

2006

**SENATE
COMMERCE**

**COMMITTEE
MINUTES**

MEMBERSHIP
SENATE COMMERCE COMMITTEE
2005-2006 Biennium

Senator R.C. Soles, Chair
Room 2022, LB 733-5963
Joan Leatherman, Janet Blalock, Mona Fitzgerald

Senator Julia Boseman, Vice Chair
Room 309, LOB 715-2525
Dot Waugaman

Senator David Hoyle, Vice Chair
Room 300A, LOB 733-5734
Penny Williams

Senator Tony Rand, Vice Chair
Room 300C, LOB 733-9892
Evelyn Costello

Senator Philip Berger, Ranking Minority
Room 1026, LB 733-5708
Barbara Eldridge

Senator Tom Apodaca
Room 1127, LB 733-5745
Nancy Pulley

Senator Doug Berger
Room 622, LB 715-9363
Linda Laton

Senator Harris Blake
Room 517, LOB 733-4809
Anna Kidd

Senator Walter Dalton
Room 523, LOB 715-3038
Barbara O'Sullivan

Senator Katie Dorsett
Room 2106, LB 715-3042
Phyllis Cameron

Senator Jim Forrester
Room 1129, LB 715-3050
Mary Watson

Senator Linda Garrou
Room 627, LOB 733-5620
Gail Bishop

Senator Eddie Goodall
Room 1414, LB 733-7569
Elizabeth Slocum

Senator Malcolm Graham
Room 620, LOB 733-5650
Susan Boston

Senator Kay Hagan
Room 411, LOB 733-5856
Marian Phillips

Senator Jim Jacumin
Room 1113, LB 715-7823
Janet Black

Senator John Kerr
Room 526, LOB 733-5621
Evelyn Hartsell

Senator Vernon Malone
Room 2113, LB 733-5880
Bonnie McNeil

Senator Martin Nesbitt
Room 300B, LOB 715-3001
Jan Lee

Senator Keith Presnell
Room 1121, LB 733-3460
Rhonda Todd

Senator William Purcell
Room 625, LOB 733-5953
Lorraine Blake

Senator Larry Shaw
Room 621, LOB 733-9349
Barbara Lee

Senator Richard Stevens
Room 406, LOB 733-5653
Kleist Rhodes

STAFF

Tim Hovis
Insurance Issues

733-2578
Room 201, LOB

Wendy Graf Ray
General Commerce & Financial Regulation Issues

733-2578
Room 201, LOB

Walker Reagan
General Commerce & Financial Regulation Issues

733-2578
Room 201, LOB

Steve Rose
Utilities Regulatory Issues

733-2578
Room 545, LOB

Dot Waugaman
Committee Assistant

715-2525
Room 309, LOB

Senate Commerce Committee
Wednesday, May 17, 2006, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HJR 1807 Confirm Bill Culpepper.

Representative Saunders
Representative Brubaker
Representative Morgan

Other Business

Adjournment

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Wednesday, May 17, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.JR.	1807	Confirm Bill Culpepper.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE COMMERCE COMMITTEE
Wednesday, May 17, 2006 at 10:00 AM
Room 1027, Legislative Building

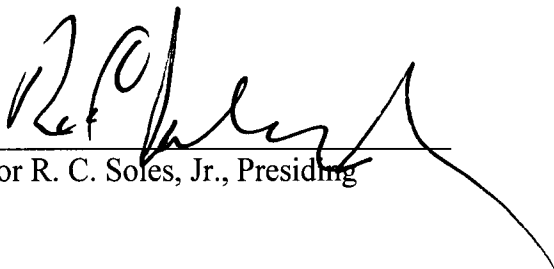
MINUTES

The Senate Commerce Committee met at 10:00 AM on May 17, 2006, in Room 1027 of the Legislative Building. Twelve members of the committee were present. Senator R.C. Soles, Jr., presided.

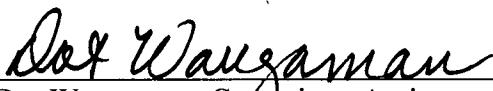
Senator Soles introduced Mr. Steve Rose, Committee Counsel, to explain the confirmation process. He then recognized Representative Drew Saunders to speak in favor of the resolution. He introduced Mr. Franklin Freeman, who on behalf of Governor Mike Easley presented Mr. William T. Culpepper, as the Governor's candidate for appointment to the Utilities Commission for a term beginning January 1, 2006 and ending June 30, 2013, to fill a vacancy created because of the resignation of Mr. Robert K. Koger, and asked that Mr. Culpepper be confirmed. Ms. JoAnne Sanford, Chair of the Commission also spoke in favor of the resolution. Senator Jim Forrester moved favorable report of the joint resolution. The motion carried.

Senator Soles introduced the pages and thanked them for their assistance: Grace Wakefield from Valdese, sponsored by Senator Jim Jacumin; Hannah Evans from Wallace, sponsored by Senator Charlie Albertson; Amanda Mordecai from Raleigh, sponsored by Senator Janet Cowell; and Cameron Green from Raleigh, sponsored by Senator Neal Hunt.

The meeting adjourned at 10:30 a.m.



Senator R. C. Soles, Jr., Presiding



Dot Waugaman, Committee Assistant

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

H

1

HOUSE JOINT RESOLUTION 1807

Sponsors: Representatives Saunders, Brubaker, Morgan (Primary Sponsors); Bell, Carney, Coleman, England, Farmer-Butterfield, Hackney, Harrison, Insko, Jones, Ed Jones, Lucas, Parmon, Rapp, Spear, Underhill, Wainwright, and Williams.

Referred to: Public Utilities.

May 9, 2006

1 A JOINT RESOLUTION FOR THE CONFIRMATION OF THE APPOINTMENT OF
2 WILLIAM T. CULPEPPER, III TO THE UTILITIES COMMISSION.

3 Whereas, under the provisions of G.S. 62-10, appointments made by the
4 Governor to membership on the North Carolina Utilities Commission are subject to
5 confirmation by the General Assembly by joint resolution; and

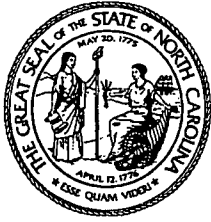
6 Whereas, a vacancy occurred on the North Carolina Utilities Commission
7 because of the resignation of Robert K. Koger on December 5, 2005; and

8 Whereas, the Governor has submitted the name of his appointee, William T.
9 Culpepper, III, to serve the remainder of that term on the North Carolina Utilities
10 Commission, to expire June 30, 2013; Now, therefore,

11 Be it resolved by the House of Representatives, the Senate concurring:

12 **SECTION 1.** The appointment of William T. Culpepper, III to the North
13 Carolina Utilities Commission to serve the remainder of the term expiring June 30,
14 2013, is confirmed.

