinstate the drivers license of the person named in the order provided the person meets all the other eligibility requirements of this Article."

SECTION 2. G.S. 7A-305 is amended by adding a new subsection to read:

"(a3) In an action for a limited driving privilege filed under G.S. 20-20.1, a cost of one hundred dollars ($100.00) shall be assessed against the person filing the action. Costs collected by the clerk under this subsection shall be remitted to the State Treasurer. The State Treasurer must credit one-half of the assessed cost to the Highway

Fund and the remaining one-half of the assessed cost to the Court Information Technology Fund established under G.S. 7A-343.2. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

SECTION 3. This act becomes effective December 1, 2005.

SENATE BILL 1087:
Ltd Driving Privileges/Certain Rvk'd Licenses.

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 10, 2005
Introduced by:	Sen. Kerr	**Summary by:**	Kory Goldsmith Staff Attorney
Version:	PCS to Second Edition S1087-CSRC-30		

SUMMARY: ***SB1087 would allow certain persons with revoked drivers licenses to obtain limited driving privileges. It would also allow them to regain their license in a shorter period of time than is currently allowed.***

The Proposed Committee Substitute substantially rewrites the 2nd Edition of Senate Bill 1087 to provide a specific procedure for obtaining these driving privileges, to more clearly define who would be eligible to receive the limited privilege, and to impose a charge for court costs.

The act would become effective December 1, 2005.

CURRENT LAW: G.S. 20-16 lists a number of offenses for which the Division of Motor Vehicles (DMV) may revoke a person's driver's license. These include the accumulation of 12 or more drivers license points in a three year period, fraudulent use of a license, any offense committed in another state that if committed in this State would be grounds for suspension or revocation, and certain speeding violations[1]. G.S. 20-17 lists a number of offenses for which the DMV is required to revoke a person's driver's license. These include manslaughter resulting from the operation of a motor vehicle, impaired driving under G.S. 20-138.1 or 138.2[2], failure to stop and render aid, two convictions of reckless driving is a 12 month period, and conviction of assault with a motor vehicle. G.S. 50-13.12 and G.S. 110-142.2 both authorize a court to revoke a driver's license of a person who is delinquent with their child support payments. There are numerous other grounds for license revocation (see attached list). By far the most license revocations[3] occur under G.S. 20-24.2(a)(1) as a result of a failure to appear for a trial or hearing on a traffic offense. The next most common reason for revocation is the offense of driving while license revoked under G.S. 20-28.[4]

The amount of time a license is revoked depends upon the specific grounds for the revocation. The revocation periods may be as little as 30 days, or last indefinitely if the person fails to resolve the underlying matter that led to the specific revocation. If no specific revocation period is provided, the period of revocation is one year[5]. The license is revoked for 2 years upon a second offense, and permanently revoked upon conviction of a third offense.[6] A person who is convicted of driving while license revoked is also guilty of a Class 1 misdemeanor and the license is revoked for an additional year.

There are a number of provisions under current law under which a court may grant a limited driving privilege during the term of a revocation. (See attached). These include certain limited DWI offenses, certain speeding offenses, and revocations related to failure to pay child support.

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[1] See also G.S. 20-16.1.
[2] G.S. 20-16.2 requires the revocation of a license for refusing to take a breath test.
[3] DMV reports 324,662 revocations in 2004, 306,226 revocations in 2003, and 304,064 revocations in 2002.
[4] DMV reports 68,361 revocations in 2004, 62,355 revocations in 2003, and 63,355 revocations in 2002.
[5] G.S. 20-19(f).
[6] G.S. 20-28(a).

BILL ANALYSIS:

Section 1 creates a new statute G.S. 14-20.1. It would allow persons whose drivers licenses have been revoked for certain specified offenses to obtain limited driving privileges if all of the following apply:

- The person has no other outstanding or unresolved offenses or charges.
- The person has complied with the current revocation for at least the last 6 months without any violation.
- The court, in its discretion, finds good cause to issue a limited driving privilege.

The following persons would not be eligible for the privilege:

- Persons who are eligible for limited driving privileges under other provisions of the law.
- Persons whose licenses are revoked due to an impaired driving offense.
- Persons whose licenses are revoked due to mental incompetence or drug or alcohol addiction.
- Persons whose licenses have been revoked in another state.
- Persons to whom the DMV refuses to issue a license due to physical or mental diseases that prevent them from exercising ordinary care in the operation of a vehicle.

A person seeking a limited driving privilege under this section would file a civil action in the district court of the county where the person resides according to DMV records. The privilege would be limited to essential driving for employment, maintenance of the household and emergency medial care. The specifics of the privilege and other conditions are contained in subsections (f) - (k) of the bill, and are patterned after existing law regarding limited driving privileges for DWI offenses in G.S. 14-179.3.[7] They include a requirement that the person applying for the privilege had adequate liability and property damage coverage.

If granted, the privilege would last for between 6 and 12 months, at the discretion of the court. If the holder of the privilege violated the privilege during that period the violation would be considered a violation of G.S. 20-28 (driving while license revoked), and the privilege would be suspended pending a final disposition of a charge. If the holder did not violate the privilege during the term of the privilege, the holder could apply to DMV to issue a new license.

Section 2 amends G.S. 7A-305 by adding a new subsection. The provision assesses a court cost of $100 for persons filing for a limited driving privilege under G.S. 20-20.1. The costs are remitted to the State Treasurer. One half of the amount will be credited to the Highway Fund and the remaining one half will be remitted to the Court Information Technology Fund. These costs are in addition to any filing fee or other court costs assessed under G.S. 7A-305.

EFFECTIVE DATE: The act would become effective December 1, 2005. It would be applicable to persons whose licenses have been revoked prior to that date.

S1087e2-SMRC-CSRC-30

[7] Subsection (k) provides that if DMV determines the court has issued a privilege, but law does not authorize the privilege, DMV must notify the court and also indicate the DMV records that the privilege is void. A similar provision in G.S. 20-179.3 has been challenged and held to violate the separation of powers provision of the North Carolina. See State v. Bowes, 159 N.C. App. 18. This matter is currently on appeal to the North Carolina Supreme Court.

Suspension statutes that require the loss of driving privilege.[8]

Description Statute	Suspension Statute	Violation Description
20-179.4	20-179.4	Failure to Complete Community Service
20-16.5	20-16.5	Civil Revocation
20-17.8(f)	20-17.8(f)	Violation of Ignition Interlock
50-13.12	50-13.12	Fail to Pay Child Support
15A-1331A	15A-1331A	Forfeiture of License Privileges
20-141(j2)	20-17(2)(10)	Speeding in a Work Zone
20-138.7	20-17(12),19(g1)	Open Container After Consuming
14-72(a)	20-17(a)), 19(f)	Larceny of Motor Fuel
20-30(2)	20-16(a)(6).19-(c)	Allow Use of License or Permit
* 20-141.3(b)	20-141.3(e)	Willful Racing or Speed Competition
* 18B-406,	20-16(a)(8),19-(a)	Transporting Intoxicants
20-28(a)	20-28	Driving While License Revoked
20-166(a)	20-17(a)(4), 19(f), 166(e)	Felony Hit and Run PI
14-18	20-17(a)(I), 19(f)	Involuntary Manslaughter
20-1669(b), 14-15	20-17(a)(4), 19(f)	Leaving Scene of Accident PI
14-18	20-17(a)(1), 19(f)	Manslaughter
20-141.3(a)	20-141.3(d)	Prearranged Speed Competition
* 20-30(I)	20-16(a)(6), 19(c)	Improper Use of License/Fictitious License
20-30(3)	20-16(a)(6), 19(c)	Unlawful Use of License
20-30(5)	20-17(a)(8)	Fraudulent License Permit
20-30(5)	20-17(a)(8)	Obtain Driver's License By Fraud
20-30(5)	20-17(a)(8)	Allowing False Application
20-4.20	20-4.20	Failure to Comply with Out of State Citation
* 20-16(a)(7)	20-17,20-26	Out of Sate Conviction
20-141.4(a2)	20-17(a)(9), 19(f)	Misdemeanor Death by Vehicle
20-141(j)	20-17(a)(10), 19(f)	Speeding to Elude (Prior to 12-1-1997
20-17(11)	20-19(c)	Assault With Motor Vehicle
20-138.1	20-19(e)	Driving While Impaired 3rd Offense
20-138.1	20-17(a)(2), 19(c1)	Driving While Impaired 1st Offense
20-138.1	20-19(d)	Driving While Impaired 2nd Offense
20-138.1	20-17(a)(2), 19(c1)	Aiding & Abetting Impaired Driving
* 20-12.1	20-16(8a), 19(f)	Instructing While Under the Influence
20-141.4(A1)	20-17(a)(9), 19(I)	Death by Vehicle Involving DWI
20-138.3	20-13.2	Driving After Consuming <21
18B-302	20-17.3	Violation of ABC Laws
20-28(a)	20-28	Driving While License Revoked
20-24.1	20-24.1	Failure to Appear
20-24.1	20-24.1	Failure to Pay
20-17(a)(3)	20-19(f)	Felony Using a Motor Vehicle
14-17	20-19(I)	2nd Degree Murder – DWI

[8] Compiled and provided by the Division of Motor Vehicles.

20-138.5	20-138.5(d)	Habitual Impaired Driving
20-141.5	20-141.5(d)	Misdemeanor Eluding Arrest
20-141.5	20-141.5(d)	Felony Eluding Arrest (2 Aggravating Factors)
20-141.5(b)	20-141.5(d)	Felony Eluding Arrest (3 Aggravating Factors)
20-138.2A	20-17(a)(13)	Driving CMV After Consuming
138.2B	20-17(a)(14)	Driving School Bus/Activity Bus/Childcare Vehicle
20-166(e)	20-166	Hit and Run – Fail to Stop PI (2 yr. Revocation)
20-17(a)(15)	20-13.2(c2)(d), 19(f)	Property Damage by Explosive
14-69.2(c)	20-13.2(c2)(d),17(a)(15)	False Bomb Report
14-69.2(c)	20-13.2(c2), 17(a)(15)	Hoax False Bomb-Public Bldgs.
14-268.9(b1)	20-13.2(c2)(d),17(a)(15)	Possession of Explosives On Education Property
14-69.2(c1), 269.2(c1)	20-13.2(c2)(d),17(a)(15)	Aid Minor Possess Explo.Educ.Prop.
18B-302(c)	20-17.3	Aid Underage Purchase Liquor
18-302(b)	20-17.3	Purchase MTBV – by and not 19/20
20-160.1(a)	20-160.1(a)	Fail to Yield – Serious Injury
* 20-16.2	20-16.2	Refuse Chemical Test
* 20-19(c3)	20-19(c3)	Violation of Alcohol Concentration Restriction
* 20-17.8(g)	20-17.8(g)	Violation of Ignition Interlock Restriction
* 20-16	20-16	Point Accumulation
* 20-16	20-19	Speedings
20-16.1	20-16.1	Speedings
* 20-13	20-16(a)(7)	Provisional Licensee Moving W/N 12 mos.
20-16(c)		Violation Of Probation
* 20-16(a)(8b)	20-19(c)	Driving While Impaired – Military Court
* 20-16(a)(7)	20-19(c)	Driving While Impaired – Out of State – 1st Offense

- Notations indicated by asterisk represent discretionary suspensions.

Current Limited Privilege Criteria

20-16(e1)	Speeding
20-16.1(b)	Excess speed
20-16.2(e1)	Refusal
20-16.5	Civil Revocation
20-138.3	Consuming alcohol less than 21 years of age
20-138.7	Transporting open container of alcohol
20-141.5	Felony elude
20-179.3	Impaired Driving
110-142.2 or 50-13.12	Child Support
20-166	Hit and Run PI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1087

Judiciary II Committee Substitute Adopted 4/19/05

Short Title: Limited Driving Privilege for DWLR. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN PERSONS WITH A REVOKED DRIVERS LICENSE TO OBTAIN A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility.

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid

drivers license or a drivers license that had been expired for less than one year and:

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(3) Except as otherwise provided by law for a particular motor vehicle offense, any person whose licensing privileges have been revoked for a motor vehicle offense other than an impaired driving offense is eligible for a limited driving privilege if the court finds that the person is supporting existing dependents or must have a drivers license to be gainfully employed. The limited driving privilege granted under this subdivision may, in the court's discretion, authorize the person to drive for essential purposes related to any of the activities in subsection (a) of this section. This subdivision shall not apply to a person whose license has been revoked for an impaired driving offense and who has subsequently been found guilty of violating G.S. 20-28."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 11, 2005

TO: Senator Kerr

FROM: Bob Weiss
Fiscal Research Division

RE: PCS S1087-CSRC-30 (v.6) Ltd Driving Privileges/Certain Rvk'd Licenses

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Highway Fund	$3,500,000	$6,000,000	$6,000,000	$6,000,000	$6,000,000
Court Information Technology Fund	$3,500,000	$6,000,000	$6,000,000	$6,000,000	$6,000,000
EXPENDITURES:					
DMV (Highway Fund)	$516,832				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Courts, DMV (Highway Fund)

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: S 1087 would allow certain persons with revoked drivers licenses to obtain limited driving privileges. It would also allow them to regain their license in a shorter period of time than is currently allowed.

The Proposed Committee Substitute substantially rewrites the 2nd Edition of Senate Bill 1087 to provide a specific procedure for obtaining these driving privileges, to more clearly define who would be eligible to receive the limited privilege, and to impose a charge for court costs. *(Source: Bill Summary, Research Division)*

ASSUMPTIONS AND METHODOLOGY: A very rough estimate made in conjunction with DMV indicates that approximately 120,000 persons each year might be able to use the opportunities created in this bill. Each would pay $100, half of which would go to the Courts and half to the Highway Fund, for a total of $12,000,000 in each full year ($7,000,000 in the first year).

DMV considers the technical effort required to implement the requirements on its systems to be extremely high and estimates a one time IT cost of $516,832 in the first year.

With respect to impact on the Court system, violators of limited driving privilege, since they are otherwise convicted of Driving While License Revoked, would be in court on a violation hearing whether they had limited privilege or not, thus there should be only a limited impact on courts. The Sentencing Commission has not been able to provide specific data on prison impact yet, but any incarceration impact would most likely be on county jails, since Class 1 misdemeanors rarely go to prison.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

Evelyn Hartsell (Sen. Kerr)

[redacted]: Susan Greene [greenes@mail.fpg.unc.edu]
[redacted]: Tuesday, May 10, 2005 4:36 PM
To: Sen. John Kerr
Subject: Senate Bill 1087 Limited Driving Privilege for DWLR

Dear Mr. Kerr,

I wish to thank you for your initiation of Senate Bill 1087 - Limited Driving
Privilege for DWLR.

My 25-year old son had a permanent suspension of his drivers license in April 2002 for 3 speeding/failure to appear violations in 3 different NC counties.
He had no further violations until he made the bad decision to try a friend's
new motorcycle in April 2004 and was again convicted of DWLR and an additional suspension of his license until April 2007.

My son has been an impulsive, erratic and disorganized individual for the past 5 years.
After his latest conviction, he sought medical help and learned that he has Bipolar Disorder which explains this type of behavior. He has been on medication
for a year now and is doing quite well.

Unfortunately, his loss of license has caused him to drop out of UNC Greensboro and
[redacted] a low-paying job at a local shopping center which is located near [redacted] home
where my husband and me have an easier time of supplying transportation to/from work
for him. He is forced to work in a job that offers
him no medical coverage for mental health and therefore our family is paying $350 per month for his physician appointments and medications.
He also has a 5-year old child to support.

Our family was so frustrated in court to watch people with multiple DWLRs reduced to a single one because it was the same county but
even worse was to watch people with DWIs get no conviction or get limited driving privileges.

Is it possible that my son could get a limited driving privilege under this law when
and if it is approved? Our family needs any help on this problem that you can offer.

Thank you,
Susan Greene

--
Susan Greene
FPG Child Development Institute, UNC-CH
Applications Analyst
Design and Statistics Unit
greenes@mail.fpg.unc.edu
(919) 966-8632

SENATE FINANCE COMMITTEE
Wednesday, May 18, 2005 1:00 pm
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 pm on May 18, 2005, in the room 544 of the Legislative Office Building. Thirty members of the committee were present. Senator John Kerr presided. Jonathan Stutts and Christopher Garcia served as pages.

HB 393 – Holly Springs Eminent Domain.

Representative Stam was recognized to explain the bill. Senator Stevens moved to approve the bill and the motion carried. A copy of the bill, and the summary are attached.

SB 249 – Asheville Satellite Annexations.

Senator Apodaca was recognized to explain the proposed committee substitute. Senator Soles moved to approve the proposed committee substitute and the motion carried. A copy of the proposed committee substitute, the bill and the summary are attached.

HB 1080 – Dortches Deannexation.

Senator Swindell was recognized to explain the bill. Senator Kerr moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

SB 525 – NASCAR Hall of Fame Financing.

Senator Clodfelter was recognized to explain the proposed committee substitute. Jim Hobbs, Hospitality Alliance of NC and NC Hotel and Lodging Association, and Gary Hancock, NC Travel and Tourism Coalition, were recognized to speak in opposition of the bill. Senator Clodfelter moved to approve the proposed committee substitute and the motion carried. A copy of the bill and the summary are attached.

The remaining bills: SB 589, SB 592, SB 593, SB 594, and SB 1087 were pulled from the agenda due to time constraints.

The meeting adjourned at 2:05 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

Wednesday, May 18, 2005

Senator KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **393** Holly Springs Eminent Domain.
Sequential Referral: None
Recommended Referral: None

H.B. **1080** Dortches Deannexation.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **249** 48th Senatorial District Local Act.-1.
Draft Number: 75295
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **525** NASCAR Hall of Fame Financing.
Draft Number: 85248
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 18, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Emily Barrett	AOC
Matt Osborn	AOC
Danielle Carman	DDS
Betty Turner	Bank of America
Ken Melton	D.O.R.
Lu-Ann Coe	NCRA
Joyce Peters	JP Assoc
John Bordeaux	Electricities
Andy Romanet	NCLM
Jim Blackburn	NC Association of County Commissioners
Chip Killian	Register of Deeds Assn

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 18, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Warren Plonk	OSBM
Nancy Reed	NCBIO
Bill Wilkes	DOR
Cathy Matthews	DMV
Portia Manley	NCDOT/DMV
Bill Rowe	NC Justice Ctr.
Anne Wimsatt	Atty
Jim Hobbs	HANC
Amy Hobbs	HANC
Carole Lauter	NCTTC
Richard S. Ward	Richard S. Ward for Governor.

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 18, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Steve Metcalf	Energy United
John Mabry	Governor's Office
Boyd Cauble	City of Charlotte
Stephanie Dorko	Charlotte Chamber
Andrew Meehan	NC Assn. Elec Co-ops
Rick Zechini	NC Assoc. of Realtors
Kathy Hawkins	Progress Energy
Lauren McLaughlin	TNC

Senate Finance Committee
Wednesday, May 18, 2005, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 525	NASCAR Hall of Fame Financing.	Senator Clodfelter
SB 1087	Limited Driving Privilege for DWLR.	Senator Kerr
HB 393	Holly Springs Eminent Domain.	Rep. Stam
HB 1080	Dortches Deannexation.	Rep. Daughtridge, Jr.
SB 249	48th Senatorial District Local Act.-1.	Senator Apodaca
SB 589	Registers of Deeds/Tax Certification.	Senator Weinstein
SB 592	Indigent Defense Technical Revisions.	Senator Kinnaird
SB 593	Copy Costs in Indigent Cases.	Senator Kinnaird
SB 594	Recoupment by Court-Appointed Attorneys.	Senator Kinnaird

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S **D**

SENATE BILL 525
PROPOSED COMMITTEE SUBSTITUTE S525-PCS85247-SVx-31

Short Title: NASCAR Hall of Fame Financing. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO NASCAR HALL OF FAME FINANCING.

Whereas, the General Assembly has, pursuant to Section 6(a) of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, previously authorized Mecklenburg County to levy an occupancy tax at a rate not to exceed 6%; and

Whereas, the General Assembly has not previously authorized any local government to levy an occupancy tax in excess of 6%; and

Whereas, the State of North Carolina and the City of Charlotte now have a "once-in-a-lifetime" opportunity to potentially locate a unique national tourism facility (i.e., the NASCAR Hall of Fame Museum) in Charlotte, North Carolina – a facility that will have a significant positive impact on the economy of the Charlotte region and the State of North Carolina; and

Whereas, in order to facilitate the financing of the capital costs of the NASCAR Hall of Fame Museum, the General Assembly is, for this unique situation and opportunity, willing to authorize a 2% occupancy tax that is in addition to the previously authorized 6% occupancy tax; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. (a) Authorization and Scope. – Upon receiving written confirmation from the National Association of Stock Car Auto Racing, Inc., (NASCAR) that it will license or otherwise legally authorize the location of the NASCAR Hall of Fame Museum facility in Charlotte, North Carolina, the Mecklenburg County Board of Commissioners may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any accommodation subject to the tax under Section 6 of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws. The tax authorized by this section is in addition to any other State or local sales and use tax and any other State or local occupancy tax authorized by law.

SECTION 1.(b) Administration. – Except as otherwise provided in this act, a tax levied under this section shall be levied, administered, and collected as provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402. The penalties provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, apply to a tax levied under this section.

SECTION 1.(c) Definitions. – The definitions in G.S. 105-164.3 and in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, apply to this act insofar as they are not inconsistent with this act.

SECTION 1.(d) Relationship to the Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 shall apply to this act insofar as they are not inconsistent with the provisions of this act. All other provisions of Article 5 and Article 9 of Subchapter I, Chapter 105 of the General Statutes, as the same relate to the North Carolina Sales and Use Tax Act, shall be applicable to this act and administered by the local administrative authority unless the provisions are inconsistent with the provisions of this act. It is the intention of this act that the provisions of this act and the provisions of the North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized. The provisions with respect to remedies and penalties applicable to the North Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter I, Chapter 105 of the General Statutes, shall be applicable in like manner to the taxes authorized to be levied and collected under this act, to the extent that the same are not inconsistent with any provision of this act.

SECTION 1.(e) Repeal. – A tax levied under this act may be repealed by resolution of the Mecklenburg County Board of Commissioners. 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 or ordinance was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that has attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal. Notwithstanding the foregoing, a tax levied under this act may not be repealed until the date of final satisfaction, by payment or other irrevocable defeasance, of any debt instruments or obligations that were issued by the City of Charlotte or a related special purpose entity in connection with the financing or refinancing of the NASCAR Hall of Fame Museum facility. Effective July 1 following the date of final satisfaction, by payment or other irrevocable defeasance, of any debt instruments or obligations that were issued by the City of Charlotte or a related special purpose entity in connection with the financing or refinancing of the NASCAR Hall of Fame Museum facility, subsection (a) of this section is repealed, and any tax levied under that subsection shall be rescinded.

SECTION 1.(f) Distribution and Use of Proceeds. – The local administrative authority, acting on its own behalf or as agent for each taxing entity shall distribute the proceeds of the tax levied pursuant to this act to the City of Charlotte. The City of Charlotte shall use the proceeds only for the acquisition, construction, repair, maintenance, and financing of a NASCAR Hall of Fame Museum facility and an

ancillary and adjacent NASCAR/convention center ballroom facility. The Charlotte Regional Visitors Authority shall have all the powers and duties enumerated in Section 5.23 of the Charter of the City of Charlotte (S.L. 2000-26 as amended by S.L. 2001-402 and S.L. 2004-14) with respect to facilities constructed pursuant to this act.

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

SENATE BILL 525:
NASCAR Hall of Fame Financing

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S525-CSSVx-31		Committee Counsel

SUMMARY: The Proposed Committee Substitute for SB 525 does the following:

- ***It would authorize the Mecklenburg County Board of Commissioners to levy an additional 2% occupancy tax upon receiving written confirmation from NASCAR that it will locate the NASCAR Hall of Fame Museum facility in Charlotte. This would bring the occupancy tax rate to 8% in Mecklenburg. No other county or city in North Carolina currently has an occupancy tax rate in excess of 6%.***
- ***It would require the net proceeds of the additional 2% occupancy tax to be used only for the acquisition, construction, repair, maintenance, and financing of the NASCAR Hall of Fame Museum facility and an adjacent NASCAR convention center ballroom facility.***

CURRENT LAW: Mecklenburg County has the authority to levy a 6% occupancy tax. The net proceeds of the first 3% are distributed to the City of Charlotte to provide for convention center facilities. The net proceeds of the remainder are divided between the City of Charlotte and the following six towns in the county: Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville. Generally, the remainder is required to be used for acquiring, constructing, financing, maintaining, operating, marketing, and promoting convention centers, civic centers performing arts centers, coliseums, auditoriums, and museums, for off-street parking for use in conjunction with these facilities, and for tourism and tourism-related programs and activities including art and cultural programs, events, and festivals.

Of the 74 counties and 65 cities authorized to levy a room occupancy tax, no locality currently has the authority to levy an occupancy tax in excess of 6%.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 525 does the following:

Levy. – The bill authorizes Mecklenburg County to levy an additional 2% room occupancy tax upon receiving written confirmation from NASCAR that it will locate the NASCAR Hall of Fame Museum facility in Charlotte. The additional tax would be levied, administered, and collected in accordance with the procedures currently place for the existing 6% occupancy tax. With this authority, the total occupancy tax rate in Mecklenburg would be 8%.

Use. – The net proceeds of the additional 2% occupancy tax must be distributed to the City of Charlotte and used only for the acquisition, construction, repair, maintenance, and financing of a NASCAR Hall of Fame Museum facility and an ancillary and adjacent NASCAR convention center ballroom facility.

Repeal. – The bill provides that the additional 2% occupancy tax may be repealed, by resolution of the county board of commissioners, upon final satisfaction of all debt instruments or obligations issued by the City of Charlotte (or a related special purpose entity) in connection with the financing or refinancing of the NASCAR Hall of Fame Museum facility. The repeal would not become effective until July 1 following the date of final satisfaction.

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

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

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

Wednesday, May 18, 2005

To: Members of the Senate Finance Committee
From: Hospitality Alliance of North Carolina
NC Hotel & Lodging Association
Presented by Jim Hobbs

RE: Senate Bill 525
NASCAR Hall of Fame Financing

The legislation before this committee today would authorize an additional 2% occupancy tax to be levied in Mecklenburg County raising the total tax on a hotel room in Charlotte to 15.5%, the highest for a major city on the East Coast.

The total tax levied on overnight accommodations in similar cities include the following:

Atlanta 15%	Miami 13%	Orlando 10%	New York 13.62%
Washington 14.5%	Baltimore 12.5%	Chicago 14.9%	Richmond 13%
Las Vegas 9%	Boston 12.45%	Philadelphia 14%	Norfolk 13%

Charlotte 15.5%

The City of Charlotte has demonstrated a reckless disregard for managing revenues from the occupancy tax and prepared food taxes the General Assembly has provided them in existing legislation. Charlotte's annual debt service obligation for tourism capital projects is expected to exceed available hospitality tax revenues by $12.9 million in FY 2005. Charlotte officials have confirmed the following amounts.

Revenues from Tourism Taxes FY 2005	$33.6 Million
Debt Service Obligations & Required Distributions	$46.5 million
Funds Deficit FY 2005	($12.9 million)

Each of the debt instruments for the $374.2 million outstanding bonds or installment contracts requires that one or more of the hospitality taxes already authorized by the General Assembly will be the sole source of annual revenues to fund the debt service. A report detailing these commitments is available to each member of this Finance Committee.

Supporters of the NASCAR Hall of Fame Museum should question how aggressively Charlotte will pursue the new museum given the current $12.9 million deficit and their need for additional revenues.

NCHLA and the Hospitality Alliance of North Carolina will continue to oppose any local effort to raise the occupancy tax above a rate of 6%. However, due to the potential economic impact of the NASCAR Hall of Fame Museum, these lodging based organizations have offered in writing an alternative-funding plan.

Under that plan, Charlotte would be allowed to levy the additional occupancy tax but the General Assembly would create and appoint the members of a Facility Authority responsible for all public and private monies raised for the museum.

This proposal has been rejected by Charlotte with them stating they are in a better position to manage the funds than the state.

Hospitality Alliance of North Carolina
603 Holden Street • Raleigh, NC 27604-1948 (919)-821-7125

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 525

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

S525-ARB-11 [v.1]

Date _____,2005

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

Senator _____

moves to amend the bill on page 2, lines 24 through 39, by rewriting those lines to read:

"**SECTION 1.(e)** Repeal. – A tax levied under this act may not be repealed until the date of final satisfaction, by payment or other irrevocable defeasance, of any debt instruments or obligations that were issued by the City of Charlotte or a related special purpose entity in connection with the financing or refinancing of the NASCAR Hall of Fame Museum facility. Effective July 1 following that date, subsection (a) of this section is repealed, and any tax levied under that subsection shall be rescinded. Repeal of a tax levied under this act does not affect a liability for a tax that has attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 18, 2005

TO: Senator Clodfelter

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 525 (First Edition)

FISCAL IMPACT ($ in millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund			No General Fund Impact		
Mecklenburg County	$5.8	$6.1	$6.4	$6.7	$7.0

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

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
The bill authorizes Mecklenburg County to levy an additional 2% room occupancy tax upon receiving written confirmation from NASCAR that it will locate the NASCAR Hall of Fame Museum facility in Charlotte. The additional tax would be levied, administered, and collected in accordance with the procedures currently in place for the existing 6% occupancy tax. With this authority, the total occupancy tax rate in Mecklenburg would be 8%.

The net proceeds of the additional 2% occupancy tax must be distributed to the City of Charlotte and used only for the acquisition, construction, repair, maintenance, and financing of a NASCAR Hall of Fame Museum facility and an ancillary and adjacent NASCAR convention center ballroom facility.

The bill provides that the additional 2% occupancy tax may be repealed, by resolution of the county board of commissioners, upon final satisfaction of all debt instruments or obligations issued by the City of Charlotte (or a related special purpose entity) in connection with the financing or refinancing of the NASCAR Hall of Fame Museum facility. The repeal would not become effective until July 1 following the date of final satisfaction.