15 **SECTION 2.** This resolution is effective upon ratification.



HOUSE BILL 1807: Confirm Bill Culpepper

BILL ANALYSIS

Committee: Senate Commerce	Date: May 16, 2006
Introduced by: Reps. Saunders, Brubaker, Morgan	Summary by: Steven Rose
Version: First Edition	Committee Counsel

SUMMARY: *William T. Culpepper has been appointed to serve the unexpired term of Dr. Robert K. Koger on the Utilities Commission. If confirmed by the General Assembly, Mr. Culpepper's term will expire June 30, 2013. HJR 1807 confirms this appointment as required by G.S. 62-10. The resolution is effective upon ratification.*

The General Assembly was not in session at the time of Dr. Koger's resignation on December 5, 2005, and Mr. Culpepper's appointment, January 1, 2006. Pursuant to G.S. 62-10(g), the Governor appointed Mr. Culpepper to serve on an interim basis until the General Assembly reconvened. Mr. Culpepper took his seat on January 3, 2006.

Mr. Culpepper's biographical information, and his Statement of Economic Interest as filed with the North Carolina Board of Ethics, are before this Committee.

BACKGROUND: The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight-year terms. Terms are staggered. Commissioners are appointed by the Governor and must be confirmed by the General Assembly by Joint Resolution.

A Utilities Commissioner is presently paid a salary of \$109,279 annually. There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years.

Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment.

A Commissioner may not engage in any other employment, business, profession or vocation. G.S. 62-11(i) provides, in part: "*Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.*"

During the term of office a Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies that the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well as a judge in all matters relating to regulated public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies among the different types of utilities, and there are limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility

House Bill 1807

Page 2

rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, use of natural gas expansion funds, the provision of new utility services, and complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction depends upon the type of utility service and is affected in some cases by federal law. The Commission also has limited authority over electric cooperatives and their subsidiaries, and municipalities.

The resolution is effective upon ratification.

H1807e1-SMRL-02



North Carolina Utilities Commission

430 North Salisbury Street
Dobbs Building
Raleigh, NC 27603-5918

Mailing Address:
4325 Mail Service Center
Raleigh, NC 27699-4325

Office Hours: 8:00 a.m. to 5:00 p.m.
Telephone Number (919) 733-7328
Fax Number (919) 733-7300

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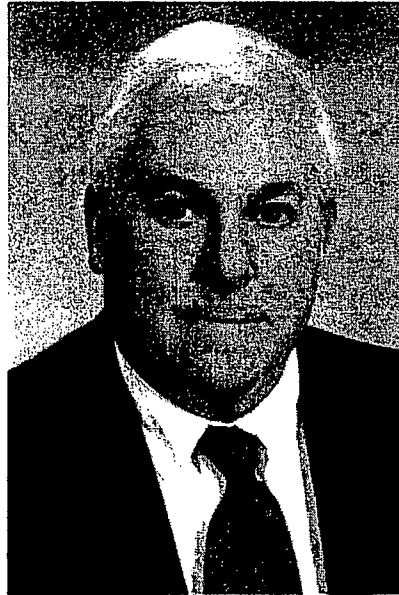
RESTRUCTURING

REPORTS

APPEALS

APPLICATIONS

PUBLICATIONS



WILLIAM THOMAS CULPEPPER, III
Commissioner

WILLIAM THOMAS CULPEPPER, III born Elizabeth City, North Carolina January 23, 1947.

Preparatory education: Hampden-Sydney College (B.S., 1968). Legal education: Wake Forest University (J.D., 1973). Recipient: Edenton Jaycees Distinguished Service Award, 1975. Director, Edenton Chamber of Commerce, 1974-1976. Chairman, Chowan County Unit, American Cancer Society, 1974-1976. Chairman, Chowan County Chapter, American Red Cross, 1974-1977. Advisor, Chowan County Teen-Dem Club, 1974-1978. Recipient: Most Outstanding Teen-Dem Advisor in NC, 1976. Chairman, Historic Edenton, Inc., 1976-1977. Chairman, Edenton Historic District Commission, 1976-1980. President, Chowan County Heart Fund, 1977. President, Edenton Jaycees, 1980-1981. President, Edenton Rotary Club, 1986-1987. Chairman, Chowan County Industrial Facilities and Pollution Control Financing Authority, 1979-2005. Chairman, Chowan County Democratic Party, 1987-1991. Member, Edenton Historical Commission, 1987-present. President, First Judicial District Bar Association, 1987-1988. Recipient, Perquimans Restoration Association Harvey Award for Distinguished Public Service, 1997. Practicing attorney in Edenton, N.C., 1973-2005. County Attorney, Chowan County, 1979-2005. Member, Edenton Savings and Loan Board of Directors, 1979-1993. Member, Branch Banking and Trust Company, Edenton Local Board of Directors, 1993-present. Member, N.C. House of Representatives, 1993-2005. Member, N.C. General Statutes Commission, 1995-2005. Member, N.C. Courts Commission, 1995-2005. Chairman, Committee on Rules, Calendar and Operations of the House, 1999-2005. Co-chairman, Appropriations Subcommittee on Justice and Public Safety, 1999-2002. Member, Joint Legislative Commission on Government Operations, 1999-2005. Member, Legislative Services Commission, 1999-2005. Co-chairman, Joint

Legislative Ethics Commission, 2003-2005, Member, UNC Wilmington Board of Visitors, 2005 - present. Assumed Commissionership with the North Carolina Utilities Commission: 1/3/06, Expires: 6/30/13.



E-MAIL TO COMMISSIONER CULPEPPER

[[NCUC Home](#)] [[Chairman Sanford](#)] [[Commissioner Owens](#)]
[[Commissioner Ervin](#)] [[Commissioner Joyner](#)] [[Commissioner Kerr](#)]
[[Commissioner Lee](#)] [[Commissioner Culpepper](#)] [[Chief Clerk's Office](#)]
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Please send questions/comments regarding content to the [Chief Clerk's Office](#).
Please send comments & suggestions about this web site to the [Webmaster](#).

"Long Form"

Statement of Economic Interest

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail: nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Office Use Only
Bd Code _____
Appt by _____
Date filed: _____

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009J, Raleigh

Name of Person Filing: William T. (Bill) Culpepper, III

Name of Spouse: _____

Home Address: P.O. Box 344
Edenton, NC 27932
(252) 482-3818

Home Telephone: wculpepper@ncuc.net

E-Mail Address: North Carolina Utilities Commission

Name of Employer: Commissioner

Your Title: 4325 Mail Service Center

Business Address: Raleigh, NC 27699-4325
(919) 733-6053

Business Telephone: (919) 715-5970

Business Fax: Regulatory

Business Activity: _____

Spouse's Employer and Business Activity: _____

(i) If you are filing because you are serving on or being considered for appointment to a State "board" (as defined in the attached cover sheet), please state the full legal name of the Board:

North Carolina Utilities Commission

(ii) By whom were you appointed or are you being considered for appointment (Governor, Speaker of the House, President Pro Tempore of the Senate): Governor

(iii) Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? Answering "yes" does *not* disqualify you from service. See the attached cover sheet. No X Yes ___ If "yes," please explain:

**** Please respond to all 16 questions, even if the answer is "None." ****

NOTE: The Order requires you to list assets and liabilities with a value of \$10,000 or more for yourself and spouse as set forth below. You are NOT required to include an estimated value of the assets and liabilities.

1. (a) List all parcels of **real estate** located in North Carolina in which you, or your spouse, have an ownership interest valued at \$10,000 or more. Give the street address and/or other specific description adequate to determine the location of each parcel. State the specific interest held in each identified parcel. **Please indicate "None" if appropriate.**

1506 N. Broad St. Edenton, NC 100% owner

4125 S. Virginia Dare Trail, Nags Head, NC 100% owner

4930 N. Virginia Dare Trail, Kitty Hawk, NC 25% owner

Timberlands, Perquimans County, NC 25% owner

Timberlands, Pasquotank County, NC 25% owner

- (b) Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. **Please indicate "None" if appropriate.**

None

- (c) If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain. **Please indicate "None" if appropriate.**

None

2. Identify any **personal property** sold to or bought from the State within the preceding two years and any personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain. **Please indicate "None" if appropriate.**

None

3. List the *name* of each **publicly-owned company** in which the value of securities held by you or your spouse is \$10,000 or more. This question is not asking for the value or worth of such securities – just the *name* of the company. You may attach a list from your broker. **Please indicate "None" if appropriate.**

None

4. (a) List the *name* and business activity of each **non-publicly-owned company or business entity** in which the value of securities or other equity interests held by you or your spouse is \$10,000 or more, including, but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations. **Please indicate "None" if appropriate.**

Culpepper and Dixon A North Carolina General Partnership – real estate holding company

- (b) With respect to the entities listed above, should any of those entities own securities or equity interests of \$10,000 or more in **other companies or business entities**, list the name of the company or business entity and give a brief description of the business activity of each. **Please indicate "None" if appropriate.**

None

- (c) Are any of the entities listed above licensed by, regulated by, or have any business relationships with the same area of State Government with which you are or will be associated? No Yes If yes, please explain.

5. You are required to make a good faith effort to identify and list any individual or business entity with which you, your spouse, or your business or company have a financial or professional relationship (including service on a board of directors or other leadership or policy-making body) provided a reasonable person would conclude that **either**

- (1) The *nature of such relationship* presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, **or**
- (2) Such individual or business entity's *other financial or professional interests* (separate and distinct from yours) would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties.

For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed. **Please indicate "None" if appropriate.**

Branch Banking and Trust Company Local (Edenton, NC) Board of Directors – this is a local board that has no authority pertaining to decisions affecting the business operations of the bank

6. List all **directorships** on all boards on which you are serving. Please explain any situation that could conflict or appear to conflict with your official duties. **Please indicate "None" if appropriate.**

See answer and question No. 5

7. Are you an **elected official** at the local government level? No Yes If so, please explain.

8. If you, your spouse, or your dependent children are the **beneficiary of a trust** created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of \$10,000 or more. **Please indicate "None" if appropriate.**

None

9. List each **asset** with a valuation of \$10,000 or more, held by you or your spouse, **which has not been listed elsewhere**. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list furniture, jewelry, automobiles, and other personal effects. **Please indicate "None" if appropriate.**

Branch Banking and Trust Co. - bank account

State of North Carolina - retirement account

State Farm Insurance Co. - life insurance cash value

10. List each **liability** with a valuation of \$10,000 or more for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans. **Please indicate "None" if appropriate.**

State Farm Insurance Co. - life insurance loan

Branch Banking and Trust Co - second home loan Sallie Mae - education loan guarantor

11. (a) List each **source of income** for you and your spouse where \$10,000 or more was received during the past year. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. **Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.**

Sources for Person Filing: State of North Carolina - legislative salary

W.T. Culpepper, III, Attorney at Law - law practice sole proprietorship

Prudential - Resort Realty - second home rental income

J.W. Jones Lumber Company - timber sale Culpepper Campaign Fund - income taxable withdrawals

Sources for Spouse:

(b) Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are or will be connected. **Please indicate "None" if appropriate.**

None

12. Are you a **practicing attorney**? No Yes If so, please check each category of legal representation in which you and/or the law firm with which you are associated has, during any single year of the past five years, earned legal fees of \$10,000 or more from any of the following categories of legal representation:
- () Admiralty () Taxation () Decedent's estates () Corporation law () Real property
- () Negligence (representing plaintiffs) () Negligence (representing defendants)
- () Criminal law () Labor law () Insurance law () Administrative law
- () Utilities regulation or representation of regulated utilities () Representation of local governments