ASSUMPTIONS AND METHODOLOGY:

Historically, Mecklenburg County's collections have been as follows:

Year	Amount	Each 1%
2001-02	$15,248,147	$2,541,357
2002-03	$15,774,948	$2,629,158
2003-04	$16,707,195	$2,784,532

Extending this trend suggests the following increase in total occupancy tax revenue as a result of a 2% increase in the rate:

Year	Amount	Each 1%
2005-06	$5,829,823	$2,914,911
2006-07	$6,103,307	$3,051,653
2007-08	$6,389,892	$3,194,946
2008-09	$6,689,792	$3,344,896
2009-10	$7,004,212	$3,502,106

SOURCES OF DATA: NC Department of Revenue; Mecklenburg County Finance Department

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1087

Judiciary II Committee Substitute Adopted 4/19/05

PROPOSED COMMITTEE SUBSTITUTE S1087-CSRC-30 [v.8]

5/16/2005 10:18:40 AM

Short Title: Ltd Driving Privileges/Certain Rvk'd Licenses. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN PERSONS WHOSE DRIVERS LICENSES HAVE BEEN REVOKED TO OBTAIN A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 is amended by adding anew section to read:

"**§ 20-20.1. Limited driving privilege for certain revocations.**

(a) Definitions. – As used in this section, the following definitions apply:

(1) Impaired driving license revocation. – Defined in G.S. 20-28.2(a).

(2) Limited driving privilege. – A judgment issued by a court authorizing a person with a revoked drivers license to drive under the terms and conditions authorized under this section.

(3) Nonfleet private passenger motor vehicle. – Defined in Article 40 of Chapter 58 of the General Statutes.

(4) Nonstandard working hours. – Any time other than 6 A.M. until 8 P.M. on Monday through Friday.

(5) Standard working hours. – Any time from 6 A.M. until 8 P.M. on Monday through Friday.

(b) Eligibility. – A person whose licensing privileges have been revoked is eligible for a limited driving privilege issued under this section if all of the following apply:

(1) The person has no unresolved or outstanding motor vehicle offenses or charges.

(2) The person has complied with the revocation of the applicant's licensing privileges for at least six months immediately preceding the application for a limited privilege under this section.

(3) The person is not disqualified under subdivision (2) of this subsection.

(4) The court, in its discretion, finds good cause to issue a limited driving privilege.

(c) Ineligibility. – The following persons are not eligible to receive a limited driving privilege under this section:

(1) A person who is eligible to receive limited driving privileges under any other provision of law.

(2) A person whose license is revoked for any impaired driving license revocation.

(3) A person whose license is revoked for an impaired driving license revocation offense and who has subsequently been found guilty of violating G.S. 20-28.

(4) A person whose license is revoked under G.S. 20-17.1.

(5) A person whose license is revoked in another state for any reason.

(6) A person to whom the Division has refused to issue a license under G.S. 20-9(e).

(7) A person who previously received a limited driving privilege under this section within 3 years of applying for another privilege under this section. For purposes of determining whether this subdivision applies, the required 3-year waiting period shall be measured from the date the previous limited driving privilege expired as set out in the order of the previous limited driving privilege.

(d) Scope of limited driving privilege. –

(1) A limited driving privilege must restrict the holder to essential driving related the following purposes.

a. The person's employment.

b. Necessary maintenance of the person's household.

c. Emergency medical care for the person or for an immediate family member of the person who resides in the same household with the person.

(2) Any driving that is not related to the purposes authorized in subdivision (1) of this subsection is unlawful even though done at times and upon routes that may be authorized by the privilege. Except as provided in subdivision (3) of this subsection, all driving must be for a purpose and done within the restrictions specified in the privilege.

(3) If a privilege is granted for emergency medical care, driving related to that privilege is authorized at any time and without restriction as to routes.

(e) Jurisdiction. – An application for a limited driving privilege made under this section shall be a civil action, shall be filed in district court in the county of the person's residence as reflected by the Division's records, and shall be a separate action from any action that resulted in the revocation.

(f) Application for limited driving privileges. – The application for a limited driving privilege requested under this section must include information regarding all of

the convictions or violations that resulted in the revocation of the person's driving privileges. The application must also include a sworn statement that there are no outstanding or unresolved charges or violations that could result in the revocation of the person's driving privileges, and that the person has complied with the most recent order of revocation for at least the six months immediately preceding the person's application for a limited driving privilege under this section.

(g) Driving for employment-related purposes in standard working hours. – The court may authorize driving for employment-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the person is not required to drive for essential employment-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (i) of this section. The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(h) Driving for employment-related purposes during nonstandard working hours. – If the person is required to drive during nonstandard working hours for an essential employment-related purpose, the person must provide to the court documentation of that fact before the court may authorize the person to drive for that purpose during those hours. If the person is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the court determines that it is necessary for the person to drive during nonstandard working hours for an employment-related purpose, the court may authorize the person to drive subject to these limitations:

(1) If the person is required to drive to and from a specific place of employment at regular times, the limited driving privilege must specify the general times and routes in which the person will be driving to and from work, and restrict driving to those times and routes.

(2) If the person is required to drive to and from work at a specific place, but is unable to specify the times during which the driving will occur, the limited driving privilege must specify the general routes which the person will be driving to and from work, and restrict the driving to those general routes.

(3) If the person is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the person will be driving, and restrict driving to those times and within those boundaries.

(4) If the person can specify neither the times nor places in which the person will be driving to and from work, or if the person is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic

boundaries in which the person will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the person's place of employment or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(i) Driving for other than employment-related purposes. – A limited driving privilege may not allow driving for maintenance of the household except during standard working hours. The limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court.

(j) Proof of financial responsibility required. –

(1) A person applying for limited driving privileges under this section must provide to the court proof of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

a. A written certificate or electronically-transmitted facsimile of the certificate issued by an insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

b. A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

(2) Subdivision (1) of this subsection shall not apply to persons who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. If this subdivision applies, the person shall sign a written certificate to that effect. The Division shall furnish the certificate. Any material misrepresentation made by the person on the certificate shall be grounds for the court to revoke the limited driving privileges granted under this section.

(3) The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

(4) A limited driving privilege shall be conditioned upon the maintenance of financial responsibility during the period of the limited driving privilege.

(5) Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(k) Other mandatory and permissive conditions or restrictions. – The court shall include in all limited driving privileges a restriction that the holder of the privilege not consume alcohol while driving or drive at any time while the holder has remaining in the holder's body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The court may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(l) Copy of limited driving privilege to Division; action taken if privilege invalid. – The clerk of court must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section or that does not contain the limitations required by law is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege.

(m) Term of privilege. –

(1) Expect as provided in subdivision (2) of this subsection, the term of a limited driving privilege issued under this section shall not be less than six months nor more than twelve months at the court's discretion. The court shall determine the length of the term based upon the severity of the charges or violations that resulted in the revocation, the number of charges or violations that resulted in the revocation, and whether the person's driving privileges have been revoked on other occasions prior to the revocation that is the subject of this application.

(2) The term of a limited driving privilege granted under this section to a person who at any time has previously received a limited driving privilege under any provision of law shall be no less than twelve months.

(n) Modification or termination of privileges. – A court may modify or revoke a person's limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege. The judge must indicate in the order of modification or revocation the reasons for the order, or the judge must make specific findings indicating the reason for the order and those findings must be entered in the record of the case. The court shall issue an order of modification or revocation and the clerk shall send a copy of the order to the Division

(o) Effect of violation of restriction. – Any violation of the limited driving privilege issued under this section shall constitute the offense of driving while license

has been suspended under G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege shall be suspended pending the final disposition of the charge.

(p) Reinstatement of driving privileges. – A person who receives a limited driving privilege under this section and who also complies with all the requirements of the privilege for the entire term of the privilege may, upon the completion of the term of the privilege, apply to the court for an order stating the same. If the court issues an order under this subsection, the clerk shall send a copy to the Division. The Division shall reinstate the drivers license of the person named in the order provided the person meets all the other eligibility requirements of this Article."

SECTION 2. G.S. 7A-305 is amended by adding a new subsection to read:

"(a3) In an action for a limited driving privilege filed under G.S. 20-20.1, a cost of one hundred dollars ($100.00) shall be assessed against the person filing the action. Costs collected by the clerk under this subsection shall be remitted to the State Treasurer. The State Treasurer must credit one-half of the assessed cost to the Highway Fund and the remaining one-half of the assessed cost to the Court Information Technology Fund established under G.S. 7A-343.2. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

SECTION 3. This act becomes effective December 1, 2005.

SENATE BILL 1087:
Ltd Driving Privileges/Certain Rvk'd Licenses.

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Kerr	**Summary by:**	Kory Goldsmith Staff Attorney
Version:	PCS to Second Edition S1087-CSRC-30		

SUMMARY: ***SB1087 would allow certain persons with revoked drivers licenses to obtain limited driving privileges. It would also allow them to regain their license in a shorter period of time than is currently allowed.***

The Proposed Committee Substitute substantially rewrites the 2nd Edition of Senate Bill 1087 to provide a specific procedure for obtaining these driving privileges, to more clearly define who would be eligible to receive the limited privilege, and to impose a charge for court costs.

The act would become effective December 1, 2005.

CURRENT LAW: G.S. 20-16 lists a number of offenses for which the Division of Motor Vehicles (DMV) may revoke a person's driver's license. These include the accumulation of 12 or more drivers license points in a three year period, fraudulent use of a license, any offense committed in another state that if committed in this State would be grounds for suspension or revocation, and certain speeding violations[1]. G.S. 20-17 lists a number of offenses for which the DMV is required to revoke a person's driver's license. These include manslaughter resulting from the operation of a motor vehicle, impaired driving under G.S. 20-138.1 or 138.2[2], failure to stop and render aid, two convictions of reckless driving is a 12 month period, and conviction of assault with a motor vehicle. G.S. 50-13.12 and G.S. 110-142.2 both authorize a court to revoke a driver's license of a person who is delinquent with their child support payments. There are numerous other grounds for license revocation (see attached list). By far the most license revocations[3] occur under G.S. 20-24.2(a)(1) as a result of a failure to appear for a trial or hearing on a traffic offense. The next most common reason for revocation is the offense of driving while license revoked under G.S. 20-28.[4]

The amount of time a license is revoked depends upon the specific grounds for the revocation. The revocation periods may be as little as 30 days, or last indefinitely if the person fails to resolve the underlying matter that led to the specific revocation. If no specific revocation period is provided, the period of revocation is one year[5]. The license is revoked for 2 years upon a second offense, and permanently revoked upon conviction of a third offense.[6] A person who is convicted of driving while license revoked is also guilty of a Class 1 misdemeanor and the license is revoked for an additional year.

There are a number of provisions under current law under which a court may grant a limited driving privilege during the term of a revocation. (See attached). These include certain limited DWI offenses, certain speeding offenses, and revocations related to failure to pay child support.

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[1] See also G.S. 20-16.1.
[2] G.S. 20-16.2 requires the revocation of a license for refusing to take a breath test.
[3] DMV reports 324,662 revocations in 2004, 306,226 revocations in 2003, and 304,064 revocations in 2002.
[4] DMV reports 68,361 revocations in 2004, 62,355 revocations in 2003, and 63,355 revocations in 2002.
[5] G.S. 20-19(f).
[6] G.S. 20-28(a).

BILL ANALYSIS:

Section 1 creates a new statute G.S. 14-20.1. It would allow persons whose drivers licenses have been revoked for certain specified offenses to obtain limited driving privileges if all of the following apply:

- The person has no other outstanding or unresolved offenses or charges.
- The person has complied with the current revocation for at least the last 6 months without any violation.
- The court, in its discretion, finds good cause to issue a limited driving privilege.

The following persons would not be eligible for the privilege:

- Persons who are eligible for limited driving privileges under other provisions of the law.
- Persons whose licenses are revoked due to an impaired driving offense.
- Persons whose licenses are revoked due to mental incompetence or drug or alcohol addiction.
- Persons whose licenses have been revoked in another state.
- Persons to whom the DMV refuses to issue a license due to physical or mental diseases that prevent them from exercising ordinary care in the operation of a vehicle.
- A person who received a limited privilege under this law within 3 years of applying for another privilege under this law.

A person seeking a limited driving privilege under this section would file a civil action in the district court of the county where the person resides according to DMV records. The privilege would be limited to essential driving for employment, maintenance of the household and emergency medial care. The specifics of the privilege and other conditions are contained in subsections (f) - (l) of the bill, and are patterned after existing law regarding limited driving privileges for DWI offenses in G.S. 14-179.3.[7] They include a requirement that the person applying for the privilege had adequate liability and property damage coverage.

If granted, the privilege would last for between 6 and 12 months, at the discretion of the court. If the holder of the privilege violated the privilege during that period the violation would be considered a violation of G.S. 20-28 (driving while license revoked), and the privilege would be suspended pending a final disposition of a charge. If the holder did not violate the privilege during the term of the privilege, the holder could apply to DMV to issue a new license.

Section 2 amends G.S. 7A-305 by adding a new subsection. The provision assesses a court cost of $100 for persons filing for a limited driving privilege under G.S. 20-20.1. The costs are remitted to the State Treasurer. One half of the amount will be credited to the Highway Fund and the remaining one half will be remitted to the Court Information Technology Fund. These costs are in addition to any filing fee or other court costs assessed under G.S. 7A-305.

EFFECTIVE DATE: The act would become effective December 1, 2005. It would be applicable to persons whose licenses have been revoked prior to that date. ***S1087e2-SMRC-CSRC-30***

[7] Subsection (l) provides that if DMV determines the court has issued a privilege, but law does not authorize the privilege, DMV must notify the court and also indicate the DMV records that the privilege is void. A similar provision in G.S. 20-179.3 has been challenged and held to violate the separation of powers provision of the North Carolina. See State v. Bowes, 159 N.C. App. 18. This matter is currently on appeal to the North Carolina Supreme Court.

Suspension statutes that require the loss of driving privilege.[8]

Description Statute	Suspension Statute	Violation Description
20-179.4	20-179.4	Failure to Complete Community Service
20-16.5	20-16.5	Civil Revocation
20-17.8(f)	20-17.8(f)	Violation of Ignition Interlock
50-13.12	50-13.12	Fail to Pay Child Support
15A-1331A	15A-1331A	Forfeiture of License Privileges
20-141(j2)	20-17(2)(10)	Speeding in a Work Zone
20-138.7	20-17(12),19(g1)	Open Container After Consuming
14-72(a)	20-17(a)), 19(f)	Larceny of Motor Fuel
20-30(2)	20-16(a)(6).19-(c)	Allow Use of License or Permit
* 20-141.3(b)	20-141.3(e)	Willful Racing or Speed Competition
* 18B-406,	20-16(a)(8),19-(a)	Transporting Intoxicants
20-28(a)	20-28	Driving While License Revoked
20-166(a)	20-17(a)(4), 19(f), 166(e)	Felony Hit and Run PI
14-18	20-17(a)(I), 19(f)	Involuntary Manslaughter
20-1669(b), 14-15	20-17(a)(4), 19(f)	Leaving Scene of Accident PI
14-18	20-17(a)(1), 19(f)	Manslaughter
20-141.3(a)	20-141.3(d)	Prearranged Speed Competition
* 20-30(I)	20-16(a)(6), 19(c)	Improper Use of License/Fictitious License
20-30(3)	20-16(a)(6), 19(c)	Unlawful Use of License
20-30(5)	20-17(a)(8)	Fraudulent License Permit
20-30(5)	20-17(a)(8)	Obtain Driver's License By Fraud
20-30(5)	20-17(a)(8)	Allowing False Application
20-4.20	20-4.20	Failure to Comply with Out of State Citation
* 20-16(a)(7)	20-17,20-26	Out of Sate Conviction
20-141.4(a2)	20-17(a)(9), 19(f)	Misdemeanor Death by Vehicle
20-141(j)	20-17(a)(10), 19(f)	Speeding to Elude (Prior to 12-1-1997
20-17(11)	20-19(c)	Assault With Motor Vehicle
20-138.1	20-19(e)	Driving While Impaired 3rd Offense
20-138.1	20-17(a)(2), 19(c1)	Driving While Impaired 1st Offense
20-138.1	20-19(d)	Driving While Impaired 2nd Offense
20-138.1	20-17(a)(2), 19(c1)	Aiding & Abetting Impaired Driving
* 20-12.1	20-16(8a), 19(f)	Instructing While Under the Influence
20-141.4(A1)	20-17(a)(9), 19(I)	Death by Vehicle Involving DWI
20-138.3	20-13.2	Driving After Consuming <21
18B-302	20-17.3	Violation of ABC Laws
20-28(a)	20-28	Driving While License Revoked
20-24.1	20-24.1	Failure to Appear
20-24.1	20-24.1	Failure to Pay
20-17(a)(3)	20-19(f)	Felony Using a Motor Vehicle
14-17	20-19(I)	2nd Degree Murder – DWI

[8] Compiled and provided by the Division of Motor Vehicles.

20-138.5	20-138.5(d)	Habitual Impaired Driving
20-141.5	20-141.5(d)	Misdemeanor Eluding Arrest
20-141.5	20-141.5(d)	Felony Eluding Arrest (2 Aggravating Factors)
20-141.5(b)	20-141.5(d)	Felony Eluding Arrest (3 Aggravating Factors)
20-138.2A	20-17(a)(13)	Driving CMV After Consuming
138.2B	20-17(a)(14)	Driving School Bus/Activity Bus/Childcare Vehicle
20-166(e)	20-166	Hit and Run – Fail to Stop PI (2 yr. Revocation)
20-17(a)(15)	20-13.2(c2)(d), 19(f)	Property Damage by Explosive
14-69.2(c)	20-13.2(c2)(d),17(a)(15)	False Bomb Report
14-69.2(c)	20-13.2(c2), 17(a)(15)	Hoax False Bomb-Public Bldgs.
14-268.9(b1)	20-13.2(c2)(d),17(a)(15)	Possession of Explosives On Education Property
14-69.2(c1), 269.2(c1)	20-13.2(c2)(d),17(a)(15)	Aid Minor Possess Explo.Educ.Prop.
18B-302(c)	20-17.3	Aid Underage Purchase Liquor
18-302(b)	20-17.3	Purchase MTBV – by and not 19/20
20-160.1(a)	20-160.1(a)	Fail to Yield – Serious Injury
* 20-16.2	20-16.2	Refuse Chemical Test
* 20-19(c3)	20-19(c3)	Violation of Alcohol Concentration Restriction
* 20-17.8(g)	20-17.8(g)	Violation of Ignition Interlock Restriction
* 20-16	20-16	Point Accumulation
* 20-16	20-19	Speedings
20-16.1	20-16.1	Speedings
* 20-13	20-16(a)(7)	Provisional Licensee Moving W/N 12 mos.
20-16(c)		Violation Of Probation
* 20-16(a)(8b)	20-19(c)	Driving While Impaired – Military Court
* 20-16(a)(7)	20-19(c)	Driving While Impaired – Out of State – 1st Offense

- Notations indicated by asterisk represent discretionary suspensions.

Current Limited Privilege Criteria

20-16(e1)	Speeding
20-16.1(b)	Excess speed
20-16.2(e1)	Refusal
20-16.5	Civil Revocation
20-138.3	Consuming alcohol less than 21 years of age
20-138.7	Transporting open container of alcohol
20-141.5	Felony elude
20-179.3	Impaired Driving
110-142.2 or 50-13.12	Child Support
20-166	Hit and Run PI

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 18, 2005

TO: Senator Kerr

FROM: Bob Weiss
Fiscal Research Division

RE: PCS to Second Edition S1087-CSRC-30 (v.8) Ltd Driving Privileges/Certain Rvk'd Licenses

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Highway Fund	**$3,500,000**	**$6,000,000**	**$6,000,000**	**$6,000,000**	**$6,000,000**
Court Information Technology Fund	**$3,500,000**	**$6,000,000**	**$6,000,000**	**$6,000,000**	**$6,000,000**
EXPENDITURES:					
DMV (Highway Fund) Information Technology	**$516,832**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles (Highway Fund), Courts

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: S 1087 would allow certain persons with revoked drivers licenses to obtain limited driving privileges. It would also allow them to regain their license in a shorter period of time than is currently allowed.

The Proposed Committee Substitute substantially rewrites the 2nd Edition of Senate Bill 1087 to provide a specific procedure for obtaining these driving privileges, to more clearly define who would be eligible to receive the limited privilege, and to impose a charge for court costs of $100, half of which will go to the Court Information Technology Fund and half to the Highway Fund. *(Source: Bill Summary, Research Division)*

ASSUMPTIONS AND METHODOLOGY: A very rough estimate made in conjunction with DMV indicates that approximately 120,000 persons each year might be able to use the opportunities created in this bill. Each would pay $100, half of which would go to the Courts and half to the Highway Fund, for a total of $12,000,000 in each full year ($7,000,000 in the first year).

DMV considers the technical effort required to implement the requirements on its computer systems to be extremely high and estimates a one time IT cost of $516,832 in the first year.

With respect to impact on the Court system, violators of limited driving privilege, since they are otherwise convicted of Driving While License Revoked, would be in court on a violation hearing whether they had limited privilege or not, thus there should be only a limited impact on courts. The Sentencing Commission has not been able to provide specific data on prison impact yet, but any incarceration impact would most likely be on county jails, since Class 1 misdemeanors rarely go to prison.

SOURCES OF DATA: Division of Motor Vehicles

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1087

Judiciary II Committee Substitute Adopted 4/19/05

Short Title: Limited Driving Privilege for DWLR. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN PERSONS WITH A REVOKED DRIVERS LICENSE TO OBTAIN A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility.

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid

drivers license or a drivers license that had been expired for less than one year and:

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(3) Except as otherwise provided by law for a particular motor vehicle offense, any person whose licensing privileges have been revoked for a motor vehicle offense other than an impaired driving offense is eligible for a limited driving privilege if the court finds that the person is supporting existing dependents or must have a drivers license to be gainfully employed. The limited driving privilege granted under this subdivision may, in the court's discretion, authorize the person to drive for essential purposes related to any of the activities in subsection (a) of this section. This subdivision shall not apply to a person whose license has been revoked for an impaired driving offense and who has subsequently been found guilty of violating G.S. 20-28."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 393*

Short Title:	Holly Springs Eminent Domain.	(Local)
Sponsors:	Representative Stam.	
Referred to:	Finance.	

February 28, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF HOLLY SPRINGS TO USE THE PROCEDURE AND AUTHORITY OF CHAPTER 136 OF THE NORTH CAROLINA GENERAL STATUTES IN CONDEMNATION PROCEEDINGS CONCERNING WATER, SEWER, PUBLIC STREETS AND ROADS.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Holly Springs, being S.L. 2003-73, is amended by adding a new section to read:

"Section 5.2. **Additional Eminent Domain Powers.** Notwithstanding the provisions of G.S. 40A-1, in the exercise of its authority of eminent domain for the acquisition of property interests (including, without limitation, fee simple title, rights-of-way, and easements) to be used for waterlines and treatment facilities and sewer lines and treatment facilities, and opening, widening, extending, or improving public streets and roads, the town may use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes of North Carolina, as now or hereafter amended; provided further, that whenever therein the words 'Secretary' or 'Secretary of Transportation' appear, they shall be deemed to include the 'Town Manager'; Manager', and whenever therein the word 'highway' appears, it is deemed to include 'public works' in accordance with this section, provided further that nothing herein shall be construed to enlarge the power of the town to condemn property already devoted to public use. Provided further, just compensation for the acquisition of fee simple title or a perpetual easement pursuant to this section to be used for street or road right-of-way shall be no less than (i) one dollar ($1.00) per square foot of real property taken, or (ii) the prorated ad valorem tax value of the parent tract, whichever is less. The powers granted by this section are in addition to and supplementary to those powers granted by any local or general law."

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

HOUSE BILL 393:
Holly Springs Eminent Domain

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Rep. Stam	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 393 authorizes the Town of Holly Springs to use the same condemnation procedures and authority for roads that the Department of Transportation uses in Chapter 136.

As introduced, this bill was identical to S204, as introduced by Sen. Stevens, which is currently in Senate Finance.

CURRENT LAW: Cities and towns may condemn property under Chapter 40A for water, sewer, roads, and streets. The Department of Transportation may acquire property under Article 9 of Chapter 136 for the construction and improvement of highways. Municipalities may also use the condemnation provisions in Article 9 of Chapter 136 for the acquisition of property related to the construction and improvement of roads and streets within their corporate boundaries that are part of the state-highway-system, but not for city streets. There are two primary differences between the acquisition authority granted by Chapter 40A and Article 9 of Chapter 136:

- Under Chapter 40A, a condemnor must give the owner of the property to be acquired 30 days notice of its intent to institute an action to condemn the property.[1] Under Article 9 of Chapter 136, the condemnor does not have to give this 30-day notice.

Under Chapter 40A, the just compensation for the value of the property taken is generally its fair market value prior to the taking.[2] Under Chapter 136, the just compensation for the property taken is its fair market value, taking into consideration any benefits resulting from the utilization of the part taken for highway purposes.

BILL ANALYSIS: House Bill 393 provides that the Town of Holly Springs may use the procedure and authority of Article 9 of Chapter 136 for the acquisition of property for water, sewer, and public streets and roads. The bill also establishes a floor for determining just compensation by specifying that just compensation may be no less than $1.00 per square foot of real property taken or the prorated property tax value of the parent tract, whichever is less. Therefore, for the Town of Holly Springs, the determination of just compensation under Article 9 of Chapter 136 would be the fair market value of the property taking into consideration any benefit the property derives from the road improvement, but in no event may that value be less than $1.00 per square foot or the prorated property tax value of the parent tract, whichever is less. The General Assembly granted the same authority to the Town of Apex last biennium in S.L. 2003-88.

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[1] For purposes of road construction and improvement, the title to the property and the right to immediate possession vests automatically with the city subject to the filing of the condemnation complaint and deposit of the estimated just compensation. Chapter 40A and Article 9 of Chapter 136 do not differ in this point.

[2] Under Chapter 40A, the measure of compensation is the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking or (ii) the fair market value of the property taken. The value of the property does not include an increase or decrease in value that is caused by the proposed improvement or project for which the property is taken.

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

H0393e1-SMSV

HOUSE BILL 1080

Short Title:	Dortches Deannexation.	(Local)
Sponsors:	Representative Daughtridge.	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

Commencing at a point in the centerline of Hunter Hill Road (SR 1604), said point being approximately 0.64 miles west of the intersection of Hunter Hill Road (SR 1604) and Woodruff Road (SR 1613) as shown on the map hereinafter referred to; thence N 06°33'01"E 30.66 feet to an iron pipe on the northern right-of-way of Hunter Hill Road, the southwest corner of Belmont N. Woodruff, Deed Book 1178 Page 701; thence along the western line of Woodruff the following three courses and distances: (1) N 06°33'01"E 544.62 feet to an iron pipe; thence (2) N 06°37'51"E 263.63 feet to an iron pipe, and (3) N 06°38'27"E 656.60 feet to a point, the POINT OF BEGINNING; thence continuing along the western line of Woodruff the following four courses and distances: (1) N 06°38'27"E 13.39 feet to an iron pipe; thence (2) N 06°34'29"E 1059.90 feet to an iron pipe; thence (3) N 06°34'52"E 662.80 feet to an iron pipe, and (4) N 06°34'52"E 19.83 feet to a point in the center of Goose Branch; thence along the centerline of Goose Branch the following seventy-nine courses and distances: (1) N 87°14'19"E 38.87 feet to a point; (2) N 33°28'34"E 32.81 feet to a point; (3) N 74°39'06"E 18.43 feet to a point; (4) S 46°47'37"E 18.20 feet to a point; (5) N 54°45'19"E 19.88 feet to a point; (6) S 86°19'12"E 21.51 feet to a point; (7) S 33°16'52"E 16.05 feet to a point; (8) N 72°08'16"E 41.78 feet to a point; (9) N 13°41'19"E 21.24 feet to a point; (10) N 39°26'31"W 16.05 feet to a point; (11) N 46°45'44"W 19.46 feet to a point; (12) N 44°28'36"E 48.64 feet to a point; (13) S 66°11'01"E 32.90 feet to a point; (14) S 81°16'33"E 39.38 feet to a point; (15) N 38°24'32"E 44.68 feet to a point; (16) N 62°37'46"E 16.43 feet to a point; (17) S 47°15'47"E 21.24 feet to a point; (18) N 89°56'55"E 20.61 feet to a point; (19) N 31°35'50"E 39.76 feet to a point; (20) N 61°46'22"E 24.94 feet to a point; (21) S 35°55'59"E 27.77 feet to a point; (22) N

88°26'40"E 50.89 feet to a point; (23) N 46°33'10"E 18.62 feet to a point; (24) N 04°08'24"E 30.38 feet to a point; (25) N 09°57'49"W 21.47 feet to a point; (26) N 27°44'17"E 27.63 feet to a point; (27) N 66°05'32"E 34.06 feet to a point; (28) S 81°56'48"E 12.12 feet to a point; (29) N 62°11'40"E 15.75 feet to a point; (30) S 68°59'05"E 32.18 feet to a point; (31) N 64°55'34"E 1.91 feet to a point; (32) S 42°59'01"E 17.33 feet to a point; (33) S 48°01'00"E 11.80 feet to a point; (34) S 69°50'31"E 27.50 feet to a point; (35) N 65°16'47"E 10.10 feet to a point; (36) N 39°57'09"E 24.45 feet to a point; (37) N 86°51'15"E 27.98 feet to a point; (38) N 45°20'21"E 26.50 feet to a point; (39) S 78°43'02"E 36.19 feet to a point; (40) N 64°12'15"E 17.72 feet to a point; (41) N 31°06'09"E 30.86 feet to a point; (42) N 77°43'15"E 33.45 feet to a point; (43) S 32°11'32"E 58.25 feet to a point; (44) S 62°22'12"E 18.20 feet to a point; (45) N 86°54'18"E 18.49 feet to a point; (46) S 77°46'33"E 58.35 feet to a point; (47) N 45°56'39"E 16.23 feet to a point; (48) N 34°06'59"E 74.53 feet to a point; (49) N 79°31'58"E 22.59 feet to a point; (50) S 61°50'15"E 94.92 feet to a point; (51) S 57°11'52"E 46.55 feet to a point; (52) N 54°50'20"E 53.32 feet to a point; (53) S 53°20'36"E 72.88 feet to a point; (54) S 29°03'53"E 82.40 feet to a point; (55) S 78°44'41"E 53.38 feet to a point; (56) S 65°39'57"E 51.91 feet to a point; (57) N 44°32'31"E 75.98 feet to a point; (58) S 57°18'22"E 43.39 feet to a point; (59) S 19°00'23"W 41.37 feet to a point; (60) S 39°06'27"E 45.69 feet to a point; (61) N 64°53'10"E 182.38 feet to a point; (62) S 47°52'04"E 39.66 feet to a point; (63) S 83°24'18"E 72.61 feet to a point; (64) S 20°04'10"E 76.09 feet to a point; (65) S 59°38'23"E 67.36 feet to a point; (66) S 20°11'24"E 110.52 feet to a point; (67) S 28°59'16"W 53.79 feet to a point; (68) S 68°17'04"W 33.36 feet to a point; (69) N 83°58'11"W 44.01 feet to a point; (70) S 06°34'37"E 62.10 feet to a point; (71) S 15°32'34"E 96.25 feet to a point; (72) S 59°00'23"E 184.89 feet to a point; (73) S 29°36'28"E 68.74 feet to a point; (74) S 31°23'21"E 151.80 feet to a point; (75) S 40°45'24"W 79.33 feet to a point; (76) S 01°10'54"W 53.48 feet to a point; (77) S 25°30'33"E 76.50 feet to a point; (78) S 77°02'09"E 38.59 feet to a point; and (79) N 82°43'48"E 101.89 feet to a point; thence leaving Goose Branch and continuing along the present City Limits the following ten courses and distances: (1) S 57°59'33"W 167.19 feet to a point; (2) S 60°10'38"W 171.65 feet to a point; (3) S 61°38'32"W 280.10 feet to a point; (4) S 63°45'09"W 280.36 feet to a point; (5) S 65°47'08"W 280.04 feet to a point; (6) S 67°52'28"W 279.93 feet to a point; (7) S 69°48'22"W 237.92 feet to a point; (8) S 71°28'31"W 223.48 feet to a point; (9) S 73°38'21"W 336.09 feet to a point; and (10) S 76°00'20"W 307.00 feet to a point, the POINT OF BEGINNING and containing 70.18 acres as shown on map by MACK GAY ASSOCIATES, P.A., March 22, 2005.