13. If the information has not been included in previous questions, list all **non-publicly owned businesses** you have been associated with during the *past five years* as an employee, officer, director, partner, or owner. For each business listed, state your association and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of business and whether you or the business is licensed by, regulated by, receive permits, grants, or other funding from the same area of State Government with which you are associated. **Please indicate "None" if appropriate.**

None

14. (a) List all **gifts** received with a value exceeding \$200 during the twelve months preceding the date of this statement from sources other than your spouse or relatives. **Please indicate "None" if appropriate.**
None other than enumerated in subparagraph (b)

(b) List all **gifts** received with a value exceeding \$100 during the twelve months preceding the date of this statement from any source having business with or regulated by the State. **Please indicate "None" if appropriate.**
US Open tickets received from BellSouth Corp, Duke Energy and Progress Energy

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy. **Please indicate "None" if appropriate.**

None

16. Having read the Order in general and the "Rules of Conduct for Public Officials" in particular, provide **any other information** which a reasonable person would conclude is necessary or helpful either to carry out the purposes of the Order or to fully disclose any potential conflict of interest or appearance of conflict. Identify any conflicts or potential conflicts you may have that are not fully or adequately covered elsewhere in this form. Include an explanation of how you would propose to resolve any conflicts or potential conflicts. **Please indicate "None" if appropriate.**

None

**** Please respond to all 16 questions, even if the answer is "None." ****

VERIFICATION

I hereby do certify that I have read the Order and this Statement of Economic Interest and to the best of my knowledge and belief this Statement is true, correct, and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

5/10/06

Date

William D. Sulper

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn to before me this the 10th day of May, 2006.



My Commission Expires:

May 28, 2006

My Commission Expires 5-28-2006

Debra C. Fearing

Signature of Notary Public

Rev. 12-20-05

Please make sure you have responded to all 16 questions, even if the answer is "None." Failure to answer each part of each question will cause your form to be returned to you, which may result in a late filing.

VISITOR REGISTRATION SHEET

Senate Commerce Committee

May 17, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Joe D. Carpenter	Gaston County Commissioners
Harry L. Latham	
Paul Pullen	NCATL
C. P. [unclear]	NCATL
Bob Wells	M&T/Co Alliance
Roe Sawitt	WCEA
Lisa Percy	Duke Energy
John McAlister	Duke Energy
Bill Pittman	Pittman Law Firm

7

VISITOR REGISTRATION SHEET

Senate Commerce Committee

May 17, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Duke Chen	Research
Bob Gillam	Public Staff - NCUC
Lee Hodges	KCLH
SUSANNE STREBS	NCRA
PATRICK BUFFKIN	ALLEY ASSOC, INC.
Sharon Miller	CUCA
Athena Dering	Electric City
Katry Hawkins	Progress Energy
Mitch Williams	Progress Energy
Joe Stewart	IFNC
Jeff Mixon	Civitas Inst.

Senate Commerce Committee
Thursday, June 8, 2006, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1185	Navassa Zoning Jurisdiction.	Senator Soles, Jr.
SB 1559	Video Service Competition Act.	Senator Clodfelter
SB 1688	Remove Expense Reserve Ceil'g/Real Est. Comm.	Senator Rand

Other Business

Adjournment

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Thursday, June 08, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	1185	Navassa Zoning Jurisdiction.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	1688	Remove Expense Reserve Ceil'g/Real Est. Comm.	
		Sequential Referral:	Appropriations/Base Budget
		Recommended Referral:	None

TOTAL REPORTED: 2

Committee Clerk Comments:

SENATE COMMERCE COMMITTEE
Thursday, June 8, 2006 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 AM on June 8, 2006, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages and thanked them for their assistance: Anna Hudson from Elon, sponsored by Senator Jerry Tillman; Trey Motley from Cary, sponsored by Senator Tony Rand; Caroline Allen from Rock Hill (South Carolina, sponsored by Senator David Hoyle; Wiley Narron from Smithfield, sponsored by Senator Fred Smith; and Dane Jorgensen from Black Mountain, sponsored by Senator Martin Nesbitt.

Senator Soles asked Senator Hoyle to preside while he presented Senate Bill 1185, Navassa Zoning Jurisdiction, for consideration. Senator Jim Forrester moved for a favorable report of the bill. The motion carried unanimously.

Senator Soles recognized Senator Dan Clodfelter to present Senate Bill 1559, Video Service Competition Act, for consideration. Senator Hoyle moved the adoption of a proposed committee substitute. The motion carried. Senator Clodfelter stated the bill come out of work done by the Revenue Laws Committee.

Senator Soles displaced the bill to consider another bill. He recognized Senator Rand to explain Senate Bill 1688, Remove Expense Reserve Ceil'g/Real Est. Comm. Senator Hoyle moved a favorable report of the bill. The motion carried.

Senator Soles again recognized Senator Clodfelter to explain the provisions of Senate Bill 1559. Senator Doug Berger moved the adoption of Amendment #1, but later withdrew it. Several members of the committee asked questions. At 10:00 AM, Senator Soles announced that there were several members of the public who wanted to speak on the bill, and therefore he would carry consideration of the bill over until June 13, 2006.

The meeting adjourned at 10:00 AM.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

S

1

SENATE BILL 1185

Short Title: Navassa Zoning Jurisdiction. (Local)

Sponsors: Senator Soles.

Referred to: State and Local Government.

May 10, 2006

A BILL TO BE ENTITLED

1
2 AN ACT TO DIVEST PLANNING JURISDICTION OVER CERTAIN PROPERTY
3 FROM THE TOWN OF NAVASSA AND VEST IT IN THE COUNTY OF
4 BRUNSWICK.

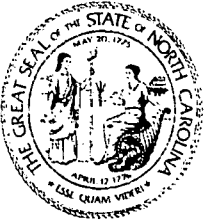
5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 77 of the Session Laws of 1977, being the Charter of
7 the Town of Navassa, is amended by adding a new section to read:

8 "Sec. 6.1. Notwithstanding any other provisions of this Charter or the provisions of
9 general law, the provisions of Article 19 of Chapter 160A of the General Statutes do not
10 apply to the following described property; and jurisdiction under Article 18 of Chapter
11 153A of the General Statutes is vested in the County of Brunswick as if the area was not
12 in the corporate limits of the Town of Navassa:

13 That property annexed by Annexation Ordinance No. 03-001 of the Town of
14 Navassa, adopted October 9, 2003."

15 **SECTION 2.** This act becomes effective when the County of Brunswick has
16 adopted in accordance with Article 18 of Chapter 153A of the General Statutes such
17 ordinances as are necessary under that Article. This act expires June 30, 2010, but the
18 Town of Navassa may, on or after January 1, 2010, adopt in accordance with Article 19
19 of Chapter 160A of the General Statutes such ordinances as are necessary under that
20 Article, to become effective July 1, 2010.



SENATE BILL 1185: Navassa Zoning Jurisdiction

BILL ANALYSIS

Committee:	Senate Commerce	Date:	June 8, 2006
Introduced by:	Sen. Soles	Summary by:	O. Walker Reagan Committee Co-Counsel
Version:	First Edition		

SUMMARY: *Senate Bill 1185 would transfer the planning jurisdiction over a portion of the Town of Navassa that was acquired through a satellite annexation in 2003 to Brunswick County until June 30, 2010.*

[As introduced, this bill was identical to H2093, as introduced by Rep. Stiller, which is currently in Rules, Calendar, and Operations of the House.]

CURRENT LAW: By virtue of the annexation in 2003, the Town of Navassa has planning jurisdiction over the property that was annexed into the town in 2003.

BILL ANALYSIS: Senate Bill 1185 would divest the Town of Navassa of planning and zoning jurisdiction over the property annexed by the town through a satellite annexation in 2003 and restore that authority to Brunswick County. Planning and zoning jurisdiction would be restored to the town on June 30, 2010.

EFFECTIVE DATE: The bill becomes effective when Brunswick County adopts an ordinance to apply planning and zoning jurisdiction by the county to this property. The act expires June 30, 2010.

BACKGROUND: Senate Bill 1185 is identical to the Senate Committee Substitute for House Bill 734 that was reported favorably out of the Senate Commerce Committee and assented by the Senate on July 21, 2005. House bill 734 is currently in the House Rules Committee.

S1185e1-SMRU

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

1

SENATE BILL 1559*

Short Title: Video Service Competition Act. (Public)

Sponsors: Senators Clodfelter, Dalton, Hartsell, Hoyle, Kerr, and Webster.

Referred to: Commerce.

May 18, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS
3 AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING
4 SERVICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 66 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 42.

9 "State Franchise for Cable Television Service.

10 "**§ 66-350. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Cable service. – Defined in G.S. 105-164.3.
13 (2) Cable system. – Defined in 47 U.S.C. § 522.
14 (3) Channel. – A portion of the electromagnetic frequency spectrum that is
15 used in a cable system and is capable of delivering a television
16 channel.
17 (4) Commission. – The North Carolina Utilities Commission.
18 (5) Existing agreement. – A local franchise agreement that was awarded
19 under G.S. 153A-137 or G.S. 160A-319 and is in effect on January 1,
20 2007.
21 (6) Pass a household. – Make service available to a household, regardless
22 of whether the household subscribes to the service.
23 (7) PEG channel. – A public, educational, or governmental access channel
24 provided to a county or city.

25 "**§ 66-351. State franchising authority.**

26 (a) Authority. – The North Carolina Utilities Commission is designated the
27 exclusive franchising authority in this State for cable service provided over a cable
28 system. This designation replaces the authorization to counties and cities in former
29 G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This

1 designation is effective January 1, 2007. After this date, a county or city may not award
2 or renew a franchise for cable service.

3 (b) Award and Scope. – The Commission is considered to have awarded a
4 franchise to a person who files a notice of service under G.S. 66-352. A franchise for
5 cable service authorizes the holder of the franchise to construct and operate a cable
6 system over public rights-of-way within the area to be served. Chapter 160A of the
7 General Statutes governs the regulation of public rights-of-way by a city.

8 **§ 66-352. Notice and commencement of service.**

9 (a) Notice of Service. – A person who intends to provide cable service over a
10 cable system in an area must file a notice of service with the Commission before
11 providing the service. The notice is effective when it is filed with the Commission. The
12 notice of service must include all of the following:

13 (1) The applicant's name and principal place of business.

14 (2) A description and map of the area to be served.

15 (3) A list of each county and city in which the described service area is
16 located, in whole or in part.

17 (4) A schedule indicating when service is expected to be offered in part or
18 all of the service area.

19 (b) Initial Service. – A person who files a notice of service under subsection (a)
20 of this section must begin providing cable service in the service area described in the
21 notice within 120 days after the notice is filed. If cable service does not begin within
22 this period, the notice of service terminates 130 days after it was filed. If cable service
23 begins within this period, the holder of the State-issued franchise must file a report of
24 initial service with the Commission within 10 days after the cable service begins. Cable
25 service begins when it passes one or more households in the described service area. This
26 subsection does not apply to a cable service provider who terminates an existing
27 agreement whose franchise area includes all of the service area described in a notice of
28 service filed by the provider under subsection (a) of this section.

29 A report of initial service for a service area must include all of the following:

30 (1) The effective date of a notice of service for that area.

31 (2) A description and map of the service area.

32 (3) A statement that cable service has begun in the service area.

33 (c) Extension. – A person who intends to provide cable service over a cable
34 system in an area that is contiguous with but outside the service area described in a
35 notice of service on file with the Commission must file a notice of service under
36 subsection (a) of this section that includes the proposed area. The initial service
37 requirements in subsection (b) of this section apply to the proposed area. If the map of
38 the area to be served includes any area that is part of the service area of another
39 State-issued franchise, the termination of a notice of service for the proposed area for
40 failure to begin service within the required time does not affect the status of the other
41 State-issued franchise.

42 (d) Withdrawal. – A person may withdraw a notice of service by filing a notice
43 of withdrawal with the Commission. The notice of withdrawal must be filed at least 90
44 days before the service is withdrawn.

"§ 66-353. Annual service report.

A holder of a State-issued franchise must file an annual service report with the Commission. The report must be filed on or before July 15 of each year. The report must include all of the following:

- (1) The effective date of a notice of service for that area.
- (2) A description and map of the service area.
- (3) The approximate number of households in the service area.
- (4) A description and a map of the households passed in the service area as of July 1.
- (5) The percentage of households passed in the service area as of July 1.
- (6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this subsection.
- (7) A schedule indicating when service is expected to be offered in part or all of the service area, to the extent the schedule differs from one included in the notice of service or in a report previously submitted under this subsection, and an explanation of the reason for the new schedule.