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

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

House Bill 1080:
Dortches Deannexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Rep. Daughtridge	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1080 removes approximately 70 acres from the Town of Dortches, effective June 30, 2005.

BILL ANALYSIS: The General Assembly incorporated the Town of Dortches in 1977. The Town has a population of just over 800 people. Much of the southern boundary of the town is contiguous with the City of Rocky Mount and much of the eastern boundary of the Town is contiguous with the ETJ of Rocky Mount.

House Bill 1080 would remove approximately 70 acres from the corporate limits of Dortches so that it could be annexed by the City of Rocky Mount. The property includes four parcels of land. The owners of the property would like to develop the land and would benefit from the water and sewer infrastructure that would be available to the property if incorporated by the City of Rocky Mount.

H1080e1-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 249
PROPOSED COMMITTEE SUBSTITUTE S249-PCS75295-LMx-12

Short Title: Asheville Satellite Annexations. (Local)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the City of Asheville:

(a) LOT 3 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina and being more particularly described as follows:

BEGINNING at a point on the northwesterly side of Airport Road (N.C. 280), said point being the southwesterly corner to Lot 4 Southridge Associates LLC Property; thence, with the northwesterly side of Airport Road (N.C. 280) three courses: (1) South 25 degrees 50 minutes 38 seconds West – 39.02 feet to a point; (2) South 25 degrees 30 minutes 39 seconds West – 50.15 feet to a right-of-way monument; and (3) South 25 degrees 27 minutes 18 seconds West – 220.74 feet to an iron rod, a northeasterly corner to C.E. Shope; thence, with C.E. Shope and continuing with Smith Land & Improvement Corporation North 76 degrees 31 minutes 32 seconds West – 535.53 feet to an iron pipe; thence, with Smith Land & Improvement Corporation South 05 degrees 17 minutes 48 seconds West – 518.24 feet to a iron pipe, a northeasterly corner to Dennis Weaver; thence with Dennis Weaver North 72 degrees 50 minutes 27 seconds West – 182.87 feet to an iron rod, a northeasterly corner to Rockwood Road, LLC; thence with Rockwood Road, LLC and continuing with Lot 6 Southridge Associates LLC Property North 65 degrees 04 minutes 25 seconds West – 431.63 feet to an iron rod, a southeasterly corner to Lot 5 Southridge Associates LLC Property; thence with Lot 5 Southridge Associates LLC Property three courses: (1)North 00 degrees 20 minutes 42 seconds West – 285.78 feet to an iron rod; (2)South 89 degrees 39 minutes 18 seconds West – 201.14 feet to an iron rod; and (3) Around a curve to the left (Chord South 44 degrees 39 minutes 18 seconds West – 77.78 feet, Radius 55.00 feet, Delta 90

degrees 00 minutes 00 seconds, Length 86.39 feet) to an iron rod on the line of Lot 2 Southridge Associates LLC; thence with Lot 2 Southridge Associates LLC Property ten courses: (1) North 00 degrees 20 minutes 42 seconds West – 73.00 feet to a railroad spike; (2) North 89 degrees 39 minutes 18 seconds East – 467.34 feet to a railroad spike; (3) North 00 degrees 20 minutes 42 seconds West – 67.51 feet to a railroad spike; (4) Around a curve to the left (Chord North 81 degrees 53 minutes 04 seconds East – 79.15 feet, Radius 314.50 feet, Delta 14 degrees 27 minutes 29 seconds, Length 79.36 feet) to an iron rod; (5) North 74 degrees 39 minutes 18 seconds East – 16.64 feet to an iron rod; (6) North 00 degrees 20 minutes 42 seconds West – 470.27 feet to an iron rod; (7) South 89 degrees 39 minutes 18 seconds West – 57.86 feet to an iron rod; (8) North 00 degrees 20 minutes 42 seconds West – 183.56 feet to an iron rod; (9) North 89 degrees 39 minutes 18 seconds East – 10.19 feet to an iron rod; and (10) North 00 degrees 20 minutes 42 seconds West – 342.00 feet to an iron rod on the line of Ovalformer, LLC; thence with Ovalformer, LLC and continuing with Jules Johnson and Anthony Kushigian South 86 degrees 36 minutes 54 seconds East – 1,014.99 to an iron rod, a northwesterly corner to Lot 4 Southridge Associates LLC; thence with Lot 4 Southridge Associates LLC South 00 degrees 20 minutes 42 seconds East – 888.69 feet to the BEGINNING. Containing 31.105 acres, more or less.

(b) LOT 4 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina and being more particularly described as follows: BEGINNING at a point on the northwesterly side of Airport Road (N.C. 280), said point being the southeasterly corner to Lot 3 Southridge Associates LLC Property; thence with Lot 3 Southridge Associates LLC Property North 00 degrees 20 minutes 42 seconds West – 888.69 feet to an iron rod on the line of Anthony Kushigian; thence with Anthony Kushigian three courses: (1) South 86 degrees 36 minutes 54 seconds East – 140.97 feet to an iron pipe; (2) South 31 degrees 07 minutes 34 seconds East – 258.10 feet to an iron pipe; and (3) South 83 degrees 53 minutes 06 seconds East – 251.34 feet to an iron rod on the northwesterly side of Airport Road (N.C. 280); thence with the northwesterly side of Airport Road (N.C. 280) two courses: (1) South 55 degrees 40 minutes 08 seconds West – 1.48 feet to an iron rod; and (2) Around a curve to the left (Chord South 50 degrees 17 minutes 18 seconds West – 246.10 feet, Radius 1,482.39 feet, Delta 09 degrees 31 minutes 22 seconds, Length 246.38 feet) to an iron rod, a southeasterly corner to Lot 4A Southridge Associates LLC Property; thence with Lot 4A Southridge Associates LLC Property five courses: (1) North 44 degrees 01 minutes 00 seconds West – 88.83 feet to an iron rod; (2) Around a curve to the right (Chord North 37 degrees 34 minutes 17 seconds West – 50.74 feet, Radius 226.00 feet, Delta 12 degrees 53 minutes 26 seconds, Length 50.85 feet) to an iron rod; (3) North 31 degrees 07 minutes 34 seconds West – 49.95 feet to an iron rod; (4) South 54 degrees 29 minutes 19 seconds West – 147.41 feet to an iron rod; and (5) South 09 degrees 04 minutes 44 seconds East – 295.83 feet to an iron rod on the northwesterly side of Airport Road (N.C. 280); thence with the northwesterly side of Airport Road (N.C. 280) six courses: (1) Around a curve to the left (Chord South 32 degrees 40 minutes 49 seconds West – 63.40 feet, Radius 1,482.39 feet, Delta 02

degrees 27 minutes 03 seconds, Length 63.41 feet) to a right-of-way monument; (2) South 30 degrees 30 minutes 38 seconds West – 51.60 feet to a point; (3) South 28 degrees 50 minutes 40 seconds West – 51.31 feet to a point; (4) South 27 degrees 30 minutes 40 seconds West – 51.02 feet to a point; (5) South 26 degrees 30 minutes 40 seconds West – 50.73 feet to a point; and (6) South 25 degrees 50 minutes 38 seconds West – 11.42 feet to the BEGINNING. Containing 3.379 acres, more or less.

(c) LOT 4A OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at a point on the northwesterly side of Airport Road (N.C. 280), said point being the northeasterly corner to Lot 4 Southridge Associates LLC Property; thence with the northwesterly side of Airport Road (N.C. 280) two courses: (1) South 55 degrees 40 minutes 08 seconds West – 1.48 feet to an iron rod; and (2) Around a curve to the left (Chord South 50 degrees 17 minutes 18 seconds West – 246.10 feet, Radius 1,482.39 feet, Delta 09 degrees 31 minutes 22 seconds, Length 246.38 feet) to an iron rod, the TRUE POINT OF BEGINNING. Thence with Lot 4 Southridge Associates LLC Property five courses: (1) North 44 degrees 01 minutes 00 seconds West – 88.83 feet to an iron rod; (2) Around a curve to the right (Chord North 37 degrees 34 minutes 17 seconds West – 50.74 feet, Radius 226.00 feet, Delta 12 degrees 53 minutes 26 seconds, Length 50.85 feet) to an iron rod; (3) North 31 degrees 07 minutes 34 seconds West – 49.95 feet to an iron rod; (4) South 54 degrees 29 minutes 19 seconds West – 147.41 feet to an iron rod; and (5) South 09 degrees 04 minutes 44 seconds East – 295.83 feet to an iron rod on the northwesterly side of Airport Road (N.C. 280); thence with the northwesterly side of Airport Road (N.C. 280) around a curve to the right (Chord North 39 degrees 42 minutes 59 seconds East – 300.16 feet, Radius 1,482.39 feet, Delta 11 degrees 37 minutes 16 seconds, Length 300.67 feet) to the BEGINNING. Containing 1.029 acres, more or less.

(d) LOT 5 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at an iron rod on the easterly line of Lot 2 Southridge Associates, LLC Property, said iron rod being a northwesterly corner to Lot 6 Southridge Associates, LLC Property; thence with Lot 2 North 00 degrees 20 minutes 42 seconds West – 230.78 feet to an iron rod, a westerly corner to Lot 3 Southridge Associates, LLC Property; thence with Lot 3 Southridge Associates, LLC Property three courses: (1) Around a curve to the right (Chord North 44 degrees 39 minutes 18 seconds East – 77.78 feet, Radius 55.00 feet, Delta 90 degrees 00 minutes 00 seconds, Length 86.39 feet) to an iron rod; (2) North 89 degrees 39 minutes 18 seconds East – 201.14 feet to an iron rod; and (3) South 00 degrees 20 minutes 42 seconds East – 285.78 feet to an iron rod, a northerly corner to Lot 6 Southridge Associates, LLC Property; thence with Lot 6 South 89 degrees 39 minutes 18 seconds West – 256.14 feet to the BEGINNING. Containing 1.666 acres, more or less.

(e) LOT 6 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at an iron rod on the northerly side of Rockwood Road (S.R. 3568), said iron rod being a southeasterly corner to Lot 2 Southridge Associates, LLC Property; thence with Lot 2 three courses: (1) Around a curve to the right (North 15 degrees 14 minutes 09 seconds East – 42.25 feet, Radius 50.00 feet, Delta 49 degrees 59 minutes 25 seconds, Length 43.63 feet) to a mag nail; (2) Around a curve to the left (Chord North 19 degrees 56 minutes 31 seconds East – 81.83 feet, Radius 118.00 feet, Delta 40 degrees 34 minutes 26 seconds, Length 83.56 feet) to a mag nail; and (3) North 00 degrees 20 minutes 42 seconds West – 88.47 feet to an iron rod, a southwesterly corner to Lot 5 Southridge Associates, LLC Property; thence with Lot 5 Southridge Associates, LLC Property North 89 degrees 39 minutes 18 seconds East – 256.14 feet to an iron rod, a southwesterly corner to Lot 3 Southridge Associates, LLC Property; thence with Lot 3 South 65 degrees 04 minutes 25 seconds East – 12.64 feet to a iron pipe, a northwesterly corner to Rockwood Road, LLC; thence with Rockwood Road, LLC South 12 degrees 15 minutes 00 seconds West – 374.37 feet to an iron rod on the northerly side of Rockwood Road; thence with the northerly side of Rockwood Road two courses: (1) North 57 degrees 41 minutes 58 seconds West – 161.39 feet to an iron rod; and (2) North 49 degrees 26 minutes 20 seconds West – 118.77 feet to the BEGINNING. Containing 1.740 acres, more or less.

(f) LOT 7 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at a mag nail in Rockwood Road (S.R. 3568), said mag nail being a southwesterly corner to Lot 1 Southridge Associates, LLC Property; thence down Rockwood Road (S.R. 3568) five courses: (1) North 49 degrees 26 minutes 20 seconds West – 70.89 feet to a pk nail; (2) North 04 degrees 11 minutes 40 seconds East – 14.55 feet to a pk nail; (3) North 35 degrees 44 minutes 47 seconds West – 141.78 feet to a pk nail; (4) North 40 degrees 10 minutes 37 seconds West – 68.52 feet to a pk nail; and (5) North 43 degrees 32 minutes 08 seconds West – 364.75 feet to a pk nail; thence North 03 degrees 51 minutes 25 seconds East – 28.26 feet to an iron rod; thence North 46 degrees 16 minutes 25 seconds East – 10.61 feet to an iron rod on the northerly side of Rockwood Road (S.R. 3568); thence with the northerly side of Rockwood Road (S.R. 3568) five courses: (1) North 43 degrees 43 minutes 35 seconds West – 203.79 feet to an iron rod; (2) Around a curve to the right (Chord North 31 degrees 30 minutes 04 seconds West – 100.54 feet, Radius 288.31 feet, Delta 20 degrees 04 minutes 59 seconds, Length 101.06 feet) to an iron rod; (3) North 28 degrees 06 minutes 00 seconds West – 53.85 feet to an iron rod; (4) North 22 degrees 44 minutes 00 seconds West – 356.99 feet to an iron rod; and (5) North 21 degrees 21 minutes 00 seconds West – 44.52 feet to a right-of-way monument; thence with Able Outdoor, Inc. North 10 degrees 09 minutes 30 seconds East – 409.62 feet to an iron rod; thence with Rita Bullman, ETAL South 89 degrees 09 minutes 39 seconds East – 216.19 feet to an iron rod, a northwest corner to Lot 1 Southridge Associates, LLC

Property; thence with Lot 1 Southridge Associates, LLC Property twelve courses: (1) South 00 degrees 20 minutes 42 seconds East – 339.36 feet to an iron rod; (2) North 89 degrees 39 minutes 18 seconds East – 47.00 feet to an iron rod; (3) South 00 degrees 20 minutes 42 seconds East – 420.00 feet to an iron rod; (4) South 30 degrees 20 minutes 42 seconds East – 257.34 feet to an iron rod; (5) North 59 degrees 19 minutes 51 seconds East – 18.01 feet to an iron rod; (6) Around a curve to the left (Chord South 60 degrees 30 minutes 27 seconds East – 348.28 feet, Radius 350.00 feet, Delta 59 degrees 40 minutes 30 seconds, Length 364.53 feet) to an iron rod; (7) North 89 degrees 39 minutes 18 seconds East – 16.38 feet to an iron rod; (8) Around a curve to the right (Chord South 45 degrees 20 minutes 42 seconds East – 77.78 feet, Radius 55.00 feet, Delta 90 degrees 00 minutes 00 seconds, Length 86.39 feet) to an iron rod; (9) South 00 degrees 20 minutes 42 seconds East – 319.26 feet to an iron rod; (10) Around a curve to the right (Chord South 23 degrees 47 minutes 48 seconds West – 67.08 feet, Radius 82.00 feet, Delta 48 degrees 17 minutes 01 seconds, Length 69.10 feet) to an iron rod; (11) Around a curve to the right (Chord North 84 degrees 14 minutes 55 seconds West – 37.05 feet, Radius 25.00 feet, Delta 95 degrees 37 minutes 31 seconds, Length 41.72 feet) to an iron rod; and (12) South 40 degrees 33 minutes 40 seconds West – 4.65 feet to the BEGINNING. Containing 8.817 acres, more or less.

SECTION 2. Paragraph (e) of Section 1 of this act becomes effective October 31, 2005. Paragraphs (a), (b), (c), (d) and (f) of Section 1 of this act become effective October 31, 2006.

SENATE BILL 249:
Asheville Satellite Annexations
f/k/a/ 48th Senatorial District Local Act.-1

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Apodaca	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S249-PCS75295-LMx-12		Committee Counsel

SUMMARY: ***Senate Bill 249 would authorize the city of Asheville to make voluntary satellite annexation of approximately 6 lots, totaling approximately 48 acres of property to the city limits.***

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

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

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

BILL ANALYSIS: Senate Bill 249 would authorize the city of Asheville to make voluntary satellite annexation of approximately 6 lots, totaling approximately 48 acres of property to the city limits. The property being annexed is going to be developed as a large-scale commercial shopping and restaurant area. The city desires to annex the property legislatively because it does not meet the second requirement, that being that 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. The area being annexed is closer to the town limits of Fletcher than to the city limits of Asheville. However, Fletcher has a legal restriction in its charter prohibiting it from annexing in Buncombe County. Moreover, Asheville, being a much larger city, is in a better position to provide the necessary services to this commercial shopping area.

EFFECTIVE DATE: With the exception of one lot, the annexation of which becomes effective October 31, 2005, the remainder of the bill would become effective October 31, 2006.

[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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 249

Short Title:	48th Senatorial District Local Act.-1.	(Local)
Sponsors:	Senator Apodaca.	
Referred to:	Rules and Operations of the Senate.	

March 1, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE 48TH SENATORIAL DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates only to the 48th Senatorial District.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 589
Corrected Copy 4/12/05

Short Title:	Registers of Deeds/Tax Certification.	(Public)
Sponsors:	Senators Weinstein; Albertson, Allran, Apodaca, Boseman, Dalton, Garwood, Jenkins, Kinnaird, and Smith.	
Referred to:	Finance.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT A BOARD OF COUNTY COMMISSIONERS MAY REQUIRE THE REGISTER OF DEEDS NOT TO ACCEPT DEEDS FOR REGISTRATION UNLESS THE COUNTY TAX COLLECTOR CERTIFIES THAT NO DELINQUENT TAXES ARE DUE ON THAT PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31 reads as rewritten:

"**§ 161-31. Tax certification.**

(a) Tax Certification. – The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. – If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "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."

~~(b) Applicability. – This section applies only to Alleghany, 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, Lee, Lenoir, Macon, Madison, Martin, Montgomery, Nash, Northampton, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Rockingham, Rowan, Rutherford, Stanly, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties.~~"

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

SENATE BILL 589:
Registers of Deeds/Tax Certification

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Weinstein	**Summary by:**	Trina Griffin
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 589 would authorize the county commissioners in all counties to require the register of deeds to refuse to register a deed unless (1) the county tax collector has certified that no delinquent taxes are due on the property; or (2) the deed contains a statement by the closing attorney that delinquent taxes will be paid by the closing attorney upon disbursement of closing proceeds. The authority granted by this bill is permissive and would require the passage of a resolution before the authority becomes effective.

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. However, G.S. 161-31 also provides that if a board of county commissioners adopts a resolution to require the register of deeds to refuse to register a deed without the certification of the county tax collector, the register of deeds must still accept an uncertified deed that is submitted for registration under the supervision of a closing attorney and containing the 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."

This provision applies to the following 48 counties: Alleghany, Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Forsyth, Gaston, Gates, Graham, Granville, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Lee, Macon, Madison, Martin, Montgomery, Northampton, Pasquotank, Perquimans, Person, Pitt, Polk, Rockingham, Rowan, Rutherford, Stanly, Swain, Transylvania, Vance, Warren, Washington, 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.

BILL ANALYSIS: Senate Bill 589 would make the provisions of G.S. 161-31 apply statewide. If this bill passes, a board of county commissioners wishing to exercise the authority provided under this statute would have to pass a resolution, which may describe the form the certification must take.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 592
PROPOSED COMMITTEE SUBSTITUTE S592-CSSV-29 [v.1]

5/17/2005 3:52:24 PM

Short Title: Indigent Defense Technical Revisions. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL REVISIONS TO THE LAW GOVERNING INDIGENT DEFENSE AND ENTITLEMENT TO COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(d)(1) reads as rewritten:

"(d) (1) In any criminal case in which the liability for costs, fines, restitution, attorney's fees, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

a. Sums in restitution to the victim entitled thereto;
b. Costs due the county;
c. Costs due the city;
d. Fines to the county school fund;
e. Sums in restitution prorated among the persons other than the victim entitled thereto;
f. Costs due the State;
g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1.

(2) Sums in restitution received by the clerk of superior court shall be disbursed when:

a. Complete restitution has been received; or
b. When, in the opinion of the clerk, additional payments in restriction will not be collected; or
c. Upon the request of the person or persons entitled thereto; and
d. In any event, at least once each calendar year."

SECTION 2. G.S. 7A-451(a) reads as rewritten:

"(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;

(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;

(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars ($500.00) or more, or has been sentenced to a term of imprisonment;

(4) A hearing for revocation of probation;

(5) A hearing in which extradition to another state is sought;

(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.

(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;

(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;

(10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and applicable to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of April 17, 2003.

(11) A proceeding for the provision of protective services according to Chapter 108A, Article 6 of the General Statutes;

(12) In the case of a juvenile alleged to be ~~neglected~~ abused, neglected, or dependent under ~~Chapter 7A, Article 23~~ Subchapter I of Chapter 7B of the General Statutes;

(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;

(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;

(15) An action brought pursuant to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes to terminate an indigent person's parental rights.

(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General

Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(17) A proceeding involving limitation on freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145."

SECTION 3. G.S. 7A-455.1 reads as rewritten:

"**§ 7A-455.1. Appointment fee in criminal cases.**

(a) Each person ~~who requests the appointment of~~ for whom counsel is appointed in a criminal case at the trial level shall pay to the clerk of court ~~a nonrefundable~~ an appointment fee of fifty dollars ~~($50.00) at the time of appointment.~~ ($50.00). No fee shall be due ~~if the court finds that the person is not entitled to the appointment of counsel.~~ unless the person is convicted.

(b) ~~The appointment fee in this section is due regardless of the outcome of the proceedings. If paid in full at the time of appointment, the fifty dollars ($50.00) paid shall be credited against any amounts the court determines to be owed for the value of legal services rendered to the defendant. If not paid in full at the time of appointment, the~~ The fifty-dollar ($50.00) fee shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation. ~~If the fee is not paid in full at the time of appointment, and no attorneys' fees are found due when the action is finally determined at the trial level, a judgment shall be entered, docketed, and indexed pursuant to G.S. 1-233 in the amount of fifty dollars ($50.00) and shall constitute a lien as prescribed by the general law of the State applicable to judgments.~~

~~(c) The attorney representing the defendant when the action is finally determined at the trial level shall advise the court whether the appointment fee required by this section has been paid.~~

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each ~~affidavit of indigency submitted by a defendant or other determination of indigency by the court,~~ attorney appointment, regardless of the number of cases ~~for~~ to which ~~an~~ the attorney ~~is appointed.~~ was assigned. ~~An additional appointment fee shall not be assessed for any additional cases thereafter assigned to an attorney if any cases for which a defendant was previously assessed an appointment fee are still pending. Nor shall an~~ An additional appointment fee shall not be assessed ~~if the charges for which an attorney was appointed are dismissed and subsequently refiled or if the defendant is appointed an attorney on appeal on a matter for which the defendant was assessed an appointment fee at the trial level.~~ if the charges for which an attorney was appointed were reassigned to a different attorney.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars ($45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

SECTION 4. G.S. 15A-1343(e) reads as rewritten:

"(e) Costs of Court and Fees for Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and ~~costs~~ all fees for appointed ~~counsel or public defender~~ counsel, public defender, or counsel employed by or under contract with the Office of Indigent Defense Services in the case in which ~~he~~ the person was convicted. The ~~cost of~~ fees for appointed ~~counsel or public defender~~ counsel, public defender, or other counsel services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs and fees to be repaid and the method of payment."

SECTION 5. G.S. 35A-1245(c) reads as rewritten:

"(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ~~ward.~~ ward in accordance with rules adopted by the Office of Indigent Defense Services."

SECTION 6. This act is effective when it becomes law.

SENATE BILL 592:
Indigent Defense Technical Revisions

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S592-CSSV-29		Committee Counsel

SUMMARY: ***Senate Bill 592 would make technical revisions to current law governing indigent defense and entitlement to counsel to correspond with current practices and to comply with the recent North Carolina Supreme Court decision State v. Webb.***

The Proposed Committee Substitute makes an additional change in Section 3 by deleting language that prohibits the assessment of the $50 appointment fee when there are other pending cases or when charges are dismissed and refiled.

SECTION-BY-SECTION ANALYSIS:

Section 1: G.S. 7A-304 sets out the costs and fees associated with criminal actions and the priority in which the clerk of court shall distribute them. The subsection that sets out the priority of payment does not specifically include attorney's fees in the types of funds to be disbursed by the clerk of superior court, but it is included in the payment priority list that follows. Section 1 of the bill would specifically include attorney's fees in the types of funds to be disbursed by the clerk of superior court in G.S. 7A-304(d)(1) to correspond with the payment priority list that follows.

Section 2: G.S. 7A-451(a)(12) and (a)(15) currently refer to sections of the statutes addressing termination of parental rights that have been repealed and recodified. Section 2 of the bill would adjust the references in G.S. 7A-451(a)(12) and (a)(15) to correspond to the correct sections of the statutes as recodified.

Section 3: Under current law, a person for whom counsel has been appointed must pay a $50 nonrefundable fee to the clerk of court regardless of the outcome of the proceedings pursuant to G.S. 7A-455.1. In 2004, the North Carolina Supreme Court held in *State v. Webb* that this statute violated the constitutional prohibition against compelling persons to pay costs of prosecution unless they are found guilty.[1]

Therefore, Section 3 of the bill makes changes to G.S. 7A-455.1 to bring the statute into conformity with the holding in *State v. Webb.* Subsection (a) would clarify that the $50 fee is assessed only when the defendant is convicted and deletes references relating to when a defendant fails to pay the fee at the time of appointment since the fee may only be assessed at conviction.

Although the current statute also contemplates the payment of the appointment fee for appellate appointments, the Office of Indigent Services does not direct the courts to assess the fee in appellate or post-conviction proceedings. Thus, Section 3 changes G.S. 7A-455.1 to reflect this practice by clarifying that the fee may only be assessed at the trial level, and not in cases on appeal or in post-conviction.

[1] Art. I, Sec. 23 of the North Carolina State Constitution provides "In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty."

Subsection (e) has been rewritten to focus on the attorney appointment rather than the determination of indigency. The Proposed Committee Substitute makes one additional change by deleting language that prohibits the assessment of the $50 appointment fee when there are other pending cases against the defendant in which the fee was assessed or when the charges against the defendant have been dismissed and refiled. The Office of Indigent Defense Services has requested this change because this provision is difficult for the judges and clerks to implement and track. The PCS also adds language that the fee may not be assessed a second time if a different attorney is reassigned to the defendant for the same charges for which the initial appointment fee was assessed.

Section 4: G.S. 15A-1343 includes attorney's costs with court costs that are to be paid by the convicted defendant as a condition of probation. Section 4 of the bill would clarify that attorney's fees are considered to be separate from court costs and that payment of attorney's fees may also be included as a condition of probation.

Section 5: Former G.S. 7A-451(a)(10) governed the entitlement to counsel in cases involving the sterilization of mentally ill and mentally retarded persons. In 2003, this provision was repealed and recodified in G.S. 35A-1245(c). G.S. 7A-452(a) provides that appointment of counsel in all cases under Article 36 of Chapter 7A shall be "in accordance with rules adopted by the Office of Indigent Defense Services. Section 5 of the bill would add language to the new G.S. 35A-1245(c) to correspond with this language that applied when the provision was previously codified in G.S. 7A-451(a)(10).

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

Ben Popkin, counsel to Senate Judiciary II, substantially contributed to this summary.

S0592e1-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 592

Short Title:	Indigent Defense Technical Revisions.	(Public)
Sponsors:	Senators Kinnaird; Hartsell, Rand, and Weinstein.	
Referred to:	Judiciary II.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL REVISIONS TO THE LAW GOVERNING INDIGENT DEFENSE AND ENTITLEMENT TO COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(d)(1) reads as rewritten:

"(d) (1) In any criminal case in which the liability for costs, fines, restitution, attorney's fees, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

a. Sums in restitution to the victim entitled thereto;
b. Costs due the county;
c. Costs due the city;
d. Fines to the county school fund;
e. Sums in restitution prorated among the persons other than the victim entitled thereto;
f. Costs due the State;
g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1.

(2) Sums in restitution received by the clerk of superior court shall be disbursed when:

a. Complete restitution has been received; or
b. When, in the opinion of the clerk, additional payments in restriction will not be collected; or
c. Upon the request of the person or persons entitled thereto; and
d. In any event, at least once each calendar year."