"§ 66-354. General filing and report requirements.

A document filed with the Commission under this section must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Commission under this section, the person must send a copy of the document to any county or city included in the service area described in the document. A document filed under this section is a public record as defined in G.S. 132-1.

A successor in interest to a person who has filed a notice of service is not required to file another notice of service. When a change in ownership occurs, the owner must file a notice of change in ownership with the Commission within 14 days after the change becomes effective.

"§ 66-355. Effect on existing local franchise agreement.

(a) Existing Agreement. – This Article does not affect an existing agreement except as follows:

- (1) Effective January 1, 2007, gross revenue used to calculate the payment of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does not include gross receipts from cable service subject to sales tax under G.S. 105-164.4. This exclusion does not otherwise affect the calculation of gross revenue and the payment to counties and cities of franchise tax revenue under existing agreements that have not been terminated under subsection (b) of this section.
- (2) A cable service provider under an existing agreement may terminate the agreement in accordance with subsection (b) of this section when a report of initial service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are

1 passed by both the cable service provider under the existing agreement
2 and the holder of a State-issued franchise.

3 (b) Termination. – To terminate an existing agreement, a cable service provider
4 must file a notice of termination with the affected county or city and file a notice of
5 service with the Commission. A termination of an existing agreement becomes effective
6 at the end of a calendar quarter that is at least 30 days after the notice of termination is
7 filed with the affected county or city. A termination of an existing agreement ends the
8 obligations under the agreement as of the effective date of the termination but does not
9 affect the rights or liabilities of the county or city, a taxpayer, or another person arising
10 under the existing agreement before the effective date of the termination.

11 **"§ 66-356. Service standards and requirements.**

12 (a) Discrimination Prohibited. – A person who provides cable service over a
13 cable system may not deny access to the service to any group of potential residential
14 subscribers within the filed service area because of the race or income of the residents.
15 A violation of this subsection is considered an unfair or deceptive act or practice under
16 G.S. 75-1.1.

17 In determining whether a cable service provider has violated this subsection with
18 respect to a group of potential residential subscribers in a service area, the following
19 factors must be considered:

- 20 (1) The length of time since the provider filed the notice of service for the
21 area. If less than a year has elapsed since the notice of service was
22 filed, it is conclusively presumed that a violation has not occurred.
23 (2) The cost of providing service to the affected group due to distance
24 from facilities, density, or other factors.
25 (3) Technological impediments to providing service to the affected group.
26 (4) Inability to obtain access to property required to provide service to the
27 affected group.

28 (b) FCC Standards. – A person who provides cable service over a cable system
29 must comply with the customer service requirements in 47 C.F.R. § 76.309 and
30 emergency alert requirements established by the Federal Communications Commission.
31 The Consumer Protection Division of the Attorney General's office is designated as the
32 State agency to receive and respond to customer complaints concerning cable service.
33 The number for the Division must be printed on the customer's bill.

34 (c) No Build-Out. – No build-out requirements apply to a person who provides
35 cable service under a State-issued franchise.

36 **"§ 66-357. Availability and use of PEG channels.**

37 (a) Application. – This section applies to a person who provides cable service
38 under a State-issued franchise. It does not apply to a person who provides cable service
39 under an existing agreement.

40 (b) Local Request. – A county or city must make a written request to a cable
41 service provider for PEG channel capacity. The request must include a statement
42 describing the county's or city's plan to operate and program each channel requested.
43 The cable service provider must provide the requested PEG channel capacity within 120
44 days after it receives the written request.

1 (c) Initial PEG Channels. – If an area is included in both the franchise area of an
2 existing agreement and the service area of a State-issued franchise, the terms of the
3 existing agreement, as of the filing date on the notice of service for the State-issued
4 franchise, determine the required number, service tier placement, and transmission
5 quality of initial PEG channels. The cable service provider must provide the number of
6 PEG channels activated under those terms, giving equivalent service tier placement and
7 transmission quality to those channels. The cable service provider must maintain the
8 same channel designation for a PEG channel unless the service area of the State-issued
9 franchise includes PEG channels that are operated by different counties or cities and
10 those PEG channels have the same channel designation. The expiration of an existing
11 agreement after January 1, 2007, does not affect the requirements in this subsection.

12 If no existing agreement includes any part of the service area of a State-issued
13 franchise, then the number, service tier placement, and transmission quality of the initial
14 PEG channels a cable service provider must provide depends upon the population of the
15 city in which part or all of the service area is located. If the city's population is at least
16 50,000, the cable service provider must provide up to three PEG channels on a basic
17 service tier. If the city's population is less than 50,000, a cable service provider must
18 provide up to two PEG channels on a basic service tier. The transmission quality of
19 these PEG channels must be equivalent to those of the closest city covered by an
20 existing agreement.

21 (d) Additional PEG Channels. – A county or city that does not have seven PEG
22 channels, including the initial PEG channels, is eligible for an additional PEG channel if
23 it meets the programming requirements in this subsection. A county or city that has
24 seven PEG channels is not eligible for an additional channel.

25 A county or city that meets the programming requirements in this subsection may
26 make a written request under subsection (b) of this section for an additional channel.
27 The additional channel may be provided on any service tier. The transmission quality of
28 the additional channel must be at least equivalent to the transmission quality of the other
29 channels provided.

30 The PEG channels operated by a county or city must meet the following
31 programming requirements in order for the county or city to obtain an additional
32 channel:

33 (1) All of the PEG channels must have scheduled programming for at least
34 eighty percent (80%) of the time for at least eight hours a day.

35 (2) The programming content of each of the PEG channels must not repeat
36 more than fifteen percent (15%) of the programming content on any of
37 the other PEG channels.

38 (3) No more than fifteen percent (15%) of the programming content on
39 any of the PEG channels may be character-generated programming.

40 (e) Use of Channels. – If a county or city no longer provides any programming
41 for transmission over a PEG channel it has activated, the channel may be reprogrammed
42 at the cable service provider's discretion. A cable service provider must give at least 60
43 days notice to a county or city before it reprograms a PEG channel that is not used. The
44 cable service provider must restore a previously lost PEG channel within 120 days of

1 the date a county or city certifies to the provider a schedule that demonstrates the
2 channel will be used.