SECTION 2. G.S. 7A-451(a) reads as rewritten:

"(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;
(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars ($500.00) or more, or has been sentenced to a term of imprisonment;
(4) A hearing for revocation of probation;
(5) A hearing in which extradition to another state is sought;
(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.
(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;
(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;
(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;
(10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and applicable to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of April 17, 2003.
(11) A proceeding for the provision of protective services according to Chapter 108A, Article 6 of the General Statutes;
(12) In the case of a juvenile alleged to be ~~neglected~~ abused, neglected, or dependent under ~~Chapter 7A, Article 23~~ Subchapter I of Chapter 7B of the General Statutes;
(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;
(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;
(15) An action brought pursuant to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes to terminate an indigent person's parental rights.
(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(17) A proceeding involving limitation on freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145."

SECTION 3. G.S. 7A-455.1 reads as rewritten:

"**§ 7A-455.1. Appointment fee in criminal cases.**

(a) Each person ~~who requests the appointment of~~ for whom counsel is appointed in a criminal case at the trial level shall pay to the clerk of court ~~a nonrefundable~~ an appointment fee of fifty dollars ~~($50.00) at the time of appointment.~~ ($50.00). No fee shall be due ~~if the court finds that the person is not entitled to the appointment of counsel.~~ unless the person is convicted.

(b) ~~The appointment fee in this section is due regardless of the outcome of the proceedings. If paid in full at the time of appointment, the fifty dollars ($50.00) paid shall be credited against any amounts the court determines to be owed for the value of legal services rendered to the defendant. If not paid in full at the time of appointment, the~~ The fifty-dollar ($50.00) fee shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation. ~~If the fee is not paid in full at the time of appointment, and no attorneys' fees are found due when the action is finally determined at the trial level, a judgment shall be entered, docketed, and indexed pursuant to G.S. 1-233 in the amount of fifty dollars ($50.00) and shall constitute a lien as prescribed by the general law of the State applicable to judgments.~~

~~(c) The attorney representing the defendant when the action is finally determined at the trial level shall advise the court whether the appointment fee required by this section has been paid.~~

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each ~~affidavit of indigency submitted by a defendant or other determination of indigency by the court,~~ attorney appointment, regardless of the number of cases ~~for~~ to which ~~an~~ the attorney ~~is appointed.~~ was assigned. An additional appointment fee shall not be assessed for any additional cases thereafter assigned to ~~an~~ the attorney if any cases ~~for which a defendant was previously assessed an appointment fee~~ to which the attorney was appointed are still pending. Nor shall an additional appointment fee be assessed if the charges for which an attorney was appointed ~~are~~ were dismissed and subsequently ~~refiled or if the defendant is appointed an attorney on appeal on a matter for which the defendant was assessed an appointment fee at the trial level.~~ refiled, or if the charges for which an attorney was appointed were reassigned to a different attorney.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars ($45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

SECTION 4. G.S. 15A-1343(e) reads as rewritten:

"(e) Costs of Court and Fees for Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and ~~costs~~ all fees for appointed ~~counsel or public defender~~ counsel, public defender, or counsel employed by or under contract with the Office of Indigent Defense Services in the case in which ~~he~~ the person was convicted. The ~~cost of~~ fees for appointed ~~counsel or public defender~~ counsel, public defender, or other counsel services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs and fees to be repaid and the method of payment."

SECTION 5. G.S. 35A-1245(c) reads as rewritten:

"(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ~~ward.~~ ward in accordance with rules adopted by the Office of Indigent Defense Services."

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 593
Judiciary II Committee Substitute Adopted 4/19/05

Short Title: Copy Costs in Indigent Cases. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO EXEMPT ATTORNEYS APPOINTED TO REPRESENT INDIGENT CLIENTS FROM THE FEE CHARGED BY THE CLERK OF COURT FOR PREPARING COPIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-308 is amended by adding a new subsection to read:

"(b1) The fees set forth in subdivision (12) of subsection (a) of this section are not chargeable when copies are requested by an attorney who has been appointed to represent an indigent person at State expense, if the request is made in connection with the appointed case and during the duration of the appointment."

SECTION 2. This act becomes effective July 1, 2005, and applies to fees charged on or after that date.

SENATE BILL 593:
Copy Costs in Indigent Cases

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	Trina Griffin
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 593 would provide an exception to the collection of certain miscellaneous fees by the clerk of superior court. The clerk would not charge for preparing copies requested by counsel appointed to represent an indigent person at State expense so long as the request is made in connection with the appointed case and is during the period of appointment.***

CURRENT LAW: G.S. 7A-308 provides for the collection of miscellaneous fees and commissions by clerks of superior court and remittance of these fees to the State for support of the General Court of Justice. Preparation of copies is listed among these fees at $2.00 for the first page and .25 for each additional page.

Many clerk's offices currently waive the fee for preparing copies for counsel appointed in indigent cases. When the fee is charged, the cost is billed to the Office of Indigent Defense Services by the appointed counsel for reimbursement from State funds. The money paid by appointed counsel is deposited by the clerks into the State financial management system for remittance to the State General Fund.

BILL ANALYSIS: Senate Bill 593 would exempt from collection by the clerk fees for copies made at the request of counsel appointed to represent an indigent person at State expense. The bill would limit copies provided without charge to only those that are made at the request of appointed counsel in connection with the appointed case and during the duration of the appointment. Providing for appointed counsel working on indigent cases to be exempt from collection of copy costs would simplify the system and avoid any associated transaction costs.

EFFECTIVE DATE: The act would be effective on July 1, 2005 and would apply to fees charged on or after that date.

Ben Popkin, counsel to Senate Judiciary II, substantially contributed to this summary.

S0593e2-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 594

Judiciary II Committee Substitute Adopted 4/19/05

PROPOSED COMMITTEE SUBSTITUTE S594-CSSV-28 [v.2]

5/17/2005 4:26:46 PM

Short Title: Recoupment by Court-Appointed Attorneys. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING RECOUPMENT FOR LEGAL SERVICES PROVIDED TO INDIGENT PERSONS WHO ARE FINANCIALLY ABLE TO PAY A PORTION OF THE VALUE OF THOSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-455 reads as rewritten:

"**§ 7A-455. Partial indigency; liens; acquittals.**

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for ~~him~~that person by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, ~~he~~the court shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The money value of services rendered by the public defender and the appellate defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. A district court judge shall direct entry of judgment for actions or proceedings finally determined in the

district court and a superior court judge shall direct entry of judgment for actions or proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceedings petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered. No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered for the value of legal services rendered to perfect an appeal to the Appellate Division or in postconviction proceedings, if all of the matters that the person raised in the proceeding are vacated, reversed, or remanded for a new trial or resentencing.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

SECTION 2. G.S. 7B-603 reads as rewritten:

"**§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 shall be paid a reasonable fee fixed by the court or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(a1) The court may require payment of the fee for an attorney or guardian ad litem appointed pursuant to G.S. 7B-601 from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse,

neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. If the party is ordered to reimburse the State for attorney or guardian ad litem fees and fails to comply with the order at the time of disposition, the court shall file a judgment against the party for the amount due the State.

(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(b1) The court may require payment of the fee for an attorney appointed pursuant to G.S. 7B-602 or G.S. 7B-1101 from the respondent. In no event shall the respondent be required to pay the fees for a court-appointed attorney in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the respondent's rights have been terminated. At the dispositional hearing or other appropriate hearing, the court shall make a determination whether the respondent should be held responsible for reimbursing the State for the respondent's attorneys' fees. This determination shall include the respondent's financial ability to pay.

If the court determines that the respondent is responsible for reimbursing the State for the respondent's attorneys' fees, the court shall so order. If the respondent does not comply with the order at the time of disposition, the court shall file a judgment against the respondent for the amount due the State.

~~(c) The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21.~~"

SECTION 3. G.S. 7A-450.3 reads as rewritten:

"**§ 7A-450.3. Determination of responsibility at hearing.**

At the dispositional, sentencing or other hearing of the person who is less than 18 years old or who is at least 18 years old but remains dependent on and domiciled with a parent or guardian, the court shall make a determination whether the parent, guardian or trustee should be held responsible for reimbursing the State for the person's attorney or guardian ad litem fees. This determination shall include the financial situation of the parent, guardian or trustee, the relationship of responsibility the parent, guardian or trustee bears to the person and any showings by the parent, guardian or trustee that the person is emancipated or not dependent. The test of the party's financial ability to pay is the test applied to appointment of an attorney in cases of indigency. Any provision of any deed, trust or other writing, which, if enforced, would defeat the intent or purpose

of this section is contrary to the public policy of this State and is void insofar as it may apply to prohibit reimbursement to the State.

If the court determines that the parent, guardian or trustee is responsible for reimbursing the State for the attorney or guardian ad litem fees, the court shall so order. If the party does not comply with the order ~~within 90 days,~~ at the time of disposition, the court shall file a judgment against him for the amount due the State."

SECTION 4. Sections 2 and 3 of this act become effective October 1, 2005, and applies to the appointment of counsel on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 594:
Recoupment by Court-Appointed Attorneys

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	Trina Griffin
Version:	PCS to Second Edition S594-CSSV-28		Committee Counsel

SUMMARY: Senate Bill 594 would amend the law governing recoupment for legal services provided to indigent persons who are financially able to pay a portion of the value of the services provided as follows:

- ***It would exempt indigent persons from paying for legal services rendered to perfect an appeal to the appellate division or in post-conviction proceedings if all of the matters raised are vacated, reversed or remanded for a new trial or resentencing.***
- ***It would allow the court to hold a parent responsible for payment of an attorney or guardian ad litem in cases where a juvenile has been adjudicated to be abused, neglected or dependent or where the parent's rights have been terminated.***

The Proposed Committee Substitute makes two changes. It removes new language that would have provided parents ordered to reimburse the State for attorney or guardian ad litem fees a 90-day period in which to pay before a judgment was entered against them. The PCS requires the parent to pay at the time of disposition. It makes a similar change to the recoupment statute regarding reimbursement for appointed counsel for juveniles.

BILL ANALYSIS:

Section 1: North Carolina, like every jurisdiction, has an irrevocable constitutional duty to provide court-appointed counsel to an indigent defendant once he requests it. However, the State is not required to absorb the expenses of providing such counsel when the defendant has acquired the financial ability to pay. The current recoupment statute appears to direct entry of judgment in criminal appeals whenever the defendant's conviction is upheld.[1] It is unclear, however, whether this statute directs entry of civil judgment when the only relief available in the appellate courts is a new sentencing hearing. Section 1 of the bill would revise G.S. 7A-455(c) to clarify that recoupment of fees for legal services rendered is not appropriate when the appellant prevailed on the issues raised on appeal.

Section 2: Current statutes do not appear to authorize recoupment when counsel is provided to an adult in an abuse, neglect, or dependency, or termination of parental rights proceeding. G.S. 7B-603 states that a parent may be held responsible for counsel fees if the child is found to have been abused, neglected, or dependent or the parent's rights are terminated, thus suggesting that a parent may be required to pay for counsel services provided to the parent. However, this statute also states that the court should follow the procedures for recoupment in G.S. 7A-450.1, 7A-450.2, and 7A-450.3, which authorize the court to recoup fees for appointed counsel for services provided to a minor. Section 2 of the bill would clarify that a parent may be held responsible for paying the fees of a court-appointed attorney or guardian ad litem in those cases where a juvenile has been adjudicated to be abused, neglected or dependent, or in cases where the parent's rights have been terminated.

[1] G.S. 7A-455(c).

The original bill required persons ordered to reimburse the State for attorney or guardian ad litem fees to do so within 90 days, or have a judgment against them filed by the court. This 90-day period is consistent with language in G.S. 7A-450.3, which provides for the recoupment of attorney's fees from a parent where counsel or a guardian ad litem was appointed to represent a juvenile in an abuse, neglect, or dependency hearing or termination of parental rights hearing. However, the AOC indicates that this 90-day provision has proven unworkable for the clerks of court, and many clerks are entering judgment at the time of disposition. Therefore, AOC has recommended the language in the PCS, which would require payment at the time of disposition. If a parent is unable to make payment at the time of disposition, the clerk would enter a judgment against the parent for the amount owed. This change is made to both recoupment statutes – that is, where the parent is ordered to reimburse the State for appointed counsel fees for work performed on behalf of the minor and for appointed counsel fees for work performed on behalf of the parent.

EFFECTIVE DATE: The PCS changes the effective date as well. Sections 2 and 3 would become effective October 1, 2005, and apply to appointment of counsel on or after that date. The remainder of the act is effective when it becomes law.

Ben Popkin, counsel to Senate Judiciary II, substantially contributed to this summary.

S0594e2-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 594

Judiciary II Committee Substitute Adopted 4/19/05

Short Title: Recoupment by Court-Appointed Attorneys. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING RECOUPMENT FOR LEGAL SERVICES PROVIDED TO INDIGENT PERSONS WHO ARE FINANCIALLY ABLE TO PAY A PORTION OF THE VALUE OF THOSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-455 reads as rewritten:

"**§ 7A-455. Partial indigency; liens; acquittals.**

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for ~~him~~that person by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, ~~he~~the court shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The money value of services rendered by the public defender and the appellate defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. A district court judge shall direct entry of judgment for actions or proceedings finally determined in the district court and a superior court judge shall direct entry of judgment for actions or proceedings originating in, heard on appeal in, or appealed from the superior court.

Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceedings petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered. No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered for the value of legal services rendered to perfect an appeal to the Appellate Division or in postconviction proceedings, if all of the matters that the person raised in the proceeding are vacated, reversed, or remanded for a new trial or resentencing.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

SECTION 2. G.S. 7B-603 reads as rewritten:

"**§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 shall be paid a reasonable fee fixed by the court or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(a1) The court may require payment of the fee for an attorney or guardian ad litem appointed pursuant to G.S. 7B-601 from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless

the parent's rights have been terminated. If the party is ordered to reimburse the State for attorney or guardian ad litem fees and fails to comply within 90 days, the court shall file a judgment against the party for the amount due the State.

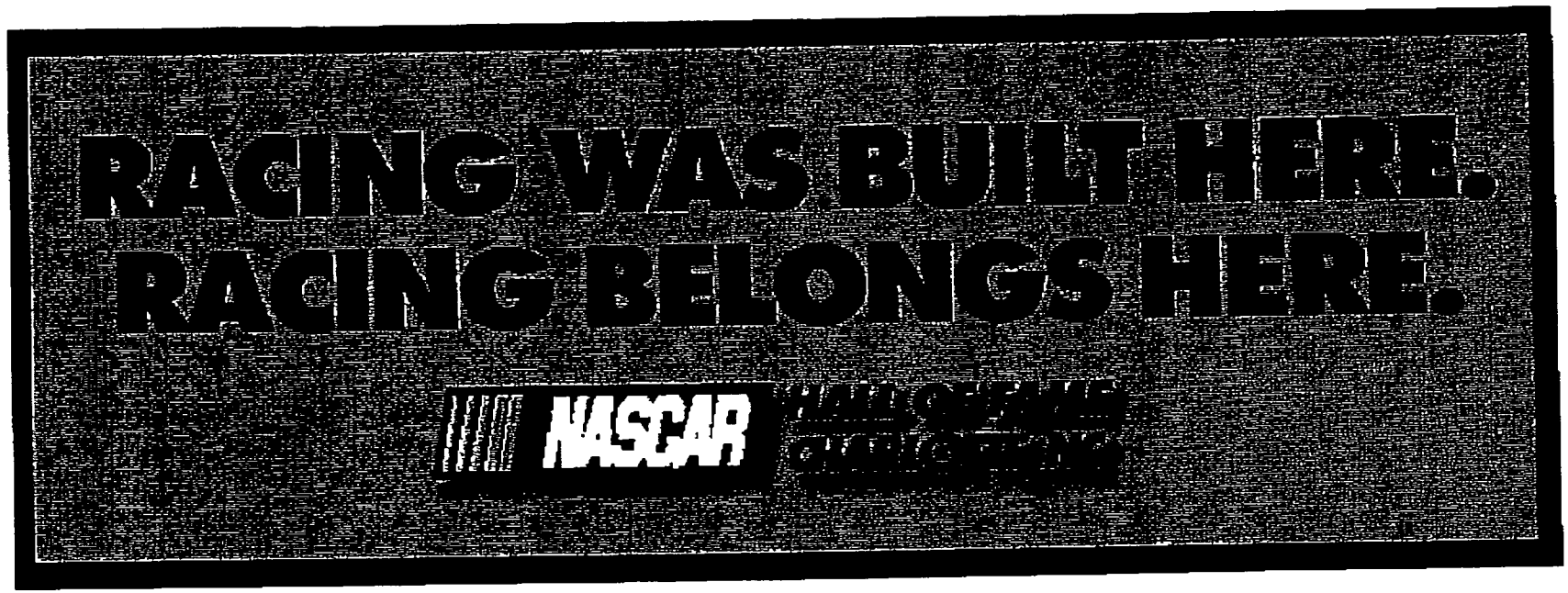
(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(b1) The court may require payment of the fee for an attorney appointed pursuant to G.S. 7B-602 or G.S. 7B-1101 from the respondent. In no event shall the respondent be required to pay the fees for a court-appointed attorney in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the respondent's rights have been terminated. At the dispositional hearing or other appropriate hearing, the court shall make a determination whether the respondent should be held responsible for reimbursing the State for the respondent's attorneys' fees. This determination shall include the respondent's financial ability to pay.

If the court determines that the respondent is responsible for reimbursing the State for the respondent's attorneys' fees, the court shall so order. If the respondent does not comply with the order within 90 days, the court shall file a judgment against the respondent for the amount due the State.

~~(c) The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21.~~"

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



Presentation to North Carolina Senate Finance Committee

May 18, 2005

05-18-2005 08:32 From-CITY OF CHARLOTTE 7043366644 T-361 P.004 F-543

Overview

- One-time opportunity
- Significant economic impact
- True destination asset
- Stiff competition: Atlanta, Daytona Beach, Detroit, Kansas City and Richmond
- Our competitive advantage:
  - Heritage in racing
  - Industry presence
  - Geography
  - Leadership
- Significant opportunity cost

05-18-2005 09:33 From-CITY OF CHARLOTTF 7043366644 T-361 P.005/024 F-543

Why the NASCAR Hall of Fame?

- Increased jobs/protection of 55,000 current jobs in hospitality
- Increased revenue from sales tax, occupancy tax and food/beverage tax
- Catalyst to new development in vicinity of NASCAR Hall of Fame
- Gives additional marketing tool for race teams and automobile manufacturers to make Charlotte region permanent home
- Pays for itself

05-18-2005 08:33 From-CITY OF CHARLOTTF 7043366644 T-361 P.006/024 F-543

The NC Checkered Flag Team

- Cross-section of leaders endorsing effort
- Honorary Grand Marshals
  - Rick Hendrick, Chairman Hendrick Motorsports
  - Gov. Mike Easley
  - US Senators Elizabeth Dole & Richard Burr
  - Congressman Mel Watt
  - NC Senate President Marc Basnight
  - NC Speaker of the House Jim Black
  - Felix Sabates, Co-owner Ganasi Racing

05-18-2005 09:33 From-CITY OF CHARLOTTF 7043366644 T-361 P.007/024 F-543

Proposal Development

- Broad-based volunteer effort
- Crew Chiefs
  - Mayor Pat McCrory
  - Luther Cochrane, CRVA Chair
  - Cathy Bessant, Charlotte Chamber Chair
- Work Teams
  - Public Sector: CRVA, City & County Staff
  - Associations: Charlotte Chamber; Cabarrus Chamber; Mooresville/S. Iredell Chamber; Charlotte Sports Commission; Center City Partners; Charlotte Regional Partnership
  - Private Sector: Duke Power; Wachovia; Bank of America; Lowe's Motor Speedway; Carousel Capital

05-18-2005 08:34 From-CITY OF CHARLOTTF 7043366644 T-361 P.010/024 F-543

Accomplishments to Date

- Comparative analysis on five other halls of fame
- Secured awarding winning expertise:
  - Architectural design – Pei, Cobb & Freed Partners
  - Interior design – Morris Architects & ESI Design
  - Marketing agency – Interpublic Group
- Identified a preferred site
- Financial plans for capital and operating expenses *(in progress)*
- Private sector funding for proposal development

05-18-2005 09:34 From-CITY OF CHARLOTTF 7043366644 T-361 P.011/024 F-543

Preferred Site

- Adjacent to the Convention Center
- Advantages:
  - Land is already under City's control
    - 3 acres purchased in 2000 w/ Convention Center funds
  - Integrates/links expansion of Convention Center
  - Creates economies and efficiencies with Convention Center operations
  - Enables NASCAR Hall of Fame to host large events, receptions and dinners on-site
  - Excellent access and visibility from interstate
  - Great connectivity to the new Arena

05-18-2005 09:42 From-CITY OF CHARLOTTE 7043366644 T-363 P.020/024 F-543

Capital

- Construction of the NASCAR Hall of Fame coupled with a new Convention Center Ballroom
- Would be a City-owned facility
- $137.5 mm - estimated capital cost with all fees & contingencies

05-18-2005 08:43 From-CITY OF CHARLOTTF 7043366644 T-363 P.022/024 F-543

Operations

- Revenues exceed expenses
- Pro forma includes reserve for appropriate capital replacement
- Analysis run on several different attendance scenarios

05-16-2005 09:43 From-CITY OF CHARLOTTF 7043366644 T-363 P.023/024 F-543

Current Status

- City Council approved site April 25
- City Council has asked State for authority to levy additional 2¢ hotel/motel revenue upon award of Hall of Fame to Charlotte and for State cash support of $20 million
- State must pass authorizing legislation for hotel/motel levy and state cash support in the next two weeks
- Complete & submit winning proposal by May 31 deadline
- NASCAR decision expected by year end

05-18-2005 09:43 From-CITY OF CHARLOTTE 7043366644 T-363 P 024/024 F-543

SENATE FINANCE COMMITTEE
Tuesday, May 24, 2005 1:00 pm
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 pm on May 24, 2005, in the room 544 of the Legislative Office Building. Twenty-nine members of the committee were present. Senator David Hoyle presided. Courtney Cooper, Stephen Rankin, Derek Breakfield, Austin Bradshaw, Josh Richardson, Meredith Wilson, and Ashley Quarles of Gaston County and Seth Avrette and Brent Longmeyer of Harnett County served as pages.

SB 551 – Present-Use Value Buyout Credits.

Senator East was recognized to explain the bill. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary are attached.

SB 592 – Indigent Defense Technical Revisions.

Senator Kinnaird was recognized to explain the proposed committee substitute. Donille Carmen, Assistant Director of Indigent Defense Services, was available to answer questions. Senator Stevens moved to approve the proposed committee substitute and the motion carried. A copy of the proposed committee substitute, the bill and the summary are attached.

SB 593 – Copy Costs in Indigent Cases.

Senator Kinnaird was recognized to explain the bill. Senator Apodaca moved to approve the bill and the motion carried. A copy of the bill and the summary are attached.

SB 594 – Recoupment by Court-Appointed Attorneys.

Senator Kinnaird was recognized to explain the proposed committee substitute. Senator Weinstein moved to approve the proposed committee substitute and the motion carried. A copy of the bill and the summary are attached.

SB 589 – Registers of Deeds/Tax Certification.

Senator Weinstein pulled the bill from the agenda.

SB 1087 – Limited Driving Privileges/Certain Revoked Licenses.

Senator Kerr was recognized to explain the proposed committee substitute. Senator Allran offered an amendment and moved for adoption. The motion was not voted on due to limited time. Sen. Soles offered an amendment and the motion passed. Kathy Matthews, Division of Motor Vehicles, and Matt Osborne, Administrative Office of the Courts, were available to answer questions. Due to limited time, the proposed committee substitute was tabled and will be taken up at another time.

The meeting adjourned at 1:55 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

CORRECTED REPORT

Tuesday, May 24, 2005

Senator HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**551**	Present-Use Value Buyout Credits.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.(CS #1)	**593**	Copy Costs in Indigent Cases.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 2

Committee Clerk Comments:

Senate Finance Committee
Tuesday, May 24, 2005, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 551	Present-Use Value Buyout Credits.	Senator East
SB 589	Registers of Deeds/Tax Certification.	Senator Weinstein
SB 592	Indigent Defense Technical Revisions.	Senator Kinnaird
SB 593	Copy Costs in Indigent Cases.	Senator Kinnaird
SB 594	Recoupment by Court-Appointed Attorneys.	Senator Kinnaird
SB 1087	Limited Driving Privilege for DWLR.	Senator Kerr

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

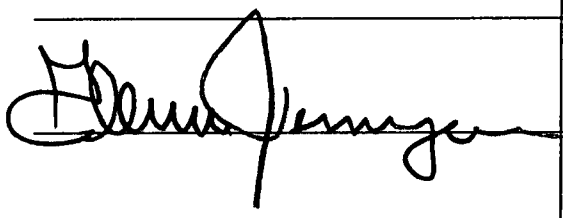
NAME	FIRM OR AGENCY AND ADDRESS
Tripp Melton	Sen. Stevens Office
Ralph Walker	AOC
Richard Potts	AOC
[illegible]	AOC
Matt Osborne	AOC
Michelle Frazier	NC Bar Ass'n
[illegible]	[illegible]
[illegible]	NCFB
Alissa Dolan	NC Conservation Network
Erin Kinney	NC Conservation Network
Eddie Price	AIANC

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	Automobile Dealers Assn of N.C.

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 24, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
NANCY RANKIN	VISITOR 811 Ashebrook Park Rd. Dallas NC 28034
SEAN RANKIN	↓ ↓
Michael Brown	NC DOR
David Baker	NC DOR
Warren Plonk	OSBM
Lu Hodge	KCCH
	Capital Group
Cathy Matthews	DMV
Portia Manley	NCDOT DMV
Debbie Jones	NCDOT DMV

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Glen M Killian III	Register of Deeds Asso
Jerry M. Lemmond	Lee County Commissioner
BOB BROWN	LEE COUNTY COMMISSIONER
Amy Stevens	Lee County Commissioner
DAVID SMITHERMAN	LEE COUNTY MGR
Beth Hathcock	DOS
Ola M. Lewis	Resident Superior Court Judge Brunswick Cty NC
Paula A. Wolf	El Pueblo
Rick Zechini	NC Assoc. of Realtors
Lucius PULLEN	ATTORNEY
Bill Scoggin	ECLIA

Sen. East
Sen. Apodaca fav. report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 551

Short Title:	Present-Use Value Buyout Credits.	(Public)
Sponsors:	Senators East; Allran, Apodaca, Berger of Rockingham, Bingham, Brown, Forrester, Goodall, Horton, Jacumin, Kerr, Pittenger, Smith, Stevens, Tillman, and Webster.	
Referred to:	Finance.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW BUYOUT PAYMENTS TO COUNT TOWARDS THE ONE THOUSAND DOLLAR GROSS INCOME REQUIREMENT FOR AGRICULTURAL LAND FOR PRESENT-USE VALUE TAX EXEMPTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.3(a)(1) reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.**

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the ~~land and~~ land, any payments received under a governmental soil conservation or land retirement ~~program.~~ program, or the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals."

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

Senate Bill 551:
Present-Use Value Buyout Credits

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 24, 2005
Introduced by:	Sen. East	**Summary by:**	Trina Griffin*
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 551 would allow payments received under the tobacco quota buyout program to be counted towards the $1,000 income requirement, which must be met before agricultural land can be assessed at present-use value for property tax purposes.***

HB 705, sponsored by Rep. Dewey Hill, is a companion bill and passed the House on April 14.

CURRENT LAW: Agricultural land, horticultural land and forestland have been designated as a special class of property and are appraised and assessed at present-use value, instead of market value, for property tax purposes if the land meets certain statutory requirements. Agricultural land must be part of a farm unit, under a sound management program, individually owned, consist of one or more tracts (one of which must consist of at least 10 acres that are in actual production) and **for the three years preceding January 1 of the year for which the present-use value benefit is claimed, have produced an average gross income of at least $1,000.** Counted income includes the following:

- Income from the sale of agricultural products produced from the land, and
- Payments received under a governmental soil conservation or land retirement program.

BILL ANALYSIS: Senate Bill 551 would allow payments received under the Fair and Equitable Tobacco Reform Act of 2004 to be included as income when determining the present-use value eligibility of agricultural land. The agricultural land must continue to meet the ownership and actual production requirements.

EFFECTIVE DATE: This bill is effective when it becomes law.

BACKGROUND: Congress passed the Fair and Equitable Tobacco Reform Act of 2004 in October of last year. This Act repeals the federal tobacco price support and quota programs, provides compensation payments to tobacco quota owners and growers, and provides an assessment mechanism for tobacco manufacturers and importers to pay for the buyout. An eligible quota owner is the owner of a farm, on the date the bill was enacted, for which a basic tobacco quota/allotment was established for the 2004 marketing year. An eligible quota grower is an owner, operator, landlord, tenant or sharecropper who shared in the risk of producing tobacco in the 2002, 2003, or 2004 marketing year. Quota owners will be paid $7 per pound for the basic quota they owned in 2002. Growers will be paid $3 per pound for their 2002 effective quota.[1] These payments will be distributed equally over 10 years, beginning with the 2005 fiscal year and ending in 2014. The initial payment should be made by the end of September. The buyout is funded by quarterly assessments on tobacco manufacturers and importers. Because the buyout is funded by manufacturer and importer assessments, future Phase II payments will be terminated. For federal tax purposes, quota owner payments are expected to be treated as capital gains and grower payments are expected to be treated as ordinary income. The I.R.S. should rule on the tax status of these payments by the end of April.

[1] The payment is $2 per pound if the grower participated in two of the three marketing years, and $1 per pound if the grower participated in only one of the three marketing years.

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 24, 2005

TO: Senator East

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 551 (First Edition)

FISCAL IMPACT

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

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

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue, Local Governments

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: This bill would allow payments received under the tobacco quota buyout program to be counted towards the $1,000 income requirement, which must be met before agricultural land can be assessed at present-use value for property tax purposes.

ASSUMPTIONS AND METHODOLOGY: Agricultural land must be part of a farm unit, under a sound management program, individually owned, consist of one or more tracts (one of which must consist of at least 10 acres that are in actual production) and for the three years preceding January 1 of the year for which the present-use value benefit is claimed, have produced an average gross income of at least $1,000. The income may include income from the sale of agricultural products produced from the land, and payments received under a governmental soil conservation or land retirement program.

In order to qualify for present-use value assessment, the land must have generated an average of $1,000 gross income for the last three years. Furthermore, to qualify as agricultural land, the land must be in commercial production and is likely to be generating income already. Therefore, the Department of Revenue does not expect that this bill would result in any significant amount of additional acreage being assessed at present-use value.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

Sen. Kinnaird
Donielle Carmen, Asst. Director of IDS, answered questions.
Sen. Stevens moved

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 592
PROPOSED COMMITTEE SUBSTITUTE S592-CSSV-29 [v.2]

5/23/2005 11:32:24 AM

Short Title: Indigent Defense Technical Revisions. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED no title change

AN ACT TO MAKE TECHNICAL REVISIONS TO THE LAW GOVERNING INDIGENT DEFENSE AND ENTITLEMENT TO COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(d)(1) reads as rewritten:

"(d) (1) In any criminal case in which the liability for costs, fines, restitution, attorney's fees, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

a. Sums in restitution to the victim entitled thereto;
b. Costs due the county;
c. Costs due the city;
d. Fines to the county school fund;
e. Sums in restitution prorated among the persons other than the victim entitled thereto;
f. Costs due the State;
g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1.

(2) Sums in restitution received by the clerk of superior court shall be disbursed when:

a. Complete restitution has been received; or
b. When, in the opinion of the clerk, additional payments in restriction will not be collected; or
c. Upon the request of the person or persons entitled thereto; and
d. In any event, at least once each calendar year."

SECTION 2. G.S. 7A-451(a) reads as rewritten:

"(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;

(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;

(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars ($500.00) or more, or has been sentenced to a term of imprisonment;

(4) A hearing for revocation of probation;

(5) A hearing in which extradition to another state is sought;

(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.

(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;

(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;

(10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and applicable to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of April 17, 2003.

(11) A proceeding for the provision of protective services according to Chapter 108A, Article 6 of the General Statutes;

(12) In the case of a juvenile alleged to be ~~neglected~~ abused, neglected, or dependent under ~~Chapter 7A, Article 23~~ Subchapter I of Chapter 7B of the General Statutes;

(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;

(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;

(15) An action brought pursuant to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes to terminate an indigent person's parental rights.

(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General

Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(17) A proceeding involving limitation on freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145."

SECTION 3. G.S. 7A-455.1 reads as rewritten:

"**§ 7A-455.1. Appointment fee in criminal cases.**

(a) Each person ~~who requests the appointment of~~ for whom counsel is appointed in a criminal case at the trial level shall pay to the clerk of court ~~a nonrefundable~~ an appointment fee of fifty dollars ~~($50.00) at the time of appointment.~~ ($50.00). No fee shall be due ~~if the court finds that the person is not entitled to the appointment of counsel.~~ unless the person is convicted.

(b) ~~The appointment fee in this section is due regardless of the outcome of the proceedings. If paid in full at the time of appointment, the fifty dollars ($50.00) paid shall be credited against any amounts the court determines to be owed for the value of legal services rendered to the defendant. If not paid in full at the time of appointment,~~ ~~the~~ The fifty-dollar ($50.00) fee shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation. ~~If the fee is not paid in full at the time of appointment, and no attorneys' fees are found due when the action is finally determined at the trial level, a judgment shall be entered, docketed, and indexed pursuant to G.S. 1-233 in the amount of fifty dollars ($50.00) and shall constitute a lien as prescribed by the general law of the State applicable to judgments.~~

~~(c) The attorney representing the defendant when the action is finally determined at the trial level shall advise the court whether the appointment fee required by this section has been paid.~~

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each ~~affidavit of indigency submitted by a defendant or other determination of indigency by the court,~~ attorney appointment, regardless of the number of cases ~~for~~ to which ~~an~~ the attorney ~~is appointed.~~ was assigned. ~~An additional appointment fee shall not be assessed for any additional cases thereafter assigned to an attorney if any cases for which a defendant was previously assessed an appointment fee are still pending. Nor shall an~~ An additional appointment fee shall not be assessed ~~if the charges for which an attorney was appointed are dismissed and subsequently refiled or if the defendant is appointed an attorney on appeal on a matter for which the defendant was assessed an appointment fee at the trial level.~~ if the charges for which an attorney was appointed were reassigned to a different attorney.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars ($45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

SECTION 4. G.S. 15A-1343(e) reads as rewritten:

"(e) Costs of Court and Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and all fees and costs for appointed ~~counsel or public defender~~ counsel, public defender, or counsel employed by or under contract with the Office of Indigent Defense Services in the case in which ~~he~~ the person was convicted. The ~~cost of~~ fees and costs for appointed ~~counsel or public defender~~ counsel, public defender, or other counsel services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs and fees to be repaid and the method of payment."

SECTION 5. G.S. 35A-1245(c) reads as rewritten:

"(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ~~ward.~~ ward in accordance with rules adopted by the Office of Indigent Defense Services."

SECTION 6. This act is effective when it becomes law.

SENATE BILL 592:
Indigent Defense Technical Revisions

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 24, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S592-CSSV-29 [v.2]		Committee Counsel

SUMMARY: ***Senate Bill 592 would make technical revisions to current law governing indigent defense and entitlement to counsel to correspond with current practices and to comply with the recent North Carolina Supreme Court decision State v. Webb.***

The Proposed Committee Substitute makes an additional change in Section 3 by deleting language that prohibits the assessment of the $50 appointment fee when there are other pending cases or when charges are dismissed and refiled. It also clarifies in Section 4 that a person placed on probation is required to pa, as a condition of probation, all fees and costs for appointed counsel, as well as court costs.

SECTION-BY-SECTION ANALYSIS:

Section 1: G.S. 7A-304 sets out the costs and fees associated with criminal actions and the priority in which the clerk of court shall distribute them. The subsection that sets out the priority of payment does not specifically include attorney's fees in the types of funds to be disbursed by the clerk of superior court, but it is included in the payment priority list that follows. Section 1 of the bill would specifically include attorney's fees in the types of funds to be disbursed by the clerk of superior court in G.S. 7A-304(d)(1) to correspond with the payment priority list that follows.

Section 2: G.S. 7A-451(a)(12) and (a)(15) currently refer to sections of the statutes addressing termination of parental rights that have been repealed and recodified. Section 2 of the bill would adjust the references in G.S. 7A-451(a)(12) and (a)(15) to correspond to the correct sections of the statutes as recodified.

Section 3: Under current law, a person for whom counsel has been appointed must pay a $50 nonrefundable fee to the clerk of court regardless of the outcome of the proceedings pursuant to G.S. 7A-455.1. In 2004, the North Carolina Supreme Court held in *State v. Webb* that this statute violated the constitutional prohibition against compelling persons to pay costs of prosecution unless they are found guilty.[1]

Therefore, Section 3 of the bill makes changes to G.S. 7A-455.1 to bring the statute into conformity with the holding in *State v. Webb.* Subsection (a) would clarify that the $50 fee is assessed only when the defendant is convicted and deletes references relating to when a defendant fails to pay the fee at the time of appointment since the fee may only be assessed at conviction.

Although the current statute also contemplates the payment of the appointment fee for appellate appointments, the Office of Indigent Services does not direct the courts to assess the fee in appellate or post-conviction proceedings. Thus, Section 3 changes G.S. 7A-455.1 to reflect this practice by

[1] Art. I, Sec. 23 of the North Carolina State Constitution provides "In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty."

clarifying that the fee may only be assessed at the trial level, and not in cases on appeal or in post-conviction.

Subsection (e) has been rewritten to focus on the attorney appointment rather than the determination of indigency. The Proposed Committee Substitute makes one additional change by deleting language that prohibits the assessment of the $50 appointment fee when there are other pending cases against the defendant in which the fee was assessed or when the charges against the defendant have been dismissed and refiled. The Office of Indigent Defense Services has requested this change because this provision is difficult for the judges and clerks to implement and track. The PCS also adds language that the fee may not be assessed a second time if a different attorney is reassigned to the defendant for the same charges for which the initial appointment fee was assessed.

Section 4: G.S. 15A-1343 includes attorney's costs with court costs that are to be paid by the convicted defendant as a condition of probation. Section 4 of the bill would clarify that attorney's fees are considered to be separate from court costs and that payment of attorney's fees may also be included as a condition of probation. **The Proposed Committee Substitute clarifies that a person placed on probation is required to pay all fees and costs for appointed counsel, as a condition of probation, in addition to court costs. The attorney "fees" are to reimburse appointed counsel for the actual services of legal representation and the "costs" associated with appointed counsel are those expenses incurred by the attorney during the course of representation, such as expert witness fees, investigator fees, or other out-of-pocket costs. This section is clarifying that these fees and costs are separate and apart from the actual court costs.**

Section 5: Former G.S. 7A-451(a)(10) governed the entitlement to counsel in cases involving the sterilization of mentally ill and mentally retarded persons. In 2003, this provision was repealed and recodified in G.S. 35A-1245(c). G.S. 7A-452(a) provides that appointment of counsel in all cases under Article 36 of Chapter 7A shall be "in accordance with rules adopted by the Office of Indigent Defense Services. Section 5 of the bill would add language to the new G.S. 35A-1245(c) to correspond with this language that applied when the provision was previously codified in G.S. 7A-451(a)(10).

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

Ben Popkin, counsel to Senate Judiciary II, substantially contributed to this summary.

S0592e1-SMSV-CSSV-29

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 592

Short Title:	Indigent Defense Technical Revisions.	(Public)
Sponsors:	Senators Kinnaird; Hartsell, Rand, and Weinstein.	
Referred to:	Judiciary II.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL REVISIONS TO THE LAW GOVERNING INDIGENT DEFENSE AND ENTITLEMENT TO COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(d)(1) reads as rewritten:

"(d) (1) In any criminal case in which the liability for costs, fines, restitution, attorney's fees, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

a. Sums in restitution to the victim entitled thereto;
b. Costs due the county;
c. Costs due the city;
d. Fines to the county school fund;
e. Sums in restitution prorated among the persons other than the victim entitled thereto;
f. Costs due the State;
g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1.

(2) Sums in restitution received by the clerk of superior court shall be disbursed when:

a. Complete restitution has been received; or
b. When, in the opinion of the clerk, additional payments in restriction will not be collected; or
c. Upon the request of the person or persons entitled thereto; and
d. In any event, at least once each calendar year."

SECTION 2. G.S. 7A-451(a) reads as rewritten:

"(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;
(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars ($500.00) or more, or has been sentenced to a term of imprisonment;
(4) A hearing for revocation of probation;
(5) A hearing in which extradition to another state is sought;
(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.
(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;
(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;
(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;
(10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and applicable to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of April 17, 2003.
(11) A proceeding for the provision of protective services according to Chapter 108A, Article 6 of the General Statutes;
(12) In the case of a juvenile alleged to be ~~neglected~~ abused, neglected, or dependent under ~~Chapter 7A, Article 23~~ Subchapter I of Chapter 7B of the General Statutes;
(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;
(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;
(15) An action brought pursuant to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes to terminate an indigent person's parental rights.
(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(17) A proceeding involving limitation on freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145."

SECTION 3. G.S. 7A-455.1 reads as rewritten:

"**§ 7A-455.1. Appointment fee in criminal cases.**

(a) Each person ~~who requests the appointment of~~ for whom counsel is appointed in a criminal case at the trial level shall pay to the clerk of court ~~a nonrefundable~~ an appointment fee of fifty dollars ~~($50.00) at the time of appointment.~~ ($50.00). No fee shall be due ~~if the court finds that the person is not entitled to the appointment of counsel.~~ unless the person is convicted.

(b) ~~The appointment fee in this section is due regardless of the outcome of the proceedings. If paid in full at the time of appointment, the fifty dollars ($50.00) paid shall be credited against any amounts the court determines to be owed for the value of legal services rendered to the defendant. If not paid in full at the time of appointment,~~ ~~the~~ The fifty-dollar ($50.00) fee shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation. ~~If the fee is not paid in full at the time of appointment, and no attorneys' fees are found due when the action is finally determined at the trial level, a judgment shall be entered, docketed, and indexed pursuant to G.S. 1-233 in the amount of fifty dollars ($50.00) and shall constitute a lien as prescribed by the general law of the State applicable to judgments.~~

~~(c) The attorney representing the defendant when the action is finally determined at the trial level shall advise the court whether the appointment fee required by this section has been paid.~~

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each ~~affidavit of indigency submitted by a defendant or other determination of indigency by the court,~~ attorney appointment, regardless of the number of cases ~~for~~ to which ~~an~~ the attorney ~~is appointed.~~ was assigned. An additional appointment fee shall not be assessed for any additional cases thereafter assigned to ~~an~~ the attorney if any cases ~~for which a defendant was previously assessed an appointment fee~~ to which the attorney was appointed are still pending. Nor shall an additional appointment fee be assessed if the charges for which an attorney was appointed ~~are~~ were dismissed and subsequently ~~refiled or if the defendant is appointed an attorney on appeal on a matter for which the defendant was assessed an appointment fee at the trial level.~~ refiled, or if the charges for which an attorney was appointed were reassigned to a different attorney.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars ($45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

SECTION 4. G.S. 15A-1343(e) reads as rewritten:

"(e) Costs of Court and Fees for Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and ~~costs~~ all fees for appointed ~~counsel or public defender~~ counsel, public defender, or counsel employed by or under contract with the Office of Indigent Defense Services in the case in which ~~he~~ the person was convicted. The ~~cost of~~ fees for appointed ~~counsel or public defender~~ counsel, public defender, or other counsel services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs and fees to be repaid and the method of payment."

SECTION 5. G.S. 35A-1245(c) reads as rewritten:

"(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ~~ward.~~ ward in accordance with rules adopted by the Office of Indigent Defense Services."

SECTION 6. This act is effective when it becomes law.

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 23, 2005

TO: Senator Kinnaird

FROM: Brenna Erford
Fiscal Research Division

RE: Senate Bill 592 (Proposed Committee Substitute)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund		***No Impact to General Fund***			
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of Indigent Defense Services

EFFECTIVE DATE: When law.

BILL SUMMARY: Makes technical revisions to the law governing indigent defense and entitlement to counsel. Revises GS 7A-455.1 requiring appointment fee of $50 to be charged only to indigent who is convicted, to comply with the NC Supreme Court decision of State v. Webb, 358 N.C. 92 (2004).

ASSUMPTIONS AND METHODOLOGY: SB 592 makes technical and conforming changes to current law. The Appointment Fee language in Section 3 of the bill makes changes to G.S. 7A-455.1 to bring the statute into conformity with the holding in *State v. Webb.* Subsection (a) would

clarify that the $50 fee is assessed only when the defendant is convicted and deletes references relating to when a defendant fails to pay the fee at the time of appointment since the fee may only be assessed at conviction.

These changes will have no fiscal impact.

SOURCES OF DATA: Office of Indigent Defense Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

Sen. Kinnaird
Sen. Apodaca moves fav. report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 593

Judiciary II Committee Substitute Adopted 4/19/05

Short Title: Copy Costs in Indigent Cases. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO EXEMPT ATTORNEYS APPOINTED TO REPRESENT INDIGENT CLIENTS FROM THE FEE CHARGED BY THE CLERK OF COURT FOR PREPARING COPIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-308 is amended by adding a new subsection to read:

"(b1) The fees set forth in subdivision (12) of subsection (a) of this section are not chargeable when copies are requested by an attorney who has been appointed to represent an indigent person at State expense, if the request is made in connection with the appointed case and during the duration of the appointment."

SECTION 2. This act becomes effective July 1, 2005, and applies to fees charged on or after that date.

SENATE BILL 593:
Copy Costs in Indigent Cases

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	Trina Griffin
Version:	Second Edition		Committee Counsel

*SUMMARY: **Senate Bill 593 would provide an exception to the collection of certain miscellaneous fees by the clerk of superior court. The clerk would not charge for preparing copies requested by counsel appointed to represent an indigent person at State expense so long as the request is made in connection with the appointed case and is during the period of appointment.***

CURRENT LAW: G.S. 7A-308 provides for the collection of miscellaneous fees and commissions by clerks of superior court and remittance of these fees to the State for support of the General Court of Justice. Preparation of copies is listed among these fees at $2.00 for the first page and .25 for each additional page.

Many clerk's offices currently waive the fee for preparing copies for counsel appointed in indigent cases. When the fee is charged, the cost is billed to the Office of Indigent Defense Services by the appointed counsel for reimbursement from State funds. The money paid by appointed counsel is deposited by the clerks into the State financial management system for remittance to the State General Fund.

BILL ANALYSIS: Senate Bill 593 would exempt from collection by the clerk fees for copies made at the request of counsel appointed to represent an indigent person at State expense. The bill would limit copies provided without charge to only those that are made at the request of appointed counsel in connection with the appointed case and during the duration of the appointment. Providing for appointed counsel working on indigent cases to be exempt from collection of copy costs would simplify the system and avoid any associated transaction costs.

EFFECTIVE DATE: The act would be effective on July 1, 2005 and would apply to fees charged on or after that date.

Ben Popkin, counsel to Senate Judiciary II, substantially contributed to this summary.

S0593e2-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 593 (Second Edition)

SHORT TITLE: Copy Costs in Indigent Cases.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No estimate available: See Assumptions and Methodology**				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of Indigent Defense Services

EFFECTIVE DATE: July 1, 2005

BILL SUMMARY: Senate Bill 593 would provide an exception to the collection of certain miscellaneous fees by the clerk of superior court. The clerk would not charge for preparing copies requested by counsel appointed to represent an indigent person at State expense so long as the request is made in connection with the appointed case and is during the period of appointment.

ASSUMPTIONS AND METHODOLOGY: Many clerk's offices currently waive the fee for preparing copies for counsel appointed in indigent cases. When the fee is charged, the cost is billed to the Office of Indigent Defense Services by the appointed counsel for reimbursement from State funds. The money paid by appointed counsel is remitted by the clerk to the State General Fund.

There is no data available on which to base a projection for this legislation. Since it is already current practice for most clerks to waive the fee for indigent cases, it is likely this bill would have little, if any, fiscal impact.

SOURCES OF DATA: Office of Indigent Defense Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

Douglas Holbrook

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: May 24, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

Sen. Kinnaird
Sen. Weinstein moved for fav. report.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 594
Judiciary II Committee Substitute Adopted 4/19/05
PROPOSED COMMITTEE SUBSTITUTE S594-CSSV-28 [v.2]

5/17/2005 4:26:46 PM

Short Title: Recoupment by Court-Appointed Attorneys. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED no title change

AN ACT TO AMEND THE LAW GOVERNING RECOUPMENT FOR LEGAL SERVICES PROVIDED TO INDIGENT PERSONS WHO ARE FINANCIALLY ABLE TO PAY A PORTION OF THE VALUE OF THOSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-455 reads as rewritten:

"**§ 7A-455. Partial indigency; liens; acquittals.**

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for ~~him~~that person by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, ~~he~~the court shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The money value of services rendered by the public defender and the appellate defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. A district court judge shall direct entry of judgment for actions or proceedings finally determined in the

district court and a superior court judge shall direct entry of judgment for actions or proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceedings petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered. No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered for the value of legal services rendered to perfect an appeal to the Appellate Division or in postconviction proceedings, if all of the matters that the person raised in the proceeding are vacated, reversed, or remanded for a new trial or resentencing.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

SECTION 2. G.S. 7B-603 reads as rewritten:

"**§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 shall be paid a reasonable fee fixed by the court or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(a1) The court may require payment of the fee for an attorney or guardian ad litem appointed pursuant to G.S. 7B-601 from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse,

neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. If the party is ordered to reimburse the State for attorney or guardian ad litem fees and fails to comply with the order at the time of disposition, the court shall file a judgment against the party for the amount due the State.

(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(b1) The court may require payment of the fee for an attorney appointed pursuant to G.S. 7B-602 or G.S. 7B-1101 from the respondent. In no event shall the respondent be required to pay the fees for a court-appointed attorney in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the respondent's rights have been terminated. At the dispositional hearing or other appropriate hearing, the court shall make a determination whether the respondent should be held responsible for reimbursing the State for the respondent's attorneys' fees. This determination shall include the respondent's financial ability to pay.

If the court determines that the respondent is responsible for reimbursing the State for the respondent's attorneys' fees, the court shall so order. If the respondent does not comply with the order at the time of disposition, the court shall file a judgment against the respondent for the amount due the State.

~~(c) The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21.~~"

SECTION 3. G.S. 7A-450.3 reads as rewritten:

"**§ 7A-450.3. Determination of responsibility at hearing.**

At the dispositional, sentencing or other hearing of the person who is less than 18 years old or who is at least 18 years old but remains dependent on and domiciled with a parent or guardian, the court shall make a determination whether the parent, guardian or trustee should be held responsible for reimbursing the State for the person's attorney or guardian ad litem fees. This determination shall include the financial situation of the parent, guardian or trustee, the relationship of responsibility the parent, guardian or trustee bears to the person and any showings by the parent, guardian or trustee that the person is emancipated or not dependent. The test of the party's financial ability to pay is the test applied to appointment of an attorney in cases of indigency. Any provision of any deed, trust or other writing, which, if enforced, would defeat the intent or purpose

of this section is contrary to the public policy of this State and is void insofar as it may apply to prohibit reimbursement to the State.

If the court determines that the parent, guardian or trustee is responsible for reimbursing the State for the attorney or guardian ad litem fees, the court shall so order. If the party does not comply with the order ~~within 90 days,~~ at the time of disposition, the court shall file a judgment against him for the amount due the State."

SECTION 4. Sections 2 and 3 of this act become effective October 1, 2005, and applies to the appointment of counsel on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 594:
Recoupment by Court-Appointed Attorneys

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	Trina Griffin
Version:	PCS to Second Edition S594-CSSV-28		Committee Counsel

SUMMARY: Senate Bill 594 would amend the law governing recoupment for legal services provided to indigent persons who are financially able to pay a portion of the value of the services provided as follows:

- ***It would exempt indigent persons from paying for legal services rendered to perfect an appeal to the appellate division or in post-conviction proceedings if all of the matters raised are vacated, reversed or remanded for a new trial or resentencing.***
- ***It would allow the court to hold a parent responsible for payment of an attorney or guardian ad litem in cases where a juvenile has been adjudicated to be abused, neglected or dependent or where the parent's rights have been terminated.***

The Proposed Committee Substitute makes two changes. It removes new language that would have provided parents ordered to reimburse the State for attorney or guardian ad litem fees a 90-day period in which to pay before a judgment was entered against them. The PCS requires the parent to pay at the time of disposition. It makes a similar change to the recoupment statute regarding reimbursement for appointed counsel for juveniles.

BILL ANALYSIS:

Section 1: North Carolina, like every jurisdiction, has an irrevocable constitutional duty to provide court-appointed counsel to an indigent defendant once he requests it. However, the State is not required to absorb the expenses of providing such counsel when the defendant has acquired the financial ability to pay. The current recoupment statute appears to direct entry of judgment in criminal appeals whenever the defendant's conviction is upheld.[1] It is unclear, however, whether this statute directs entry of civil judgment when the only relief available in the appellate courts is a new sentencing hearing. Section 1 of the bill would revise G.S. 7A-455(c) to clarify that recoupment of fees for legal services rendered is not appropriate when the appellant prevailed on the issues raised on appeal.

Section 2: Current statutes do not appear to authorize recoupment when counsel is provided to an adult in an abuse, neglect, or dependency, or termination of parental rights proceeding. G.S. 7B-603 states that a parent may be held responsible for counsel fees if the child is found to have been abused, neglected, or dependent or the parent's rights are terminated, thus suggesting that a parent may be required to pay for counsel services provided to the parent. However, this statute also states that the court should follow the procedures for recoupment in G.S. 7A-450.1, 7A-450.2, and 7A-450.3, which authorize the court to recoup fees for appointed counsel for services provided to a minor. Section 2 of the bill would clarify that a parent may be held responsible for paying the fees of a court-appointed attorney or guardian ad litem in those cases where a juvenile has been adjudicated to be abused, neglected or dependent, or in cases where the parent's rights have been terminated.

[1] G.S. 7A-455(c).

The original bill required persons ordered to reimburse the State for attorney or guardian ad litem fees to do so within 90 days, or have a judgment against them filed by the court. This 90-day period is consistent with language in G.S. 7A-450.3, which provides for the recoupment of attorney's fees from a parent where counsel or a guardian ad litem was appointed to represent a juvenile in an abuse, neglect, or dependency hearing or termination of parental rights hearing. However, the AOC indicates that this 90-day provision has proven unworkable for the clerks of court, and many clerks are entering judgment at the time of disposition. Therefore, AOC has recommended the language in the PCS, which would require payment at the time of disposition. If a parent is unable to make payment at the time of disposition, the clerk would enter a judgment against the parent for the amount owed. This change is made to both recoupment statutes – that is, where the parent is ordered to reimburse the State for appointed counsel fees for work performed on behalf of the minor and for appointed counsel fees for work performed on behalf of the parent.

EFFECTIVE DATE: The PCS changes the effective date as well. Sections 2 and 3 would become effective October 1, 2005, and apply to appointment of counsel on or after that date. The remainder of the act is effective when it becomes law.

Ben Popkin, counsel to Senate Judiciary II, substantially contributed to this summary.

S0594e2-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 594

Judiciary II Committee Substitute Adopted 4/19/05

Short Title: Recoupment by Court-Appointed Attorneys. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING RECOUPMENT FOR LEGAL SERVICES PROVIDED TO INDIGENT PERSONS WHO ARE FINANCIALLY ABLE TO PAY A PORTION OF THE VALUE OF THOSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-455 reads as rewritten:

"**§ 7A-455. Partial indigency; liens; acquittals.**

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for ~~him~~that person by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, ~~he~~the court shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The money value of services rendered by the public defender and the appellate defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. A district court judge shall direct entry of judgment for actions or proceedings finally determined in the district court and a superior court judge shall direct entry of judgment for actions or proceedings originating in, heard on appeal in, or appealed from the superior court.

Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceedings petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered. No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered for the value of legal services rendered to perfect an appeal to the Appellate Division or in postconviction proceedings, if all of the matters that the person raised in the proceeding are vacated, reversed, or remanded for a new trial or resentencing.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

SECTION 2. G.S. 7B-603 reads as rewritten:

"**§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 shall be paid a reasonable fee fixed by the court or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(a1) The court may require payment of the fee for an attorney or guardian ad litem appointed pursuant to G.S. 7B-601 from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless

the parent's rights have been terminated. If the party is ordered to reimburse the State for attorney or guardian ad litem fees and fails to comply within 90 days, the court shall file a judgment against the party for the amount due the State.

(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(b1) The court may require payment of the fee for an attorney appointed pursuant to G.S. 7B-602 or G.S. 7B-1101 from the respondent. In no event shall the respondent be required to pay the fees for a court-appointed attorney in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the respondent's rights have been terminated. At the dispositional hearing or other appropriate hearing, the court shall make a determination whether the respondent should be held responsible for reimbursing the State for the respondent's attorneys' fees. This determination shall include the respondent's financial ability to pay.

If the court determines that the respondent is responsible for reimbursing the State for the respondent's attorneys' fees, the court shall so order. If the respondent does not comply with the order within 90 days, the court shall file a judgment against the respondent for the amount due the State.

~~(c) The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21.~~"

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

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 24, 2005

TO: Senator Kinnaird

FROM: Brenna Erford
Fiscal Research Division

RE: Senate Bill 594 (Proposed Committee Substitute)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	No estimate available: see Assumptions and Methodology				
POSITIONS (cumulative):					

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

EFFECTIVE DATE:

BILL SUMMARY: Senate Bill 594 would amend the law governing recoupment for legal services provided to indigent persons who are financially able to pay a portion of the value of the services provided. It would exempt indigent persons from paying for legal services rendered to perfect an appeal to the appellate division or in post-conviction proceedings if all of the matters raised are vacated, reversed or remanded for a new trial or resentencing. It would allow the court to hold a parent responsible for payment of an attorney or guardian ad litem in cases where a juvenile has been adjudicated to be abused, neglected or dependent or where the parent's rights have been terminated.

ASSUMPTIONS AND METHODOLOGY: SB 594 gives the court the discretion to determine that an offender is capable of paying some, but not all, of their attorney cost, and that they may require the offender pay a partial fee. While the bill may improve recoupment rates, there is no available information on which to base any estimate.

SOURCES OF DATA: Office of Indigent Defense Services

TECHNICAL CONSIDERATIONS: None

Sen. Kerr
Sen. Allran amends and moves for adoption of amendment.
Kathy Matthews, DMV, answered questions

GENERAL ASSEMBLY OF NORTH CAROLINA
Sen. Soles amends pg 5, line 31 – amendment passed
SESSION 2005

Matt Osborne, Admin. Office of the Courts, answered questions.

S D

SENATE BILL 1087

Judiciary II Committee Substitute Adopted 4/19/05
PROPOSED COMMITTEE SUBSTITUTE S1087-CSRC-30 [v.8]

5/16/2005 10:18:40 AM

Short Title: Ltd Driving Privileges/Certain Rvk'd Licenses. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN PERSONS WHOSE DRIVERS LICENSES HAVE BEEN REVOKED TO OBTAIN A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 is amended by adding anew section to read:

"**§ 20-20.1. Limited driving privilege for certain revocations.**

(a) Definitions. – As used in this section, the following definitions apply:

(1) Impaired driving license revocation. – Defined in G.S. 20-28.2(a).

(2) Limited driving privilege. – A judgment issued by a court authorizing a person with a revoked drivers license to drive under the terms and conditions authorized under this section.

(3) Nonfleet private passenger motor vehicle. – Defined in Article 40 of Chapter 58 of the General Statutes.

(4) Nonstandard working hours. – Any time other than 6 A.M. until 8 P.M. on Monday through Friday.

(5) Standard working hours. – Any time from 6 A.M. until 8 P.M. on Monday through Friday.

(b) Eligibility. – A person whose licensing privileges have been revoked is eligible for a limited driving privilege issued under this section if all of the following apply:

(1) The person has no unresolved or outstanding motor vehicle offenses or charges.

(2) The person has complied with the revocation of the applicant's licensing privileges for at least six months immediately preceding the application for a limited privilege under this section.

(3) The person is not disqualified under subdivision (2) of this subsection.

(4) The court, in its discretion, finds good cause to issue a limited driving privilege.

(c) Ineligibility. – The following persons are not eligible to receive a limited driving privilege under this section:

(1) A person who is eligible to receive limited driving privileges under any other provision of law.