3 (f) Operation of Channels. – A cable service provider is responsible only for the
4 transmission of a PEG channel. The county or city to which the PEG channel is
5 provided is responsible for the operation and content of the channel. A county or city
6 that provides content to a cable service provider for transmission on a PEG channel is
7 considered to have authorized the provider to transmit the content throughout the
8 provider's service area, regardless of whether part of the service area is outside the
9 boundaries of the county or city.

10 All programming on a PEG channel must be noncommercial. A cable service
11 provider is not required to transmit content on a PEG channel that is branded with the
12 logo, name, or other identifying marks of another cable service provider.

13 **"§ 66-358. Transmission of PEG channels.**

14 (a) Service. – When a cable service provider operating under a State-issued
15 franchise begins providing cable service in an area, the service must include the
16 transmission of PEG channels by one of the following methods:

17 (1) Interconnection of its cable system on reasonable and competitively
18 neutral terms with any other cable system operated in its franchise or
19 service area. Interconnection may be accomplished by direct cable,
20 microwave link, satellite, or other method of connection.

21 (2) Transmission of the signal from each PEG channel programmer's
22 origination site.

23 (b) Signal. – All PEG channel programming must meet the minimum recognized
24 technical standards for the format used. If a PEG channel programmer transmits its
25 signal in a format a cable service provider cannot transmit without altering the
26 transmission signal, then the cable service provider must do one of the following:

27 (1) Alter the transmission signal to make it compatible with the
28 technology or protocol the cable service provider uses to deliver its
29 cable service.

30 (2) Provide to the county or city equipment needed to alter the
31 transmission signal to make it compatible with the technology or
32 protocol the cable service provider uses to deliver its cable service.

33 **"§ 66-359. Service to public building.**

34 At the written request of a county or city, a cable service provider operating under a
35 State-issued franchise must provide cable service without charge to a public building
36 located within 125 feet of the provider's cable system. The required service is the basic,
37 or lowest-priced, service the provider offers to customers. The terms and conditions that
38 apply to service provided to a retail customer apply to the service provided to the public
39 building. Only one service outlet is required for a building. The cable service provider is
40 not required to provide concealed inside wiring. A public building is a building used as
41 a public school, a charter school, a county or city library, or a function of the county or
42 city."

43 **SECTION 2.** G.S. 105-164.3 is amended by adding a new subdivision to
44 read:

1 **"§ 105-164.3. Definitions.**

2 The following definitions apply in this Article:

3 ...
4 (50c) Video programming. – Programming provided by, or generally
5 considered comparable to programming provided by, a television
6 broadcast station, regardless of the method of delivery."

7 **SECTION 3.** G.S. 105-164.4(a)(6) reads as rewritten:

8 "(6) The combined general rate applies to the gross receipts derived from
9 providing ~~any of the following broadcast services~~ video programming
10 to a subscriber in this State. A cable service provider, a direct-to-home
11 satellite service provider, and any other person engaged in the business
12 of providing any of these services video programming is considered a
13 retailer under this ~~Article~~ Article.

14 a. ~~Direct to home satellite service.~~

15 b. ~~Cable service."~~

16 **SECTION 4.** G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the
17 catchline "Bundled services."

18 **SECTION 5.** G.S. 105-164.4D, as recodified by Section 4 of this act, reads
19 as rewritten:

20 **"§ 105-164.4D. Bundled services.**

21 ~~Bundled Services.~~—When a taxable ~~telecommunications~~ service is bundled with a
22 service that is not taxable, the tax applies to the gross receipts from the taxable service
23 in the bundle as follows:

24 (1) If the service provider offers all the services in the bundle on an
25 unbundled basis, tax is due on the unbundled price of the taxable
26 service, less the discount resulting from the bundling. The discount for
27 a service as the result of bundling is the proportionate price decrease of
28 the service, determined on the basis of the total unbundled price of all
29 the services in the bundle compared to the bundled price of the
30 services.

31 (2) If the service provider does not offer one or more of the services in the
32 bundle on an unbundled basis, tax is due on the taxable service based
33 on a reasonable allocation of revenue to that service. If the service
34 provider maintains an account for revenue from a taxable service, the
35 service provider's allocation of revenue to that service for the purpose
36 of determining the tax due on the service must reflect its accounting
37 allocation of revenue to that service."

38 **SECTION 6.** The catchline to G.S. 105-164.12B reads as rewritten:

39 **"§ 105-164.12B. ~~Bundled transactions.~~ Tangible personal property bundled with**
40 **service contract."**

41 **SECTION 7.** G.S. 105-164.44F(a) reads as rewritten:

42 "(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes
43 imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must
44 make the distribution within 75 days after the end of each calendar quarter. The amount

1 the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the
2 following percentages of the net proceeds of the taxes collected during the ~~quarter,~~
3 quarter:

4 (1) Eighteen and three one-hundredths percent (18.03%), minus two
5 million six hundred twenty thousand nine hundred forty-eight dollars
6 (\$2,620,948).(\$2,620,948), must be distributed to cities in accordance
7 with this section. ~~This~~ The deduction is one-fourth of the annual
8 amount by which the distribution to cities of the gross receipts
9 franchise tax on telephone companies, imposed by former G.S. 105-20,
10 was required to be reduced beginning in fiscal year 1995-96 as a result
11 of the "freeze deduction." ~~The Secretary must distribute the specified~~
12 ~~percentage of the proceeds, less the "freeze deduction" among the~~
13 ~~cities in accordance with this section.~~

14 (2) Seven and twenty-three one-hundredths percent (7.23%) must be
15 distributed to counties and cities as provided in G.S. 105-164.44I."

16 **SECTION 8.** Article 5 of Chapter 105 of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 105-164.44I. Distribution of part of sales tax on video programming service and**
19 **telecommunications service to counties and cities.**

20 (a) Distribution. – The Secretary must distribute to the counties and cities part of
21 the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and
22 G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the
23 distribution within 75 days after the end of each calendar quarter. The amount the
24 Secretary must distribute is the sum of the following:

25 (1) The amount specified in G.S. 105-164.44F(a)(2).