(2) A person whose license is revoked for any impaired driving license revocation.

(3) A person whose license is revoked for an impaired driving license revocation offense and who has subsequently been found guilty of violating G.S. 20-28.

(4) A person whose license is revoked under G.S. 20-17.1.

(5) A person whose license is revoked in another state for any reason.

(6) A person to whom the Division has refused to issue a license under G.S. 20-9(e).

(7) A person who previously received a limited driving privilege under this section within 3 years of applying for another privilege under this section. For purposes of determining whether this subdivision applies, the required 3-year waiting period shall be measured from the date the previous limited driving privilege expired as set out in the order of the previous limited driving privilege.

(d) Scope of limited driving privilege. –

(1) A limited driving privilege must restrict the holder to essential driving related the following purposes.

a. The person's employment.

b. Necessary maintenance of the person's household.

c. Emergency medical care for the person or for an immediate family member of the person who resides in the same household with the person.

(2) Any driving that is not related to the purposes authorized in subdivision (1) of this subsection is unlawful even though done at times and upon routes that may be authorized by the privilege. Except as provided in subdivision (3) of this subsection, all driving must be for a purpose and done within the restrictions specified in the privilege.

(3) If a privilege is granted for emergency medical care, driving related to that privilege is authorized at any time and without restriction as to routes.

(e) Jurisdiction. – An application for a limited driving privilege made under this section shall be a civil action, shall be filed in district court in the county of the person's residence as reflected by the Division's records, and shall be a separate action from any action that resulted in the revocation.

(f) Application for limited driving privileges. – The application for a limited driving privilege requested under this section must include information regarding all of

the convictions or violations that resulted in the revocation of the person's driving privileges. The application must also include a sworn statement that there are no outstanding or unresolved charges or violations that could result in the revocation of the person's driving privileges, and that the person has complied with the most recent order of revocation for at least the six months immediately preceding the person's application for a limited driving privilege under this section.

(g) Driving for employment-related purposes in standard working hours. – The court may authorize driving for employment-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the person is not required to drive for essential employment-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (i) of this section. The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(h) Driving for employment-related purposes during nonstandard working hours. – If the person is required to drive during nonstandard working hours for an essential employment-related purpose, the person must provide to the court documentation of that fact before the court may authorize the person to drive for that purpose during those hours. If the person is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the court determines that it is necessary for the person to drive during nonstandard working hours for an employment-related purpose, the court may authorize the person to drive subject to these limitations:

(1) If the person is required to drive to and from a specific place of employment at regular times, the limited driving privilege must specify the general times and routes in which the person will be driving to and from work, and restrict driving to those times and routes.

(2) If the person is required to drive to and from work at a specific place, but is unable to specify the times during which the driving will occur, the limited driving privilege must specify the general routes which the person will be driving to and from work, and restrict the driving to those general routes.

(3) If the person is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the person will be driving, and restrict driving to those times and within those boundaries.

(4) If the person can specify neither the times nor places in which the person will be driving to and from work, or if the person is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic

boundaries in which the person will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the person's place of employment or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(i) Driving for other than employment-related purposes. – A limited driving privilege may not allow driving for maintenance of the household except during standard working hours. The limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court.

(j) Proof of financial responsibility required. –

(1) A person applying for limited driving privileges under this section must provide to the court proof of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

a. A written certificate or electronically-transmitted facsimile of the certificate issued by an insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

b. A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

(2) Subdivision (1) of this subsection shall not apply to persons who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. If this subdivision applies, the person shall sign a written certificate to that effect. The Division shall furnish the certificate. Any material misrepresentation made by the person on the certificate shall be grounds for the court to revoke the limited driving privileges granted under this section.

(3) The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

(4) A limited driving privilege shall be conditioned upon the maintenance of financial responsibility during the period of the limited driving privilege.

(5) Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(k) Other mandatory and permissive conditions or restrictions. – The court shall include in all limited driving privileges a restriction that the holder of the privilege not consume alcohol while driving or drive at any time while the holder has remaining in the holder's body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The court may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(l) Copy of limited driving privilege to Division; action taken if privilege invalid. – The clerk of court must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section or that does not contain the limitations required by law is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege.

(m) Term of privilege. –

(1) Expect as provided in subdivision (2) of this subsection, the term of a limited driving privilege issued under this section shall not be less than six months nor more than twelve months at the court's discretion. The court shall determine the length of the term based upon the severity of the charges or violations that resulted in the revocation, the number of charges or violations that resulted in the revocation, and whether the person's driving privileges have been revoked on other occasions prior to the revocation that is the subject of this application.

(2) The term of a limited driving privilege granted under this section to a person who ~~at any time~~ Within the preceding 3yrs has previously received a limited driving privilege under any provision of law shall be no less than twelve months. Sales - (3yrs or 7yrs)

(n) Modification or termination of privileges. – A court may modify or revoke a person's limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege. The judge must indicate in the order of modification or revocation the reasons for the order, or the judge must make specific findings indicating the reason for the order and those findings must be entered in the record of the case. The court shall issue an order of modification or revocation and the clerk shall send a copy of the order to the Division

(o) Effect of violation of restriction. – Any violation of the limited driving privilege issued under this section shall constitute the offense of driving while license

has been suspended under G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege shall be suspended pending the final disposition of the charge.

(p) Reinstatement of driving privileges. – A person who receives a limited driving privilege under this section and who also complies with all the requirements of the privilege for the entire term of the privilege may, upon the completion of the term of the privilege, apply to the court for an order stating the same. If the court issues an order under this subsection, the clerk shall send a copy to the Division. The Division shall reinstate the drivers license of the person named in the order provided the person meets all the other eligibility requirements of this Article."

SECTION 2. G.S. 7A-305 is amended by adding a new subsection to read:

"(a3) In an action for a limited driving privilege filed under G.S. 20-20.1, a cost of one hundred dollars ($100.00) shall be assessed against the person filing the action. Costs collected by the clerk under this subsection shall be remitted to the State Treasurer. The State Treasurer must credit one-half of the assessed cost to the Highway Fund and the remaining one-half of the assessed cost to the Court Information Technology Fund established under G.S. 7A-343.2. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

SECTION 3. This act becomes effective December 1, 2005.

SENATE BILL 1087:
Ltd Driving Privileges/Certain Rvk'd Licenses.

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 18, 2005
Introduced by:	Sen. Kerr	**Summary by:**	Kory Goldsmith Staff Attorney
Version:	PCS to Second Edition S1087-CSRC-30		

SUMMARY: ***SB1087 would allow certain persons with revoked drivers licenses to obtain limited driving privileges. It would also allow them to regain their license in a shorter period of time than is currently allowed.***

The Proposed Committee Substitute substantially rewrites the 2nd Edition of Senate Bill 1087 to provide a specific procedure for obtaining these driving privileges, to more clearly define who would be eligible to receive the limited privilege, and to impose a charge for court costs.

The act would become effective December 1, 2005.

CURRENT LAW: G.S. 20-16 lists a number of offenses for which the Division of Motor Vehicles (DMV) may revoke a person's driver's license. These include the accumulation of 12 or more drivers license points in a three year period, fraudulent use of a license, any offense committed in another state that if committed in this State would be grounds for suspension or revocation, and certain speeding violations[1]. G.S. 20-17 lists a number of offenses for which the DMV is required to revoke a person's driver's license. These include manslaughter resulting from the operation of a motor vehicle, impaired driving under G.S. 20-138.1 or 138.2[2], failure to stop and render aid, two convictions of reckless driving is a 12 month period, and conviction of assault with a motor vehicle. G.S. 50-13.12 and G.S. 110-142.2 both authorize a court to revoke a driver's license of a person who is delinquent with their child support payments. There are numerous other grounds for license revocation (see attached list). By far the most license revocations[3] occur under G.S. 20-24.2(a)(1) as a result of a failure to appear for a trial or hearing on a traffic offense. The next most common reason for revocation is the offense of driving while license revoked under G.S. 20-28.[4]

The amount of time a license is revoked depends upon the specific grounds for the revocation. The revocation periods may be as little as 30 days, or last indefinitely if the person fails to resolve the underlying matter that led to the specific revocation. If no specific revocation period is provided, the period of revocation is one year[5]. The license is revoked for 2 years upon a second offense, and permanently revoked upon conviction of a third offense.[6] A person who is convicted of driving while license revoked is also guilty of a Class 1 misdemeanor and the license is revoked for an additional year.

There are a number of provisions under current law under which a court may grant a limited driving privilege during the term of a revocation. (See attached). These include certain limited DWI offenses, certain speeding offenses, and revocations related to failure to pay child support.

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[1] See also G.S. 20-16.1.
[2] G.S. 20-16.2 requires the revocation of a license for refusing to take a breath test.
[3] DMV reports 324,662 revocations in 2004, 306,226 revocations in 2003, and 304,064 revocations in 2002.
[4] DMV reports 68,361 revocations in 2004, 62,355 revocations in 2003, and 63,355 revocations in 2002.
[5] G.S. 20-19(f).
[6] G.S. 20-28(a).

BILL ANALYSIS:

Section 1 creates a new statute G.S. 14-20.1. It would allow persons whose drivers licenses have been revoked for certain specified offenses to obtain limited driving privileges if all of the following apply:

- The person has no other outstanding or unresolved offenses or charges.
- The person has complied with the current revocation for at least the last 6 months without any violation.
- The court, in its discretion, finds good cause to issue a limited driving privilege.

The following persons would not be eligible for the privilege:

- Persons who are eligible for limited driving privileges under other provisions of the law.
- Persons whose licenses are revoked due to an impaired driving offense.
- Persons whose licenses are revoked due to mental incompetence or drug or alcohol addiction.
- Persons whose licenses have been revoked in another state.
- Persons to whom the DMV refuses to issue a license due to physical or mental diseases that prevent them from exercising ordinary care in the operation of a vehicle.
- A person who received a limited privilege under this law within 3 years of applying for another privilege under this law.

A person seeking a limited driving privilege under this section would file a civil action in the district court of the county where the person resides according to DMV records. The privilege would be limited to essential driving for employment, maintenance of the household and emergency medial care. The specifics of the privilege and other conditions are contained in subsections (f) - (l) of the bill, and are patterned after existing law regarding limited driving privileges for DWI offenses in G.S. 14-179.3.[7] They include a requirement that the person applying for the privilege had adequate liability and property damage coverage.

If granted, the privilege would last for between 6 and 12 months, at the discretion of the court. If the holder of the privilege violated the privilege during that period the violation would be considered a violation of G.S. 20-28 (driving while license revoked), and the privilege would be suspended pending a final disposition of a charge. If the holder did not violate the privilege during the term of the privilege, the holder could apply to DMV to issue a new license.

Section 2 amends G.S. 7A-305 by adding a new subsection. The provision assesses a court cost of $100 for persons filing for a limited driving privilege under G.S. 20-20.1. The costs are remitted to the State Treasurer. One half of the amount will be credited to the Highway Fund and the remaining one half will be remitted to the Court Information Technology Fund. These costs are in addition to any filing fee or other court costs assessed under G.S. 7A-305.

EFFECTIVE DATE: The act would become effective December 1, 2005. It would be applicable to persons whose licenses have been revoked prior to that date. ***S1087e2-SMRC-CSRC-30***

[7] Subsection (l) provides that if DMV determines the court has issued a privilege, but law does not authorize the privilege, DMV must notify the court and also indicate the DMV records that the privilege is void. A similar provision in G.S. 20-179.3 has been challenged and held to violate the separation of powers provision of the North Carolina. See State v. Bowes, 159 N.C. App. 18. This matter is currently on appeal to the North Carolina Supreme Court.

Suspension statutes that require the loss of driving privilege.[8]

Description Statute	Suspension Statute	Violation Description
20-179.4	20-179.4	Failure to Complete Community Service
20-16.5	20-16.5	Civil Revocation
20-17.8(f)	20-17.8(f)	Violation of Ignition Interlock
50-13.12	50-13.12	Fail to Pay Child Support
15A-1331A	15A-1331A	Forfeiture of License Privileges
20-141(j2)	20-17(2)(10)	Speeding in a Work Zone
20-138.7	20-17(12),19(g1)	Open Container After Consuming
14-72(a)	20-17(a)), 19(f)	Larceny of Motor Fuel
20-30(2)	20-16(a)(6).19-(c)	Allow Use of License or Permit
* 20-141.3(b)	20-141.3(e)	Willful Racing or Speed Competition
* 18B-406,	20-16(a)(8),19-(a)	Transporting Intoxicants
20-28(a)	20-28	Driving While License Revoked
20-166(a)	20-17(a)(4), 19(f), 166(e)	Felony Hit and Run PI
14-18	20-17(a)(I), 19(f)	Involuntary Manslaughter
20-1669(b), 14-15	20-17(a)(4), 19(f)	Leaving Scene of Accident PI
14-18	20-17(a)(1), 19(f)	Manslaughter
20-141.3(a)	20-141.3(d)	Prearranged Speed Competition
* 20-30(I)	20-16(a)(6), 19(c)	Improper Use of License/Fictitious License
20-30(3)	20-16(a)(6), 19(c)	Unlawful Use of License
20-30(5)	20-17(a)(8)	Fraudulent License Permit
20-30(5)	20-17(a)(8)	Obtain Driver's License By Fraud
20-30(5)	20-17(a)(8)	Allowing False Application
20-4.20	20-4.20	Failure to Comply with Out of State Citation
* 20-16(a)(7)	20-17,20-26	Out of Sate Conviction
20-141.4(a2)	20-17(a)(9), 19(f)	Misdemeanor Death by Vehicle
20-141(j)	20-17(a)(10), 19(f)	Speeding to Elude (Prior to 12-1-1997
20-17(11)	20-19(c)	Assault With Motor Vehicle
20-138.1	20-19(e)	Driving While Impaired 3rd Offense
20-138.1	20-17(a)(2), 19(c1)	Driving While Impaired 1st Offense
20-138.1	20-19(d)	Driving While Impaired 2nd Offense
20-138.1	20-17(a)(2), 19(c1)	Aiding & Abetting Impaired Driving
* 20-12.1	20-16(8a), 19(f)	Instructing While Under the Influence
20-141.4(A1)	20-17(a)(9), 19(I)	Death by Vehicle Involving DWI
20-138.3	20-13.2	Driving After Consuming <21
18B-302	20-17.3	Violation of ABC Laws
20-28(a)	20-28	Driving While License Revoked
20-24.1	20-24.1	Failure to Appear
20-24.1	20-24.1	Failure to Pay
20-17(a)(3)	20-19(f)	Felony Using a Motor Vehicle
14-17	20-19(I)	2nd Degree Murder – DWI

[8] Compiled and provided by the Division of Motor Vehicles.

20-138.5	20-138.5(d)	Habitual Impaired Driving
20-141.5	20-141.5(d)	Misdemeanor Eluding Arrest
20-141.5	20-141.5(d)	Felony Eluding Arrest (2 Aggravating Factors)
20-141.5(b)	20-141.5(d)	Felony Eluding Arrest (3 Aggravating Factors)
20-138.2A	20-17(a)(13)	Driving CMV After Consuming
138.2B	20-17(a)(14)	Driving School Bus/Activity Bus/Childcare Vehicle
20-166(e)	20-166	Hit and Run – Fail to Stop PI (2 yr. Revocation)
20-17(a)(15)	20-13.2(c2)(d), 19(f)	Property Damage by Explosive
14-69.2(c)	20-13.2(c2)(d),17(a)(15)	False Bomb Report
14-69.2(c)	20-13.2(c2), 17(a)(15)	Hoax False Bomb-Public Bldgs.
14-268.9(b1)	20-13.2(c2)(d),17(a)(15)	Possession of Explosives On Education Property
14-69.2(c1), 269.2(c1)	20-13.2(c2)(d),17(a)(15)	Aid Minor Possess Explo.Educ.Prop.
18B-302(c)	20-17.3	Aid Underage Purchase Liquor
18-302(b)	20-17.3	Purchase MTBV – by and not 19/20
20-160.1(a)	20-160.1(a)	Fail to Yield – Serious Injury
* 20-16.2	20-16.2	Refuse Chemical Test
* 20-19(c3)	20-19(c3)	Violation of Alcohol Concentration Restriction
* 20-17.8(g)	20-17.8(g)	Violation of Ignition Interlock Restriction
* 20-16	20-16	Point Accumulation
* 20-16	20-19	Speedings
20-16.1	20-16.1	Speedings
* 20-13	20-16(a)(7)	Provisional Licensee Moving W/N 12 mos.
20-16(c)		Violation Of Probation
* 20-16(a)(8b)	20-19(c)	Driving While Impaired – Military Court
* 20-16(a)(7)	20-19(c)	Driving While Impaired – Out of State – 1st Offense

- Notations indicated by asterisk represent discretionary suspensions.

Current Limited Privilege Criteria

20-16(e1)	Speeding
20-16.1(b)	Excess speed
20-16.2(e1)	Refusal
20-16.5	Civil Revocation
20-138.3	Consuming alcohol less than 21 years of age
20-138.7	Transporting open container of alcohol
20-141.5	Felony elude
20-179.3	Impaired Driving
110-142.2 or 50-13.12	Child Support
20-166	Hit and Run PI

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 18, 2005

TO: Senator Kerr

FROM: Bob Weiss
Fiscal Research Division

RE: PCS to Second Edition S1087-CSRC-30 (v.8) Ltd Driving Privileges/Certain Rvk'd Licenses

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Highway Fund	**$3,500,000**	**$6,000,000**	**$6,000,000**	**$6,000,000**	**$6,000,000**
Court Information Technology Fund	**$3,500,000**	**$6,000,000**	**$6,000,000**	**$6,000,000**	**$6,000,000**
EXPENDITURES:					
DMV (Highway Fund) Information Technology	**$516,832**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles (Highway Fund), Courts

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: S 1087 would allow certain persons with revoked drivers licenses to obtain limited driving privileges. It would also allow them to regain their license in a shorter period of time than is currently allowed.

The Proposed Committee Substitute substantially rewrites the 2nd Edition of Senate Bill 1087 to provide a specific procedure for obtaining these driving privileges, to more clearly define who would be eligible to receive the limited privilege, and to impose a charge for court costs of $100, half of which will go to the Court Information Technology Fund and half to the Highway Fund. *(Source: Bill Summary, Research Division)*

ASSUMPTIONS AND METHODOLOGY: A very rough estimate made in conjunction with DMV indicates that approximately 120,000 persons each year might be able to use the opportunities created in this bill. Each would pay $100, half of which would go to the Courts and half to the Highway Fund, for a total of $12,000,000 in each full year ($7,000,000 in the first year).

DMV considers the technical effort required to implement the requirements on its computer systems to be extremely high and estimates a one time IT cost of $516,832 in the first year.

With respect to impact on the Court system, violators of limited driving privilege, since they are otherwise convicted of Driving While License Revoked, would be in court on a violation hearing whether they had limited privilege or not, thus there should be only a limited impact on courts. The Sentencing Commission has not been able to provide specific data on prison impact yet, but any incarceration impact would most likely be on county jails, since Class 1 misdemeanors rarely go to prison.

SOURCES OF DATA: Division of Motor Vehicles

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1087

Judiciary II Committee Substitute Adopted 4/19/05

Short Title: Limited Driving Privilege for DWLR.	(Public)
Sponsors:	
Referred to:	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN PERSONS WITH A REVOKED DRIVERS LICENSE TO OBTAIN A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility.

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid

drivers license or a drivers license that had been expired for less than one year and:

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(3) Except as otherwise provided by law for a particular motor vehicle offense, any person whose licensing privileges have been revoked for a motor vehicle offense other than an impaired driving offense is eligible for a limited driving privilege if the court finds that the person is supporting existing dependents or must have a drivers license to be gainfully employed. The limited driving privilege granted under this subdivision may, in the court's discretion, authorize the person to drive for essential purposes related to any of the activities in subsection (a) of this section. This subdivision shall not apply to a person whose license has been revoked for an impaired driving offense and who has subsequently been found guilty of violating G.S. 20-28."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1087

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

S1087-ARC-17 [v.2]

Date _____,2005

Comm. Sub. [YES]
Amends Title [YES]
S1087-CSRC-30[v.8]

Senator Allran

moves to amend the bill on page 1, line 3, by deleting the word "PRIVILEGE.", and substituting the following:
"PRIVILEGE, AND TO ALLOW REINSTATEMENT OF LICENSES WITHOUT THE USE OF AN IGNITION INTERLOCK SYSTEM IN CERTAIN LIMITED SITUATIONS.";

page 6, by rewriting line 19 to read:
"**SECTION 3.** G.S. 20-17.8(b) reads as rewritten:
'(b) Ignition Interlock Required. – ~~When~~ Except as provided in subsections (l) or (m) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.'

SECTION 4. G.S. 20-17.8 is amended by adding three new subsections to read:

'(l) Medical Exception to Requirement. – A person subject to this section who has a medically diagnosed physical condition that makes the person incapable of personally activating an ignition interlock system, may request an exception to the requirements of this section from the Division. The Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless the examining physicians or surgeons have completed and signed a certificate in the form required by the Division. The certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to the recommendations in acting upon the

request for medical exception. The criterion the Division shall use in determining whether to grant the exemption shall be whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition interlock system. The burden of proof of that fact is upon the person seeking the exception. The Division shall grant the medical exception if a court granted a medical exception under G.S. 20-179.3(g3) or G.S. 20-179.3(g5), unless the Division finds evidence that the person's medical condition has changed and as a result, the person is currently able to comply with the requirements of this section.

(m) Military Exemption to Requirement. - A person subject to this section who is unable to comply with the requirements of this section due to the person's military service may request from the Division an exception to the requirements of this section. The Division shall not issue an exception to this section unless the person provides to the Division a copy of the person's military orders or other written notification from the person's command indicating the circumstances that caused the person to be unable to comply with the requirements.

The Commissioner is not bound by the military orders but shall give fair consideration to the orders in acting upon the request for military exception The criterion the Division shall use in determining whether to grant the exemption shall be whether or not, upon all the evidence, it appears that the person is in fact incapable of complying with the requirements of this section due to that person's current military service. The burden of proof of that fact is upon the person seeking the exception. The Division shall grant the military exception if a court granted a military exception under G.S. 20-179.3, unless the Division finds evidence that the person's military circumstances have changed and as a result, the person is currently able to comply with the requirements of this section.

(n) Whenever an application for exception under subsections (l) or (m) of this section is denied by the Commissioner, the denial may be reviewed by a reviewing board upon written request of the person seeking the exception. The request for review must be filed with the Division within 10 days after receipt of the denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4).'

SECTION 5. G.S. 20-179.3(g3) reads as rewritten:

'(g3) Ignition Interlock Allowed. ~~A~~ Unless a judge determines that an applicant meets the criteria for an ignition interlock exemption under G.S. 20-17.8(l) or 20-17.8(m), a judge may include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

If a judge determines an applicant meets the criteria for an ignition interlock exemption under G.S. 20-17.8(l) or 20-17.8(m), the judge shall specifically note that finding on the order.'

SECTION 6. G.S. 20-179.3(g5) reads as rewritten:

'(g5) Ignition Interlock Required. – If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1087

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

S1087-ARC-17 [v.2]

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

This subsection shall not apply if a judge determines that the person meets the criteria for an ignition interlock exemption under G.S. 20-17.8(l) or 20-17.8(m). If the judge determines a person meets the criteria for an ignition interlock exemption the judge shall specifically note that finding on the order.'

SECTION 7. This act becomes effective December 1, 2005. Sections 3, 4, 5, and 6 apply to license restorations applied for or limited driving privileges issued on or after that date."

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. _____

H. B. No. _____ DATE _____

S. B. No. S1087 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Soles
Sen.)

1 moves to amend the bill on page 5, line 31

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the words "at any time" and

4 substituting the words "[redacted] within the

5 preceding three years".

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE FINANCE COMMITTEE
Wednesday, May 25, 2005 1:00 pm
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 pm on May 25, 2005, in the room 544 of the Legislative Office Building. Twenty-four members of the committee were present. Senator John Kerr presided. Turner Vaughn, Sara Fender, Shera Farmer, Andrew Simpson and Brent Metcalf of Gaston County and Seth Avrette and Brent Longmire of Harnett County served as pages.

SB 278 – Foothills Airport Authority Land Acquisition.

Senator Jacumin was recognized to explain the proposed committee substitute. Senator Dannelly moved for a favorable report and the motion carried. A copy of the proposed committee substitute and the summary are attached.

SB 590 – Consumer Credit Counseling/Debt Management.

Senator Dorsett was recognized to explain the proposed committee substitute. Phil Lehman, an attorney with the Attorney General's office, was available to answer questions. Senator Stevens requested an amendment and the amendment passed. Senator Stevens moved to approve the proposed committee substitute and the motion carried. A copy of the proposed committee substitute, the amendment and the summary are attached.

SB 527 – Campus Police Act.

Senator Clodfelter was recognized to explain the proposed committee substitute. Senator Webster moved to approve the committee substitute and the motion carried. A copy of the committee substitute and the summary are attached.

SB 343 – Electricity Franchise Tax Distribution.

Senator Hoyle was recognized to explain the proposed committee substitute. Andy Romanet, general counsel for the NC League of Municipalities, was recognized to support the committee substitute. Senator Dannelly moved to approve the committee substitute and the motion carried. A copy of the committee substitute and the summary are attached.

SB 537 – Allow Payment of Tax by Offset.

Senator Clodfelter was recognized to explain the proposed committee substitute. Senator Dannelly moved to approve the committee substitute and the motion carried. A copy of the committee substitute and the summary are attached.

The meeting adjourned at 1:55 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

CORRECTED REPORT

Wednesday, May 25, 2005

Senator HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **592** Indigent Defense Technical Revisions.

Draft Number:	55236
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **594** Recoupment by Court-Appointed Attorneys.

Draft Number:	85250
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

CORRECTED REPORT

Thursday, May 26, 2005

Senator KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **278** 44th Senatorial District Local Act-1.

Draft Number:	75318
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **343** Amend Public Laws - 1.

Draft Number:	55238
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **537** Allow Payment of Tax by Offset.

Draft Number:	85254
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **590** Consumer Credit Counseling/Debt Management.

Draft Number:	85255
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **631** Maggie Valley Satellite Annexations.

Draft Number:	70388
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 5

Committee Clerk Comments:

House 631 was H. Comm. Sub.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Thursday, May 26, 2005

Senator KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **527** Campus Police Act.

Draft Number:	15246
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 25, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Fran Preston	NCRMA
Laurie Smalling	Wal-Mart
Leslie Swaegum Cowan	Capitol
ELLIS HANKINS	NCLM
Phil Lehman	NC AGO
Lynne Weaver	NC Att. Gen. Off.
[illegible]	NCICU
Edwin M. Speas	Poyner + Spruill
Hope Williams	NCICU
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 25, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Porter	Alliance Credit Counseling
Angie Harris	Haupin Taylor
Peter Lawler	Consumer Credit Counseling Service of Forsyth County
DAVID BARNES	Poyner + Spruill
Lisa Martin	NC Home Builders
Darth Vader	Cosmos
Kathy Hawkins	Progress Energy
John McAlister	Duke Energy
Joan Herring	Duke Energy

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 25, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	D.O.R.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 537
PROPOSED COMMITTEE SUBSTITUTE S537-CSRB-16 [v.1]

5/24/2005 3:49:49 PM

Short Title: Allow Payment of Tax by Offset. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE PAYMENT OF TAXES IN LIMITED CIRCUMSTANCES BY OFFSET OF AN OBLIGATION OWED TO THE TAXPAYER BY THE TAXING UNIT.

The General Assembly of North Carolina enacts:

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

"(a) Medium of Payment. – Taxes shall be payable in existing national currency. Deeds to real property, notes of the taxpayer or others, bonds or notes of the taxing unit, and payments in kind shall not be accepted in payment of ~~taxes, nor shall any~~ taxes. A taxing unit may not permit the payment of taxes by offset of any bill, claim, judgment, or other obligation owed to the taxpayer by the taxing unit. The prohibition against payment of taxes by offset does not apply to offset of an obligation arising from a lease or another contract entered into between the taxpayer and the taxing unit before July 1 of the fiscal year for which the unpaid taxes were levied."

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

SENATE BILL 537:
Allow Payment of Tax by Offset

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 25, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition S537-CSRB		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 537 would allow a tax assessor to accept as payment for taxes an offset of an obligation owed to the taxpayer by the taxing unit so long as the obligation arises from a lease or another contract entered into between the taxpayer and the taxing unit before the taxes were levied. The bill becomes effective when it becomes law.***

CURRENT LAW: G.S. 105-357 provides that taxes owed to local taxing authorities are payable in existing national currency. A taxing unit is specifically prohibited from accepting the following as payment of taxes: deeds to real property; notes of the taxpayer; bonds or notes of the taxing unit; payments in kind; offset of any bill, claim, judgment, other obligation owed to the taxpayer by the taxing unit.[1]

BILL ANALYSIS: Senate Bill 537 would change the law by allowing a taxing unit to accept as payment of taxes an offset of an obligation owed to the taxpayer by the taxing unit. However, an offset may only be allowed if the obligation arises from a lease or another contract entered into between the taxpayer and the taxing unit before July 1 of the fiscal year for which the unpaid taxes were levied.

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

BACKGROUND: When a taxpayer declares bankruptcy, the bankruptcy laws generally operate as a stay for all actions to collect pre-petition debts.[2] However, a creditor's right of setoff under non-bankruptcy law is preserved when the right of setoff arose before the commencement of the bankruptcy case.[3] To affect a setoff, a 'party in interest' must seek court approval from the automatic stay. The court will generally allow the setoff if the debt is a pre-petition debt and if the right of offset existed under applicable non-bankruptcy law. G.S. 105-357 currently prevents local taxing authorities from utilizing this form of collection in bankruptcy cases because, as applicable non-bankruptcy law, it forbids such an offset.

S0537e1-SMRB-CSRB

[1] G.S. 105-241 provides that taxes owed to the State are payable in national currency. However, the statute does not specifically prohibit the right of setoff.
[2] 11 U.S.C. § 362.
[3] 11 U.S.C. § 553.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 537

Short Title:	Allow Payment of Tax by Offset.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Finance.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE PAYMENT OF TAXES IN LIMITED CIRCUMSTANCES BY OFFSET OF AN OBLIGATION OWED TO THE TAXPAYER BY THE TAXING UNIT.

The General Assembly of North Carolina enacts:

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

"(a) Medium of Payment. – Taxes shall be payable in existing national currency. Deeds to real property, notes of the taxpayer or others, bonds or notes of the taxing unit, and payments in kind shall not be accepted in payment of ~~taxes, nor shall any~~ taxes. A taxing unit shall not permit the payment of taxes by offset of any bill, claim, judgment, or other obligation owed to the taxpayer by the taxing ~~unit.~~unit, except under the circumstances listed in this subsection. When the payment of taxes by an offset is permitted by this subsection, the taxing unit may accomplish the offset by seeking appropriate relief from any stay or injunction issued by the applicable federal, State, local, or foreign court or governmental agency, authority, or regulatory body having jurisdiction over the property of the taxpayer.

(1) When a taxpayer commences or consents to one of the following:

a. A voluntary case under any applicable bankruptcy, insolvency, or other similar law.

b. The entry of an order for relief in an involuntary case under any applicable bankruptcy, insolvency, or other similar law.

c. The appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the taxpayer, any substantial part of the taxpayer's property, or any general assignment of the property for the benefit of creditors.

(2) When a federal, State, local, or foreign court or governmental agency, authority, instrumentality, or regulatory body having jurisdiction does one of the following:

a. Enters a decree or order for relief in respect of the taxpayer in an involuntary case under any applicable bankruptcy, insolvency, or other similar law.

b. Appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official for the taxpayer or any substantial part of the taxpayer's property.

c. Appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official to order the winding up or liquidation of the taxpayer's affairs.

(3) When one of the following involuntary actions is commenced against the taxpayer and the action remains undismissed, undischarged, unstayed, or unbonded for a period of 60 consecutive days:

a. A case under any applicable bankruptcy, insolvency, or other similar law.

b. A case, proceeding, or other action for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official for the taxpayer or a substantial part of the taxpayer's property.

c. A case, proceeding, or other action for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official to order the winding up or liquidation of the taxpayer's affairs."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 24, 2005

TO: Senator Clodfelter

FROM: Brenna Erford
Fiscal Research Division

RE: Senate Bill 537 (First 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:					
General Fund	**No estimate available: see Assumptions and Methodology**				
Local governments	**No estimate available: see Assumptions and Methodology**				
POSITIONS (cumulative):					

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

EFFECTIVE DATE: When law.

BILL SUMMARY: SB 537 changes existing statute to allow a number of circumstances involving bankruptcy or insolvency under which taxes may be paid by offset.

ASSUMPTIONS AND METHODOLOGY: Although the change in statute created by SB 537 may result in improved collections in some bankruptcy cases, the information required for a projection is not available. In order to create a projection, each case of tax debt in the state would have to be matched against bankruptcy records. Then, the value of all non-cash holdings of the

bankrupt or insolvent party must be estimated. The Department of Revenue has advised that this information is not available.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 343
PROPOSED COMMITTEE SUBSTITUTE S343-CSLY-16 [v.2]

5/24/2005 11:17:04 AM

Short Title: Electricity Franchise Tax Distribution. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE LEAGUE OF MUNICIPALITIES TO DETERMINE A DIFFERENT METHOD FOR DISTRIBUTING THE FRANCHISE TAX ON ELECTRIC POWER COMPANIES IN ORDER TO SIMPLIFY THE DISTRIBUTION, REDUCE THE ADMINISTRATIVE BURDEN ASSOCIATED WITH THE DISTRIBUTION, AND PREVENT ERRORS IN THE DISTRIBUTION.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that the current distribution to cities under G.S. 105-116.1 of part of the franchise tax on electric power companies imposes unnecessary administrative burdens on the cities, the power companies, and the Department of Revenue and results in numerous errors in the distribution. The League of Municipalities is directed to recommend a method of distributing this revenue to the cities on the basis of a formula that uses factors such as population and percentage share of prior distributions rather than service inside constantly changing city boundaries. The League must make its recommendation to the Chairs of the House and Senate Finance Committees by June 24, 2005.

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

SENATE BILL 343:
Electricity Franchise Tax Distribution

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 25, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S343-CSLY-16		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 343 would direct the League of Municipalities to determine a different method for distributing the franchise tax on electric power companies in order to simplify and streamline the distribution.

CURRENT LAW: In addition to a 3% sales tax, an annual franchise tax is imposed on electric power companies at the rate of 3.22% of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. Of this rate, 3.09% (or 96% of collections) are distributed to the respective municipalities within which these services take place reduced by one-fourth of the city's "hold-back" amount and one-fourth of the city's proportionate share of the annual cost to the Department of Revenue of administering the distribution. The effect of the deduction of a hold-back amount from the cities' distribution is the retention by the State of the growth that occurred in the franchise tax base during the freeze years between fiscal years 1990-91 and 1994-1995 when cities did not receive distributions. The hold-back amount is considered the cities' contribution to the State budget crisis in the early 1900s. This hold-back amount has been reduced since originally enacted. G.S. 105-116.1 (attached) sets out the formula for determining a city's hold-back amount based on a comparison between the amounts distributed to the city in 1995-96 and in 1990-91.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 343 directs the League of Municipalities to recommend to the House and Senate Finance chairs by June 24, 2005 a new method for distributing to the cities franchise tax revenues derived from electric power companies. The method should be based on a formula that uses factors such as population and percentage share of prior distributions rather than service inside city boundaries, which are constantly changing.

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

BACKGROUND: The current distribution to cities of the franchise tax on electric power companies has created administrative burdens for the cities, the power companies, and the Department of Revenue, and has resulted in numerous errors in the distribution. The purpose of this bill is to simplify the distribution method and prevent errors in the distribution.

§ 105-116.1. Distribution of gross receipts taxes to cities.

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

(1) Freeze deduction. – The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. – Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power company from sales within a city that are taxable under G.S. 105-116.

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

(c) Limited Hold-Harmless Adjustment. – The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes on electric power companies and natural gas companies less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year but at least sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction attributable to receipts from electric power companies and natural gas companies to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction attributable to receipts from electric power companies and natural gas companies minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(c1) Additional Limited Hold-Harmless Adjustment. – The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes on electric power companies and natural gas companies less than sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1999-2000 distribution by adding the city's freeze deduction attributable to receipts from electric power companies and natural gas companies to the amount distributed to the city for that year.

(2) Compare the adjusted 1999-2000 amount with the city's 1990-91 distribution.

(3) If the adjusted 1999-2000 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1999-2000 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction attributable to receipts from electric power companies and natural gas companies minus the difference between the city's 1990-91 distribution and the city's 1999-2000 distribution.

(d) Allocation of Hold-Harmless Adjustment. – The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes on electric power companies and natural gas

companies at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction attributable to receipts from electric power companies and natural gas companies is reduced for all cities whose hold-back amount is determined under subsections (c) and (c1) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction attributable to receipts from electric power companies and natural gas companies.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction attributable to receipts from electric power companies and natural gas companies an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment.

(e) Disqualification. – No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 343

Short Title:	Amend Public Laws - 1.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Rules and Operations of the Senate.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE PUBLIC LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. This act amends the public laws of North Carolina.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 278
PROPOSED COMMITTEE SUBSTITUTE S278-CSLK-5 [v.1]

3/15/2005 10:57:16 AM

Short Title: Foothills Airport Authority Land Acquisition. (Local)

Sponsors:

Referred to:

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE FOOTHILLS REGIONAL AIRPORT AUTHORITY TO ACQUIRE AND CONVEY PROPERTY TO THE STATE OF NORTH CAROLINA FOR USE AS A CORRECTIONAL FACILITY AS PART OF THE STATE PRISON SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. The Foothills Regional Airport Authority, a body politic and corporate, may acquire real and personal property and convey that property to the State of North Carolina for use as a correctional facility as part of the State Prison System. Any property now held by the Foothills Regional Airport Authority, regardless of the purpose for which the property was acquired, may be conveyed to the State for use as a correctional facility. Conveyances made under the authority granted by this act may be made with or without consideration and on any terms that the Authority deems appropriate.

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

SENATE BILL 278:
Foothills Airport Authority Land Acquisition f/k/a/ 44th Senatorial District Local Act-1

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 25, 2005
Introduced by:	Sen. Jacumin	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S278-CSLK-5		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 278 authorizes the Foothills Regional Airport Authority to acquire and convey property to the State of North Carolina, with or without consideration, for use as a correctional facility.***

CURRENT LAW: In 2000, the General Assembly authorized the governing bodies of Caldwell County, Burke County, Morganton and Lenoir, jointly, to establish the Foothills Regional Airport Authority as the successor in interest to the Morganton-Lenoir Airport Authority. Among its several powers, the Airport Authority currently has the authority to sell, lease, and otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes. Generally, Article 12 provides for the disposition of real and personal property by any of the following methods:

- Private negotiation and sale
- Advertisement for sealed bids
- Negotiated offer, advertisement, and upset bid
- Public auction
- Exchange

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 278 authorizes the Foothills Airport Authority to acquire real and personal property and to convey that property to the State of North Carolina for use as a correctional facility as part of the State Prison System. Conveyances may be made with or without consideration and on any terms that the Authority deems appropriate.

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

BACKGROUND: The Airport Authority currently owns more property than they need, and the area local governments are interested in having the Airport Authority convey some of this land to the State in order to build a correctional facility as a means to generate jobs for the area. At present, there are no specific plans to locate a correctional facility in this location, but the county commissioners of Burke and Caldwell counties have endorsed this bill and would like for the Airport Authority to have this authority.

S0278e1-SMSV-CSLK-5

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 278

Short Title:	44th Senatorial District Local Act-1.	(Local)
Sponsors:	Senator Jacumin.	
Referred to:	Rules and Operations of the Senate.	

March 2, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE 44TH SENATORIAL DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. This act relates only to the 44th Senatorial District.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 527

Judiciary I Committee Substitute Adopted 4/4/05

PROPOSED COMMITTEE SUBSTITUTE S527-CSSVf-25 [v.2]

5/24/2005 4:37:52 PM

Short Title: Campus Police Act. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE CAPACITY OF PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO PROTECT THE SAFETY AND WELFARE OF THEIR STUDENTS, FACULTY, AND STAFF BY ENACTING THE CAMPUS POLICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 74G.**

"**Campus Police Act.**

"**§ 74G-1. Title.**

This Chapter is the "Campus Police Act" and may be cited by that name.

"**§ 74G-2. Policy and scope.**

(a) The purpose of this Chapter is to protect the safety and welfare of students, faculty, and staff in institutions of higher education by fostering integrity, proficiency, and competence among campus police agencies and campus police officers. To achieve this purpose, the General Assembly finds that a Campus Police Program needs to be established. As part of the Campus Police Program, the Attorney General is given the authority to certify a private, nonprofit institution of higher education, other than those described by G.S. 116-15(d), as a campus police agency and to commission an individual as a campus police officer.

(b) The purpose of this Chapter is also to assure, to the extent consistent with the State and federal constitutions, that this protection is not denied to students, faculty, and staff at private, nonprofit institutions of higher education originally established by or affiliated with religious denominations. To achieve this purpose, the General Assembly finds that:

(1) Most of the State's private, nonprofit institutions of higher education were originally established by or affiliated with religious denominations;
(2) These institutions have made and continue to make significant contributions in education to the State and the nation;
(3) These institutions admit students regardless of their spiritual or religious beliefs;
(4) These institutions' principal mission is educational;
(5) All of these institutions are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools and as such have independent governing boards of trustees;
(6) The principal State power conferred on campus police by this Chapter is the power of arrest;
(7) This power is important to protect the safety and welfare of students, faculty, and staff at these institutions;
(8) In exercising the power of arrest, these officers apply standards established by State and federal law only; and
(9) The exercise of this power is reviewable by the General Court of Justice and the federal courts.

(c) Public educational institutions operating under the authority of the Board of Governors of The University of North Carolina or the State Board of Community Colleges and private educational institutions that are licensed by the Board of Governors of The University of North Carolina pursuant to G.S. 116-15 or that are exempt from licensure by the Board of Governors pursuant to G.S. 116-15(c) may apply to the Attorney General to be certified as a campus police agency. A campus police agency may apply to the Attorney General to commission an individual designated by the agency to act as a campus police officer for the agency.

"**§ 74G-3. Liability insurance policy or certificate of self-insurance required; suspension of campus police agency certification for failure to comply.**

(a) An applicant for certification as a campus police agency must file with the Attorney General either a copy of a liability insurance policy that meets the requirements of this section or a certificate of self-insurance designating assets sufficient to satisfy the coverage requirements of this section if the applicant is a nonpublic entity. The policy or certificate of self-insurance must provide not less than one million dollars ($1,000,000) of coverage per incident for personal injury or property damage resulting from a negligent act of the applicant or an agent or employee of the applicant operating in the course and scope of employment or under color of law. The form, execution, and terms of a liability insurance policy must meet the requirements of the Attorney General.

(b) An insurance carrier that issues a liability insurance policy required by this section may cancel the policy upon giving 30 days' written notice to both the campus police agency and the Attorney General. The written notice must be given by certified mail, return receipt requested. Cancellation of a liability insurance policy does not affect any liability on the policy that accrued prior to the effective cancellation date.

(c) A campus police agency that is a nonpublic entity must maintain the liability insurance policy or certificate of self-insurance required by this section in effect at all times. The Attorney General shall suspend the certification of a campus police agency that fails to maintain a liability insurance policy or certificate of self-insurance when required to do so by this section. A certification suspended for this reason may not be reinstated until the person whose certification was suspended files with the Attorney General an application for reinstatement and either the required liability insurance policy or certificate of self-insurance.

"**§ 74G-4. Powers of Attorney General.**

The Attorney General has the following powers in addition to those conferred elsewhere in this Chapter:

(1) To establish minimum education, experience, and training standards and establish and require written or oral examinations for an applicant for certification as a campus police agency, a certified campus police agency, an applicant for commission as a campus police officer, or a commissioned campus police officer.

(2) To require a campus police agency or a campus police officer to submit reports or other information.

(3) To inspect records maintained by a campus police agency.

(4) To conduct investigations regarding alleged violations of this Chapter or a rule adopted under this Chapter and to make evaluations as may be necessary to determine if a campus police agency or a campus police officer is complying with this Chapter or a rule adopted under this Chapter.

(5) To deny, suspend, or revoke a certification as a campus police agency or a commission as a campus police officer for failure to meet the requirements of or comply with this Chapter or a rule adopted under this Chapter, in accordance with Article 3 of Chapter 150B of the General Statutes.

(6) To appear in the name of the Campus Police Program and apply to the courts having jurisdiction for injunctions to prevent a violation of this Chapter or a rule adopted under this Chapter.

(7) To delegate the authority to administer this Chapter.

(8) To require that the Criminal Justice Standards Division provide administrative support staff for the Campus Police Program.

(9) To adopt rules needed to implement this Chapter, in accordance with Chapter 150B of the General Statutes.

"**§ 74G-5. Records.**

(a) The Attorney General is the legal custodian of all books, papers, documents, or other records and property of the Campus Police Program.

(b) Any papers, documents, or other records that become the property of the Campus Police Program and are placed in a campus police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning

disclosure as set forth in Chapters 126, 153A, and 160A of the General Statutes for other personnel records.

(c) Notwithstanding the provisions of subsection (b) of this section, the Attorney General may disclose the contents of any records maintained under the authority of this Chapter to the Criminal Justice Education and Training Standards Commission, the Sheriff's Education and Training Standards Commission, or any other criminal justice agency for certification or employment purposes.

"**§ 74G-6. Oaths, powers, and authority of campus police officers.**

(a) Requirements. – An individual who is commissioned as a campus police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a campus police officer. The person in each campus police agency who is responsible for the agency's campus police officers must be commissioned as a campus police officer.

(b) Powers and Authority of Officers. – Campus police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of the institution employing the officer.

(2) Any portion of any public road or highway passing through the real property described in subdivision (1) of this subsection or immediately adjoining it, wherever located.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivision (1) or (2) of this subsection.

In exercising the powers conferred by this subsection, campus police officers shall apply the standards established by the law of this State and the United States.

(c) Powers and Authority of Institutions. – The governing body of any private educational institution that has a campus police agency may:

(1) Enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted;

(2) Enter into joint agreements with the governing board of any county and, with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted; and

(3) Enter into joint agreements with the governing board of any other public or private educational institution that has a campus police agency pursuant to this Chapter or pursuant to G.S. 116-40.5 to extend the law enforcement authority of its campus police officers into any or

all of the other institution's jurisdiction and to determine the circumstances as to which its extension of authority may be granted.

(d) Concealed Weapons. – Campus police officers shall have, if duly authorized by their campus police agency and by the sheriff of the county in which the campus police agency is located, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5).

(e) Public Institutions Option. – Notwithstanding any of the provisions of this Chapter, the board of trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes, and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a campus police agency and campus police commission pursuant to the provisions of this Chapter.

(f) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to campus police officers certified under this Chapter shall be limited to the provisions of this Chapter.

"**§ 74G-7. Badges, uniforms, weapons, and vehicles.**

Campus police agencies shall be responsible for ensuring that all employees, whether or not commissioned, comply with the provisions of this Chapter and the rules adopted under this Chapter, including those provisions pertaining to the wearing of badges and uniforms, the carrying of weapons, and the operation of vehicles.

"**§ 74G-8. Minimum standards for campus police officers.**

Applicants for commission as a campus police officer and a commissioned campus police officer must meet and maintain the same minimum preemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission and must meet and maintain any other preemployment and in-service requirements set by the Attorney General.

"**§ 74G-9. Compensation of campus police officers.**

The compensation of a campus police officer shall be paid by the campus police agency for which the officer is commissioned, as may be agreed on between them.

"**§ 74G-10. Expiration, renewal, and termination of agency certification or officer commission.**

(a) Agency. – Unless sooner suspended or revoked by the Attorney General, a campus police agency's certification expires on June 30 of the calendar year following the date it is issued. A campus police agency may renew the certification upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. An entity whose campus police agency's certification was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for that certification for three years.

(b) Officer. – Unless sooner suspended or revoked by the Attorney General, a campus police officer's commission expires on June 30 of the calendar year following the date it is issued. A campus police officer may renew a commission upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this

Chapter. The Attorney General shall immediately revoke the commission of a campus police officer when any of the following occurs:

(1) Termination of employment with the campus police agency for which the officer is commissioned.

(2) Termination, suspension, or revocation of the certification of the campus police agency for which the officer is commissioned.

(3) Failure to meet in-service training requirements as required by this Chapter or the rules adopted under this Chapter.

(4) Violation of this Chapter or a rule adopted under this Chapter.

An individual whose campus police officer's commission was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for a commission for three years.

"**§ 74G-11. Immunity.**

Neither the Attorney General nor any of the Attorney General's employees may be held criminally or civilly liable for any acts or omissions in carrying out the provisions of this Chapter or for the acts or omissions of agencies or officers certified or commissioned under this Chapter.

"**§ 74G-12. Fees.**

The Attorney General may charge fees for the items listed in the following table, not to exceed the amounts listed in the table:

Item	Maximum Fee
Application for certification as a campus police agency	$ 250.00
Annual renewal of certification as a campus police agency	$ 200.00
Application for reinstatement of certification as a campus police agency	$ 1,000
Application for commission as a campus police officer	$ 100.00
Annual renewal of commission as a campus police officer	$ 50.00
Application for reinstatement of commission as a campus police officer	$ 150.00

The fees imposed under this section are not refundable. Fees collected under this section shall be applied to the cost of administering this Chapter.

"**§ 74G-13. Penalties and enforcement.**

(a) No private person, firm, association, or corporation, and no public institution, agency, or other entity shall engage in, perform any services as, or in any way hold itself out as a campus police agency or engage in the recruitment or hiring of campus police officers without having first complied with the provisions of this Chapter. Any person, firm, association, or corporation or their agents and employees violating any of the provisions of this Chapter shall be guilty of a Class 1 misdemeanor.

(b) The Campus Police Program may apply in its own name to the superior court for an injunction to prevent any violation or threatened violation of this Chapter or a rule adopted under this Chapter, and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed because of the violation. The venue for an action brought under this subsection shall be in any county selected by the Attorney General.

(c) This section does not relieve a campus police agency from any civil liability for the acts of its campus police officers in exercising or attempting to exercise the powers conferred by this Chapter."

SECTION 2. G.S. 74E-2(b) reads as rewritten:

"(b) A ~~public or private educational institution or~~ hospital, a State institution, or a corporation engaged in providing on-site police security personnel services for persons or property may apply to the Attorney General to be certified as a company police agency. A company police agency may apply to the Attorney General to commission an individual designated by the agency to act as a company police officer for the agency."

SECTION 3. G.S. 74E-6 reads as rewritten:

"**§ 74E-6. Oaths, powers, and authority of company police officers.**

(a) Requirements. – An individual who is commissioned as a company police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a company police officer. The person in each company police agency who is responsible for the agency's company police officers must be commissioned as a company police officer.

(b) Categories. – The following three distinct classifications of company police officers are established:

(1) Campus Police Officers – Only ~~Those~~ those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by ~~G.S. 116-15.~~G.S. 116-15, and who are employed by a campus police agency that was licensed pursuant to this Chapter prior to the enactment of Chapter 74G of the General Statutes.

(2) Railroad Police Officers – Those company police officers who are employed by a certified rail carrier and commissioned as company police officers under this Chapter.

(3) Special Police Officers – All company police officers not designated as a campus police officer or railroad police officer.

(c) All Company Police. – Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5).

(d) Campus Police. – Campus police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency pursuant to this Chapter may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department pursuant to Chapter 160A.

(e) Railroad Police. – Railroad police officers have the powers contained in subsection (c) and also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation. Notwithstanding any of the provisions of this Chapter, the limitations on the power to make arrests contained in subsection (c) above, shall not be applicable to railroad police officers commissioned by the Attorney General pursuant to the authority of this Chapter.

~~(f) Campus Option. – Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter.~~

(g) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to company police officers shall be limited to the provisions of this Chapter."

SECTION 4. G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, campus police, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.

c. The individual is not prohibited by State or federal law from receiving a firearm."

SECTION 5. G.S. 14-415.10(5) reads as rewritten:

"(5) Qualified sworn law enforcement officer. – A law enforcement officer employed by a local, State, campus police, or company police agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

SECTION 6. G.S. 14-34.2 reads as rewritten:

"**§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.**

Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who commits an assault with a firearm or any other deadly weapon upon an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 74G, Chapter 17C or Chapter 116 of the General Statutes, in the performance of his duties shall be guilty of a Class F felony."

SECTION 7. G.S. 15A-402(f) reads as rewritten:

"(f) Campus Police Officers, Immediate and Continuous Flight. – A campus police officer: (i) appointed by a campus law-enforcement agency established pursuant to G.S. 116-40.5(a); (ii) appointed by a campus law enforcement agency established under G.S. 115D-21.1(a); or (iii) commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G and employed by a college or university which is licensed, or exempted from licensure, by G.S. 116-15 may arrest a person outside his territorial jurisdiction when the person arrested has committed a criminal offense within the territorial jurisdiction, for which the officer could have arrested the person within that territory, and the arrest is made during such person's immediate and continuous flight from that territory."

SECTION 8. G.S. 160A-288(d) reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 115D-21.1(a) or G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter ~~74E;~~74E or Chapter 74G; and

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2)."

SECTION 9. G.S. 160A-288.2(d) reads as rewritten:

"(d) For the purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter ~~74E.~~74E or Chapter 74G."

SECTION 10. G.S. 14-401.6(a) reads as rewritten:

"§ 14-401.6. Unlawful to possess, etc., tear gas except for certain purposes.

(a) It is unlawful for any person, firm, corporation or association to possess, use, store, sell, or transport within the State of North Carolina, any form of that type of gas generally known as "tear gas," or any container or device for holding or releasing that gas; except this section does not apply to the possession, use, storage, sale or transportation of that gas or any container or device for holding or releasing that gas:

. . .

(4) By or for security guards registered under Chapter 74C of the General ~~Statutes or~~ Statutes, company police officers commissioned under Chapter 74E of the General Statutes, or campus police officers commissioned under Chapter 74G provided they are on duty and have received training according to standards prescribed by the State Bureau of Investigation;

. . ."

SECTION 11. G.S. 20-37.6(f) reads as rewritten:

"(f) Penalties for Violation. –

. . .

(3) A law-enforcement officer, including a company police officer commissioned by the Attorney General under Chapter ~~74E,~~74E or a campus police officer commissioned by the Attorney General under Chapter 74G, may cause a vehicle parked in violation of this section to be towed. The officer is a legal possessor as provided in G.S. 20-161(d)(2). The officer shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from a space pursuant to this section, except where the motor vehicle is willfully, maliciously, or negligently damaged in the removal from the space to a place of storage.

. . ."

SECTION 12. When this act becomes law, all certificates issued to police agencies at private institutions of higher education and commissions issued to their police officers pursuant to Chapter 74E of the General Statutes shall automatically convert to certification and commissions issued pursuant to this act and shall be administered in conformity with this act. Notwithstanding any of the provisions of Chapter 74G of the General Statutes, as enacted by this act, or the provisions of Chapter 74E of the General Statutes, the board of trustees of any educational institution that, on the effective date of this act, has a company police agency licensed pursuant to Chapter 74E of the General Statutes, may elect to continue to have its officers certified under Chapter 74E of the General Statutes rather than pursuant to Chapter 74G of the General Statutes, as enacted by this act, by making a written request to the Attorney General no later than July 1, 2005.

SECTION 13. This act is effective when it becomes law.

SENATE BILL 527: Campus Police Act

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 25, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Trina Griffin
Version:	PCS to Second Edition S527-CSSVf-25		Committee Counsel

SUMMARY: ***Senate Bill 527 removes the statutory authority for a public or private educational institution to provide its own on-site police security personnel from the Company Police Act and creates the same authority under a new Article, titled the "Campus Police Act." The substantive provisions are the same as under current law. The act is effective when it becomes law, and would have the effect of automatically converting company police agencies licensed under Chapter 74E for private educational institutions to an agency licensed under the new Article 74G, unless the institution specifically elects otherwise by written request to the Attorney General's Office by July 1, 2005.***

The Proposed Committee Substitute adds Sections 6 through 11 of the bill, which are conforming changes to statutes that currently reference company police officer authority under Chapter 74E. It also makes a clarifying change regarding the carrying of a concealed weapon by a campus police officer to mirror the current provision in Chapter 74E.

CURRENT LAW: The Company Police Act (Chapter 74E) authorizes the Attorney General to certify an agency as a company police agency and to commission an individual as a company police officer. The purpose of this chapter is to ensure a minimum level of integrity, proficiency, and competence among company police agencies and company police officers. There are three categories of "company police":

- Campus police officers
- Railroad police officers
- Special police officers

Company police officers, while in the performance of their duties of employment, have the same powers ands municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for certain infractions. Company police officers have the authority to carry concealed weapons.

A campus police officer must be employed by a UNC constituent institution, or by any private college or university that is licensed or exempted from licensure.

A UNC constituent institution (or a community college), also has the option of having its campus police officers certified under Chapter 17C and Chapter 116 of the General Statutes.

BILL ANALYSIS: Senate Bill 527 moves from Chapter 74E to a new Chapter 74G the authority of public and private educational institutions to have campus police officers, as authorized by the Attorney General's Office. Under the bill, the following entities may apply to the Attorney General for certification as a campus police agency:

- Public educational institutions operating under the Board of Governors of The University of North Carolina or the State Board of Community Colleges.
- Private educational institutions licensed under state statute or exempt from licensure.

- Private, nonprofit institutions of higher education.

The Campus Police Act contains parallel provisions to the current campus police sections of the Company Police Act, including: liability insurance requirement; Attorney General's authority to establish minimum standards for education and training; record keeping; oaths and authority of police officers; badges, uniforms, weapons and vehicles; compensation; terms for renewal, termination, and expiration of certification; immunity from liability for the Attorney General for acts or omissions of the campus police officers; fees; penalties and enforcement.

The "new" G.S. 74G-12, which authorizes the Attorney General to charge fees for certain items relating to the certification of campus police agencies and commissioning of campus police officers, authorizes the same fees for the same class of individuals that are currently authorized under the Company Police Act.

The jurisdiction of a campus police officer under the act would be the same as under the Company Police Act. Officers would have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors, and to charge for infractions, on any of the following:

- Real property owned by or in possession and control of the employing institution.
- Any portion of any public road or highway passing through the real property, or adjoining it.
- Any other real property while in continuous and immediate pursuit of a person committing an offense on property described above.

Sections 2, 3, and 6 through 11 make conforming changes. Sections 4 and 5 add "campus police" to current law that defines "qualified" law enforcement officers for purposes of the concealed carry permit statutes.

Section 12 provides that, upon enactment, all certificates issued to police agencies at private institutions of higher education, and commissions to their police officers, automatically convert to certification and commissions under the new Campus Police Act. Any educational institutional that has a licensed campus police agency may elect to continue under the Company Police Act by written request to the Attorney General. The request must be filed no later than July 1, 2005.

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

BACKGROUND: In *State v. Pendleton*, the Campbell University campus police had arrested the defendant for driving while impaired. In reviewing the case in 1994, the North Carolina Supreme Court concluded that the police power was an important discretionary governmental power. Consequently, because Campbell University was a "religious institution" under the first Amendment of the US Constitution, the Court held that the campus police provisions under G.S. 74A [prior authorizing statute] fostered an excessive entanglement with religion. The Court ruled that the statute was unconstitutional as applied in Pendleton's case.

In 2002, the North Carolina Court of Appeals addressed a similar argument in *State v. Jordan*. The defendant had been stopped for driving while impaired on the campus of Pfeiffer University. The University's campus police was certified under Chapter 74E. The court found that Pfeiffer also was a religious institution, and held that Chapter 74E was unconstitutional as applied.

Hal Pell, counsel to Senate Judiciary I, substantially contributed to this summary.

S0527e2-SMSV-CSSVf-25

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 527

Judiciary I Committee Substitute Adopted 4/4/05

Short Title: Campus Police Act. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE CAPACITY OF PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO PROTECT THE SAFETY AND WELFARE OF THEIR STUDENTS, FACULTY, AND STAFF BY ENACTING THE CAMPUS POLICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 74G.**

"**Campus Police Act.**

"**§ 74G-1. Title.**

This Chapter is the "Campus Police Act" and may be cited by that name.

"**§ 74G-2. Policy and scope.**

(a) The purpose of this Chapter is to protect the safety and welfare of students, faculty, and staff in institutions of higher education by fostering integrity, proficiency, and competence among campus police agencies and campus police officers. To achieve this purpose, the General Assembly finds that a Campus Police Program needs to be established. As part of the Campus Police Program, the Attorney General is given the authority to certify a private, nonprofit institution of higher education, other than those described by G.S. 116-15(d), as a campus police agency and to commission an individual as a campus police officer.

(b) The purpose of this Chapter is also to assure, to the extent consistent with the State and federal constitutions, that this protection is not denied to students, faculty, and staff at private, nonprofit institutions of higher education originally established by or affiliated with religious denominations. To achieve this purpose, the General Assembly finds that:

(1) Most of the State's private, nonprofit institutions of higher education were originally established by or affiliated with religious denominations;

(2) These institutions have made and continue to make significant contributions in education to the State and the nation;
(3) These institutions admit students regardless of their spiritual or religious beliefs;
(4) These institutions' principal mission is educational;
(5) All of these institutions are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools and as such have independent governing boards of trustees;
(6) The principal State power conferred on campus police by this Chapter is the power of arrest;
(7) This power is important to protect the safety and welfare of students, faculty, and staff at these institutions;
(8) In exercising the power of arrest, these officers apply standards established by State and federal law only; and
(9) The exercise of this power is reviewable by the General Court of Justice and the federal courts.

(c) Public educational institutions operating under the authority of the Board of Governors of The University of North Carolina or the State Board of Community Colleges and private educational institutions that are licensed by the Board of Governors of The University of North Carolina pursuant to G.S. 116-15 or that are exempt from licensure by the Board of Governors pursuant to G.S. 116-15(c) may apply to the Attorney General to be certified as a campus police agency. A campus police agency may apply to the Attorney General to commission an individual designated by the agency to act as a campus police officer for the agency.

"**§ 74G-3. Liability insurance policy or certificate of self-insurance required; suspension of campus police agency certification for failure to comply.**

(a) An applicant for certification as a campus police agency must file with the Attorney General either a copy of a liability insurance policy that meets the requirements of this section or a certificate of self-insurance designating assets sufficient to satisfy the coverage requirements of this section if the applicant is a nonpublic entity. The policy or certificate of self-insurance must provide not less than one million dollars ($1,000,000) of coverage per incident for personal injury or property damage resulting from a negligent act of the applicant or an agent or employee of the applicant operating in the course and scope of employment or under color of law. The form, execution, and terms of a liability insurance policy must meet the requirements of the Attorney General.

(b) An insurance carrier that issues a liability insurance policy required by this section may cancel the policy upon giving 30 days' written notice to both the campus police agency and the Attorney General. The written notice must be given by certified mail, return receipt requested. Cancellation of a liability insurance policy does not affect any liability on the policy that accrued prior to the effective cancellation date.

(c) A campus police agency that is a nonpublic entity must maintain the liability insurance policy or certificate of self-insurance required by this section in effect at all times. The Attorney General shall suspend the certification of a campus police agency

that fails to maintain a liability insurance policy or certificate of self-insurance when required to do so by this section. A certification suspended for this reason may not be reinstated until the person whose certification was suspended files with the Attorney General an application for reinstatement and either the required liability insurance policy or certificate of self-insurance.

"**§ 74G-4. Powers of Attorney General.**

The Attorney General has the following powers in addition to those conferred elsewhere in this Chapter:

(1) To establish minimum education, experience, and training standards and establish and require written or oral examinations for an applicant for certification as a campus police agency, a certified campus police agency, an applicant for commission as a campus police officer, or a commissioned campus police officer.

(2) To require a campus police agency or a campus police officer to submit reports or other information.

(3) To inspect records maintained by a campus police agency.

(4) To conduct investigations regarding alleged violations of this Chapter or a rule adopted under this Chapter and to make evaluations as may be necessary to determine if a campus police agency or a campus police officer is complying with this Chapter or a rule adopted under this Chapter.

(5) To deny, suspend, or revoke a certification as a campus police agency or a commission as a campus police officer for failure to meet the requirements of or comply with this Chapter or a rule adopted under this Chapter, in accordance with Article 3 of Chapter 150B of the General Statutes.

(6) To appear in the name of the Campus Police Program and apply to the courts having jurisdiction for injunctions to prevent a violation of this Chapter or a rule adopted under this Chapter.

(7) To delegate the authority to administer this Chapter.

(8) To require that the Criminal Justice Standards Division provide administrative support staff for the Campus Police Program.

(9) To adopt rules needed to implement this Chapter, in accordance with Chapter 150B of the General Statutes.

"**§ 74G-5. Records.**

(a) The Attorney General is the legal custodian of all books, papers, documents, or other records and property of the Campus Police Program.

(b) Any papers, documents, or other records that become the property of the Campus Police Program and are placed in a campus police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning disclosure as set forth in Chapters 126, 153A, and 160A of the General Statutes for other personnel records.

(c) Notwithstanding the provisions of subsection (b) of this section, the Attorney General may disclose the contents of any records maintained under the authority of this

Chapter to the Criminal Justice Education and Training Standards Commission, the Sheriff's Education and Training Standards Commission, or any other criminal justice agency for certification or employment purposes.

"**§ 74G-6. Oaths, powers, and authority of campus police officers.**

(a) Requirements. – An individual who is commissioned as a campus police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a campus police officer. The person in each campus police agency who is responsible for the agency's campus police officers must be commissioned as a campus police officer.

(b) Powers and Authority of Officers. – Campus police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of the institution employing the officer.

(2) Any portion of any public road or highway passing through the real property described in subdivision (1) of this subsection or immediately adjoining it, wherever located.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivision (1) or (2) of this subsection.

In exercising the powers conferred by this subsection, campus police officers shall apply the standards established by the law of this State and the United States.

(c) Powers and Authority of Institutions. – The governing body of any private educational institution that has a campus police agency may:

(1) Enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted;

(2) Enter into joint agreements with the governing board of any county and, with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted; and

(3) Enter into joint agreements with the governing board of any other public or private educational institution that has a campus police agency pursuant to this Chapter or pursuant to G.S. 116-40.5 to extend the law enforcement authority of its campus police officers into any or all of the other institution's jurisdiction and to determine the circumstances as to which its extension of authority may be granted.

(d) Concealed Weapons. – Notwithstanding the provisions of G.S. 14-269, campus police officers may carry a concealed weapon in performing their duties to the

extent authorized by their campus police agency and approved by the sheriff of the county in which the campus police agency is located.

(e) Public Institutions Option. – Notwithstanding any of the provisions of this Chapter, the board of trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes, and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a campus police agency and campus police commission pursuant to the provisions of this Chapter.

(f) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to campus police officers certified under this Chapter shall be limited to the provisions of this Chapter.

"**§ 74G-7. Badges, uniforms, weapons, and vehicles.**

Campus police agencies shall be responsible for ensuring that all employees, whether or not commissioned, comply with the provisions of this Chapter and the rules adopted under this Chapter, including those provisions pertaining to the wearing of badges and uniforms, the carrying of weapons, and the operation of vehicles.

"**§ 74G-8. Minimum standards for campus police officers.**

Applicants for commission as a campus police officer and a commissioned campus police officer must meet and maintain the same minimum preemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission and must meet and maintain any other preemployment and in-service requirements set by the Attorney General.

"**§ 74G-9. Compensation of campus police officers.**

The compensation of a campus police officer shall be paid by the campus police agency for which the officer is commissioned, as may be agreed on between them.

"**§ 74G-10. Expiration, renewal, and termination of agency certification or officer commission.**

(a) Agency. – Unless sooner suspended or revoked by the Attorney General, a campus police agency's certification expires on June 30 of the calendar year following the date it is issued. A campus police agency may renew the certification upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. An entity whose campus police agency's certification was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for that certification for three years.

(b) Officer. – Unless sooner suspended or revoked by the Attorney General, a campus police officer's commission expires on June 30 of the calendar year following the date it is issued. A campus police officer may renew a commission upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. The Attorney General shall immediately revoke the commission of a campus police officer when any of the following occurs:

(1) Termination of employment with the campus police agency for which the officer is commissioned.

(2) Termination, suspension, or revocation of the certification of the campus police agency for which the officer is commissioned.

(3) Failure to meet in-service training requirements as required by this Chapter or the rules adopted under this Chapter.

(4) Violation of this Chapter or a rule adopted under this Chapter.

An individual whose campus police officer's commission was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for a commission for three years.

"**§ 74G-11. Immunity.**

Neither the Attorney General nor any of the Attorney General's employees may be held criminally or civilly liable for any acts or omissions in carrying out the provisions of this Chapter or for the acts or omissions of agencies or officers certified or commissioned under this Chapter.

"**§ 74G-12. Fees.**

The Attorney General may charge fees for the items listed in the following table, not to exceed the amounts listed in the table:

Item	Maximum Fee
Application for certification as a campus police agency	$ 250.00
Annual renewal of certification as a campus police agency	$ 200.00
Application for reinstatement of certification as a campus police agency	$ 1,000
Application for commission as a campus police officer	$ 100.00
Annual renewal of commission as a campus police officer	$ 50.00
Application for reinstatement of commission as a campus police officer	$ 150.00

The fees imposed under this section are not refundable. Fees collected under this section shall be applied to the cost of administering this Chapter.

"**§ 74G-13. Penalties and enforcement.**

(a) No private person, firm, association, or corporation, and no public institution, agency, or other entity shall engage in, perform any services as, or in any way hold itself out as a campus police agency or engage in the recruitment or hiring of campus police officers without having first complied with the provisions of this Chapter. Any person, firm, association, or corporation or their agents and employees violating any of the provisions of this Chapter shall be guilty of a Class 1 misdemeanor.

(b) The Campus Police Program may apply in its own name to the superior court for an injunction to prevent any violation or threatened violation of this Chapter or a rule adopted under this Chapter, and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted

or administrative sanctions imposed because of the violation. The venue for an action brought under this subsection shall be in any county selected by the Attorney General.

(c) This section does not relieve a campus police agency from any civil liability for the acts of its campus police officers in exercising or attempting to exercise the powers conferred by this Chapter."

SECTION 2. G.S. 74E-2(b) reads as rewritten:

"(b) A ~~public or private educational institution or~~ hospital, a State institution, or a corporation engaged in providing on-site police security personnel services for persons or property may apply to the Attorney General to be certified as a company police agency. A company police agency may apply to the Attorney General to commission an individual designated by the agency to act as a company police officer for the agency."

SECTION 3. G.S. 74E-6 reads as rewritten:

"**§ 74E-6. Oaths, powers, and authority of company police officers.**

(a) Requirements. – An individual who is commissioned as a company police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a company police officer. The person in each company police agency who is responsible for the agency's company police officers must be commissioned as a company police officer.

(b) Categories. – The following three distinct classifications of company police officers are established:

(1) Campus Police Officers – Only ~~Those~~ those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by ~~G.S. 116-15.~~G.S. 116-15, and who are employed by a campus police agency that was licensed pursuant to this Chapter prior to the enactment of Chapter 74G of the General Statutes.

(2) Railroad Police Officers – Those company police officers who are employed by a certified rail carrier and commissioned as company police officers under this Chapter.

(3) Special Police Officers – All company police officers not designated as a campus police officer or railroad police officer.

(c) All Company Police. – Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5).

(d) Campus Police. – Campus police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency pursuant to this Chapter may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department pursuant to Chapter 160A.

(e) Railroad Police. – Railroad police officers have the powers contained in subsection (c) and also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation. Notwithstanding any of the provisions of this Chapter, the limitations on the power to make arrests contained in subsection (c) above, shall not be applicable to railroad police officers commissioned by the Attorney General pursuant to the authority of this Chapter.

~~(f) Campus Option. – Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter.~~

(g) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to company police officers shall be limited to the provisions of this Chapter."

SECTION 4. G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, campus police, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.

c. The individual is not prohibited by State or federal law from receiving a firearm."

SECTION 5. G.S. 14-415.10(5) reads as rewritten:

"(5) Qualified sworn law enforcement officer. – A law enforcement officer employed by a local, State, campus police, or company police agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

SECTION 6. When this act becomes law, all certificates issued to police agencies at private institutions of higher education and commissions issued to their police officers pursuant to Chapter 74E of the General Statutes shall automatically convert to certification and commissions issued pursuant to this act and shall be administered in conformity with this act. Notwithstanding any of the provisions of Chapter 74G of the General Statutes, as enacted by this act, or the provisions of Chapter 74E of the General Statutes, the board of trustees of any educational institution that, on the effective date of this act, has a company police agency licensed pursuant to Chapter 74E of the General Statutes, may elect to continue to have its officers certified under Chapter 74E of the General Statutes rather than pursuant to Chapter 74G of the General Statutes, as enacted by this act, by making a written request to the Attorney General no later than July 1, 2005.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 25, 2005

TO: Senator Clodfelter

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 527 (First Edition)

FISCAL IMPACT

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

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

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Justice

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: This bill removes the statutory authority for a public or private educational institution to provide its own on-site police security personnel from the Company Police Act and creates the same authority under the Campus Police Act. The substantive provisions are the same as under current law.

ASSUMPTIONS AND METHODOLOGY: The Campus Police Act contains parallel provisions to the current campus police sections of the Company Police Act. Because the fees authorized under the bill are the same fees for the same class of individuals that are currently authorized under the Campus Police Act, the bill has no fiscal impact.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 590
Commerce Committee Substitute Adopted 5/18/05
PROPOSED COMMITTEE SUBSTITUTE S590-CSSV-34 [v.1]

5/25/2005 11:20:36 AM

Short Title: Consumer Credit Counseling/Debt Management. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-426 reads as rewritten:

"**§ 14-426. Certain persons and transactions not deemed debt adjusters or debt adjustment.**

The following individuals or transactions shall not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting:

(1) Any person or individual who is a regular full-time employee of a debtor, and who acts as an adjuster of his employer's ~~debts;~~debts.

(2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.

(3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.

(4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.

(5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and who does not hold himself out as being regularly engaged in debt adjusting.

(6) An attorney-at-law licensed to practice in this State who is not primarily engaged in the business of debt adjusting but who engages in debt adjusting activities incidental to the practice of law.

(7) An organization that provides credit counseling, education, and debt management services to debtors if the organization also does all of the following:

a. Provides individualized credit counseling and budgeting assistance to the debtor without charge prior to the debtor's enrollment in a debt management plan provided by the organization.

b. Determines that the debtor has the financial ability to make payments to complete the debt management plan and that the plan is suitable for the debtor.

c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with no more than nominal consideration and has agreed to in writing.

d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by the debtor.

e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.

f. If the organization is a nonprofit organization, does not purchase any goods, services, or facilities for debt management services from any entity that is affiliated with the nonprofit organization, or its officers or employees by common ownership or control, unless such purchase was approved by the members of the Board of Directors of the nonprofit organization who have no conflict of interest and the purchase is at a price no greater than a comparable organization would pay in similar circumstances.

g. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services."

SECTION 2. G.S. 14-423 reads as rewritten:

"**§ 14-423. Definitions.**

(a) As used in this ~~Article certain terms or words are hereby defined as follows:~~Article, the following definitions apply:

(1) ~~The term "debt"~~Debt adjuster" means a person who engages in, attempts to engage in, or offers to engage in the practice or business of debt ~~adjusting as said term is defined in this Article.~~adjusting.

(2) ~~The term "debt"~~Debt adjusting" ~~shall mean the~~means entering into or making ~~of~~ a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and ~~who shall~~that person, for ~~a~~ consideration, ~~agree~~ agrees to distribute, or ~~distribute~~ distributes the same among certain specified creditors in accordance with a plan agreed upon. ~~The term "debt adjusting" is further defined and shall also mean~~Debt adjusting includes the business or practice of any person who holds himself out as acting or offering or attempting to act for ~~a~~ consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in ~~anywise~~ any way altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor. Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the creditor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

(3) ~~The term or word "debtor"~~"Debtor" means an ~~individual,~~individual who resides in North Carolina, and includes two or more individuals who are jointly and ~~severally~~ severally, or jointly or ~~severally~~ severally, indebted to a creditor or creditors.

(3a) "Nominal consideration" means a fee or a contribution to cover the cost of administering a debt management plan not to exceed forty dollars ($40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan, not to exceed forty dollars ($40.00) per month.

(4) ~~The word "person"~~"Person" means an individual, firm, partnership, limited partnership, ~~corporation~~ corporation, or association."

SECTION 3. G.S. 14-425 reads as rewritten:

"**§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for money and property employed.**

The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~ enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting

business or the offering of any debt adjusting services. The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to ~~insure,~~ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been paid to the creditors of the debtors. The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

SECTION 4. G.S. 14-426(7)g., as enacted by Section 1 of this act, becomes effective October 1, 2005. The remainder of this act is effective when it becomes law. This act expires October 1, 2007.

SENATE BILL 590:
Consumer Credit Counseling/Debt Management

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 25, 2005
Introduced by:	Sen. Dorsett	**Summary by:**	Trina Griffin* Committee Counsel
Version:	PCS to Second Edition S590-CSSV-34		

SUMMARY: ***Senate Bill 590 would amend the criminal law that prohibits persons from engaging in the business or practice of debt adjusting by providing for an exemption from the limitations of the law for attorneys not primarily engaged in debt adjustment activities and credit counseling and debt management services. The bill also expands the definition of "debt adjusting" to include the business or practice of debt settlement or foreclosure assistance. The bill adds as an additional remedy for violation of this law to allow the court to order the violator to pay a civil fine of up to $5000, plus attorney's fees.***

The Proposed Committee Substitute adds a two-year sunset provision and makes a clarifying change regarding the limitation on nonprofits purchasing goods, services, or facilities from affiliated entities without Board of Director approval.

CURRENT LAW: Under current law it is a Class 2 misdemeanor to engage in the business or practice of debt adjusting (as defined in Section 2 of the bill). This law does not apply to the business or practice of debt adjustment by an employee of the debtor, a person acting pursuant to court order, a creditor of the debtor acting without cost to the debtor, a lender disbursing loan proceeds to pay debts, and a person who intermittently or casually adjust debts but is not regularly engaged in debt adjusting (See list of exempt persons in Section 1 of the bill). Currently the district attorney, acting on behalf of the State, may seek an injunctive to stop illegal debt adjustment activities.

BILL ANALYSIS:

Section 1 of the bill amends the list of persons exempt from the law by adding:

- Licensed attorneys not primarily engaged in the business of debt adjustment but who act incident to the practice of law.
- Organizations that provide credit counseling, education, and debt management services under the following conditions:
  - Provides free credit counseling and budgeting assistance to a debtor prior to enrollment in a debt management plan.
  - Determines that the debtor has the financial ability to complete a debt management plan suitable to the debtor.
  - Disburses debtor's funds to creditors pursuant to a debt management plan for which the debtor only pays nominal consideration not to exceed $40 to initiate a plan and a monthly fee of 10% of the monthly payments not to exceed $40.
  - Provides at least a quarterly accounting to the debtor of disbursements made.
  - Does not require the debtor to purchase other services or materials as a condition of participation.

- Does not purchase goods, services or facilities for debt management services from an affiliate of the organization or its officers or employees, except when approved by the Board of Directors of the organization at no more than market price. **The Proposed Committee Substitute clarifies that this restriction only applies if the organization is a nonprofit.**
- Is accredited by an organization approved by the Commissioner of Banks.

Section 2 expands the definition of "debt adjusting" to include the business or practice of debt settlement or foreclosure assistance by acting as an intermediary between the debtor and the debtor's creditors for the purposes of reducing, settling or altering terms of payment of debts regardless of whether the person is compensated or actually distributes debtor's funds to creditors.

Section 3 provides that the Attorney General, in addition to district attorneys, can bring actions to enjoin illegal debt adjusting as an unfair or deceptive trade practice. This section also allows the court to order the defendant to pay a civil penalty of up to $5000 and attorneys fees under G.S. 75-15.2 and 75-16.1.

EFFECTIVE DATE: G.S. 14-426(7), as enacted in Section 1 of the bill, becomes effective October 1, 2005, but the remainder of the bill is effective when the bill becomes law. **The Proposed Committee Substitute adds a two-year sunset provision such that the act will expire October 1, 2007.**

§ 14-424. Engaging, etc., in business of debt adjusting a misdemeanor.

If any person shall engage in, or offer to or attempt to, engage in the business or practice of debt adjusting, or if any person shall hereafter act, offer to act, or attempt to act as a debt adjuster, he shall be guilty of a Class 2 misdemeanor.

§ 75-15.2. Civil penalty.

In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when committed, knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars ($5,000) for each violation. In any action brought by the Attorney General pursuant to this Chapter in which it is shown that an action or practice when committed was specifically prohibited by a court order, the Court may, in its discretion, impose a civil penalty of up to five thousand dollars ($5,000) for each violation. Civil penalties may be imposed in a new action or by motion in an earlier action, whether or not such earlier action has been concluded. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

§ 75-16.1. Attorney fee.

In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or

(2) The party instituting the action knew, or should have known, the action was frivolous and malicious.

**O. Walker Reagan, counsel to Senate Commerce, substantially contributed to this summary.*

S0590e2-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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DATE: May 25, 2005

TO: Senator Dorsett

FROM: Brenna Erford
Fiscal Research Division

RE: Senate Bill 590 (Second Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES: General Fund	No Impact to General Fund				
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Section 1, October 1, 2005; Sections 2 and 3, when law.

BILL SUMMARY: SB 590 adds exceptions to the list of individuals and organizations not considered to be debt adjusters, including attorneys-at-law who engage in debt adjusting activities incidental to the practice of law as well as accredited organizations that provide credit counseling, education, and debt management services and satisfy other eligibility criteria.

ASSUMPTIONS AND METHODOLOGY: SB 590 has no direct fiscal impact on the State. The changes made in the bill will affect various private businesses engaged in the business of debt adjusting and/or credit or debt management services.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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DATE: May 10, 2005

TO: Senator Dorsett

FROM: Aaron Paul and Chloe Gossage
Fiscal Research Division

RE: SB 590 (Second Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
GENERAL FUND					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
Justice	No substantial impact anticipated.				
LOCAL GOVERNMENTS	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	No additional prison beds anticipated.				
POSITIONS: (cumulative)	Exact amount cannot be determined; no additional positions anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments; Department of Justice

EFFECTIVE DATE: October 1, 2005

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: This Proposed Committee Substitute (PCS) for Senate Bill 590 amends G.S. 14-426 to permit additional specified individuals to engage in the practice of debt adjustment. Engaging in debt adjusting services or transactions without specific authorization is a Class 2 misdemeanor.

Section 1 of SB 590 amends G.S. 14-426 to provide that lawyers who engage in debt adjusting activities incidental to the practice of law and certain tax-exempt nonprofit organizations are *not* deemed to be debt adjusters or engaged in the business or practice of debt adjusting.

Section 2 amends G.S. 14-423 to broaden the definition of "debt adjusting" by including additional activities not included under current law. This section also restricts the definition of "debtor" to individuals residing in North Carolina.

Current G.S. 14-425 permits the district attorney to act to enjoin a person from acting, offering to act, or attempting to act as a debt adjuster, or engage in debt adjusting. Section 4 of the bill amends G.S. 14-425 to allow the Attorney General, as well as the district attorney, to act to enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting business or the offering of any debt adjusting services and for whomever brings the action under this section to appoint a receiver for the property and money employed in the transaction. Section 4 adds to G.S. 14-425 that the court may assess civil penalties and award attorneys' fees to the State.

Source: Administrative Office of the Courts Research and Planning (05/09/05).

ASSUMPTIONS AND METHODOLOGY:

General

By expanding the conduct defined as debt adjusting, this bill would be expected to result in additional Class 2 misdemeanor charges and convictions and could, consequently, entail costs to the Judiciary and Department of Correction. The Administrative Office of the Courts (AOC) currently does not maintain a specific offense code for engaging in debt adjusting in violation of G.S. 14-424, which is some indication that the offense may be infrequently charged and rarely result in convictions. As such, few additional Class 2 misdemeanor charges and convictions are anticipated to result from this bill, and the associated fiscal impact is not expected to be substantial.

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population

sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Because this bill would expand the scope of Class 2 misdemeanors for unlawfully engaging in debt adjusting (violations of G.S. 14-423), additional Class 2 convictions would be expected to result from this bill. Due to lack of historical data, the Sentencing Commission is unable to project the number of additional Class 2 misdemeanors that would result, but the lack of an AOC offense code (see "General") is some indication that the number would not be substantial.

In FY 2003-04, 15 percent of Class 2 misdemeanants received active sentences and the average active sentence length was 23 days. Because Class 2 misdemeanors carry a maximum sentence of 45 days and sentences less than 90 days are served in local jails, offenders sentenced under this bill would not impact prison population. Offenders with active sentences of less than thirty days are housed in county jails at county expense.

In FY 2003-04, 86 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Due to lack of historical data, AOC is unable to estimate the number of additional Class 2 misdemeanor charges that would result form expanding the scope of offenses relating to debt adjusting. However, the lack of an offense code for current violations of G.S. 14-423 is some indication that charges are presently infrequent (see "General"). Based on the costs of time in court, attorney preparation time, and jury fees the average estimated cost to process one Class 2 misdemeanor charge via trial is $1,365. For trials in which indigent defense is needed, AOC estimates that the additional cost would $949 per trial. However, based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of $271 per plea.

To the extent that the Attorney General would act under this bill to enjoin the continuation of debt adjusting in circumstances where district attorneys are not doing so now, there would be additional hearings in superior court to assess civil penalties and award attorney fees. Any proceeds from civil penalties would be remitted to the Civil Penalty and Forfeiture Fund, which must be used exclusively for the public school system as required by the State Constitution. Because no data is available regarding the frequency with which such hearings would occur, the associated costs and amount of civil penalties assessed cannot be determined.

Department of Justice
The Department states that it will be able to absorb any additional workload generated by this bill with existing resources.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: This bill would be effective October 1, 2005. Traditionally, most bills with criminal penalties become effective on December 1. This date has been used to give the criminal justice system time to change their operating systems to accommodate criminal penalty changes and to inform and train attorneys and judges of those changes. There is typically a delay of six months between charging and sentencing an offender. The N.C. Sentencing and Policy Advisory Commission population projections assume a December 1 effective date, and thus are based on changes in population starting the second year. The expenditures and savings calculated by Fiscal Research use these projections and, thus, assume that the legislation will not impact the prison system until the beginning of 2006-07. If the bill becomes effective prior to December 1, there will be an impact on the prison system in the 2005-06 fiscal year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 590

Commerce Committee Substitute Adopted 5/18/05

Short Title: Consumer Credit Counseling/Debt Management. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-426 reads as rewritten:

"**§ 14-426. Certain persons and transactions not deemed debt adjusters or debt adjustment.**

The following individuals or transactions shall not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting:

(1) Any person or individual who is a regular full-time employee of a debtor, and who acts as an adjuster of his employer's ~~debts;~~debts.

(2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.

(3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.

(4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.

(5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and who does not hold himself out as being regularly engaged in debt adjusting.

(6) An attorney-at-law licensed to practice in this State who is not primarily engaged in the business of debt adjusting but who engages in debt adjusting activities incidental to the practice of law.

(7) An organization that provides credit counseling, education, and debt management services to debtors if the organization also does all of the following:

a. Provides individualized credit counseling and budgeting assistance to the debtor without charge prior to the debtor's enrollment in a debt management plan provided by the organization.

b. Determines that the debtor has the financial ability to make payments to complete the debt management plan and that the plan is suitable for the debtor.

c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with no more than nominal consideration and has agreed to in writing.

d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by the debtor.

e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.

f. Does not purchase any goods, services, or facilities for debt management services from any entity that is affiliated with the nonprofit organization, or its officers or employees by common ownership or control, unless such purchase was approved by the members of the Board of Directors of the nonprofit organization who have no conflict of interest and the purchase is at a price no greater than a comparable organization would pay in similar circumstances.

g. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services."

SECTION 2. G.S. 14-423 reads as rewritten:

"**§ 14-423. Definitions.**

(a) As used in this ~~Article certain terms or words are hereby defined as follows:~~Article, the following definitions apply:

(1) ~~The term "debt"~~Debt adjuster" means a person who engages in, attempts to engage in, or offers to engage in the practice or business of debt ~~adjusting as said term is defined in this Article.~~adjusting.

(2) ~~The term "debt"~~Debt adjusting" ~~shall mean the~~means entering into or making ~~of~~ a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and ~~who shall~~that person, for ~~a~~ consideration, ~~agree~~ agrees to distribute, or ~~distribute~~ distributes the same among certain specified creditors in accordance with a plan agreed upon. ~~The term "debt adjusting" is further defined and shall also mean~~Debt adjusting includes the business or practice of any person who holds himself out as acting or offering or attempting to act for ~~a~~ consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in ~~anywise~~ any way altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor. Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the creditor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

(3) ~~The term or word "debtor"~~"Debtor" means an ~~individual,~~individual who resides in North Carolina, and includes two or more individuals who are jointly and ~~severally~~ severally, or jointly or ~~severally~~ severally, indebted to a creditor or creditors.

(3a) "Nominal consideration" means a fee or a contribution to cover the cost of administering a debt management plan not to exceed forty dollars ($40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan, not to exceed forty dollars ($40.00) per month.

(4) ~~The word "person"~~"Person" means an individual, firm, partnership, limited partnership, ~~corporation~~ corporation, or association."

SECTION 3. G.S. 14-425 reads as rewritten:

"§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for money and property employed.

The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~ enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting

business or the offering of any debt adjusting services. The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to ~~insure,~~ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been paid to the creditors of the debtors. The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

SECTION 4. G.S. 14-426(7)g., as enacted by Section 1 of this act, becomes effective October 1, 2005. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 590 - CSSV-34 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Stevens

moves to amend the bill on page 2, lines 24-32

( ) WHICH CHANGES THE TITLE

by deleting these lines;

and on page 2, line 33, by deleting the designation "g." and substituting "f.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. S90-CSSV-34 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Webster

moves to amend the bill on page 2, lines 1-3

( ) WHICH CHANGES THE TITLE

by deleting those lines,

and on page 2, line 4, by deleting "(7)" and substituting "(6)".

w/drawn

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)