26 (2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net
27 proceeds of the taxes collected during the quarter on video
28 programming, other than on direct-to-home satellite service.

29 (3) Thirty-seven percent (37%) of the net proceeds of the taxes collected
30 during the quarter on direct-to-home satellite service.

31 (b) Supplemental PEG Support. – The Secretary must include the applicable
32 amount of supplemental PEG channel support in each quarterly distribution to a county
33 or city. The amount to include is one-fourth of sixteen thousand dollars (\$16,000) for
34 each qualifying PEG channel operated by the county or city. The amount of money
35 distributed under this subsection may not exceed two million dollars (\$2,000,000) in a
36 calendar year. If the amount to be distributed for qualifying PEG channels in a calendar
37 year would otherwise exceed this maximum amount, the Secretary must proportionately
38 reduce the applicable amount distributable for each PEG channel. The amount included
39 under this subsection in a distribution to a county or city is intended to supplement the
40 PEG channel support available in the amount distributed under this section.

41 A county or city must certify to the Secretary by January 15 of each year the number
42 of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the
43 programming requirements under G.S. 66-357(d). A county or city may not receive
44 PEG channel support for more than three qualifying PEG channels.

1 The money distributed to a county or city under this subsection must be used by it
2 for the operation and support of PEG channels. For purposes of this subsection, the term
3 "PEG channel" has the same meaning as in G.S. 66-350.

4 (c) Counties and Cities Without Local Cable Revenue. – The share of a county
5 that did not impose a cable franchise tax under G.S. 153A-154 before January 1, 2007,
6 is one dollar (\$1.00) times the most recent annual population estimate for that county.
7 The share of a city that did not impose a cable franchise tax under G.S. 160A-214
8 before January 1, 2007, is two dollars (\$2.00) times the most recent annual population
9 estimate for that city.

10 (d) Counties and Cities With Local Cable Revenue. – The share of a county or
11 city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214
12 before January 1, 2007, is its proportionate share of the amount to be distributed to all
13 counties and to all cities eligible to receive a distribution under this subsection. The
14 amount to be distributed under this subsection is the amount determined under
15 subsection (a) of this section, minus the amount distributed under subsections (b) and
16 (c) of this section. A county's and city's proportionate share is the amount of cable
17 franchise tax it received under G.S. 153A-154 or G.S. 160A-214 during the 2005-2006
18 fiscal year plus the amount of a subscriber fee imposed during the 2005-2006 fiscal year
19 compared to the amount of cable franchise tax revenue and subscriber fee revenue all
20 counties and cities received in that fiscal year. Each county or city that imposed a
21 franchise tax under G.S. 153A-154 or G.S. 160A-214 must certify to the Secretary by
22 January 15, 2007, the amount of cable franchise tax revenue and subscriber fee revenue
23 it received in the 2005-2006 fiscal year.

24 For subsequent fiscal years, the Secretary must multiply the amount of a county's or
25 city's share under this subsection for the preceding year by the percentage change in its
26 population for that fiscal year and add the result to the county's or city's share for the
27 preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or
28 city's proportionate share for that year is its adjusted amount compared to the sum of the
29 adjusted amounts for all counties and cities.

30 (e) Population Determination. – In making population determinations under this
31 section, the Secretary must use the most recent annual population estimates certified to
32 the Secretary by the State Budget Officer. For purposes of the distributions made under
33 this section, the population of a county is the population of its unincorporated areas plus
34 the population of an ineligible city in the county, as determined under subsection (g) of
35 this section.

36 (f) Change in City Structure. – The following changes apply when a city alters
37 its corporate structure:

38 (1) If a city dissolves and is no longer incorporated, the proportional
39 shares of the remaining counties and cities must be recalculated to
40 adjust for the dissolution of that city.

41 (2) If two or more cities merge or otherwise consolidate, their proportional
42 shares are combined.

43 (3) If a city divides into two or more cities, the proportional share of the
44 city that divides is allocated among the new cities on a per capita basis.

1 (g) Ineligible Cities. – An ineligible city is disregarded for all purposes under this
 2 section. A city incorporated on or after January 1, 2000, is not eligible for a distribution
 3 under this section unless it meets both of the following requirements:

4 (1) It is eligible to receive funds under G.S. 136-41.2.

5 (2) A majority of the mileage of its streets is open to the public.

6 (h) Nature. – The General Assembly finds that the revenue distributed under this
 7 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
 8 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
 9 or withhold the distribution."

10 **SECTION 9.** G.S. 105-164.21B is repealed.

11 **SECTION 10.** G.S. 153A-137 is repealed.

12 **SECTION 11.** G.S. 153A-154 is repealed.

13 **SECTION 12.** G.S. 160A-211 reads as rewritten:

14 **"§ 160A-211. Privilege license taxes.**

15 (a) Authority. – Except as otherwise provided by law, a city shall have power to
 16 levy privilege license taxes on all trades, occupations, professions, businesses, and
 17 franchises carried on within the city. A city may levy privilege license taxes on the
 18 businesses that were formerly taxed by the State under the following sections of Article
 19 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities
 20 to tax the businesses before the sections were repealed:

21		
22	G.S. 105-36	Amusements – Manufacturing, selling, leasing, or
23		distributing moving picture films.
24	G.S. 105-36.1	Amusements – Outdoor theatres.
25	G.S. 105-37	Amusements – Moving pictures – Admission.
26	G.S. 105-42	Private detectives and investigators.
27	G.S. 105-45	Collecting agencies.
28	G.S. 105-46	Undertakers and retail dealers in coffins.
29	G.S. 105-50	Pawnbrokers.
30	G.S. 105-51.1	Alarm systems.
31	G.S. 105-53	Peddlers, itinerant merchants, and specialty market
32		operators.
33	G.S. 105-54	Contractors and construction companies.
34	G.S. 105-55	Installing elevators and automatic sprinkler systems.
35	G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
36	G.S. 105-62	Restaurants.
37	G.S. 105-65	Music machines.
38	G.S. 105-65.1	Merchandising dispensers and weighing machines.
39	G.S. 105-66.1	Electronic video games.
40	G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
41	G.S. 105-77	Tobacco warehouses.
42	G.S. 105-80	Firearms dealers and dealers in other weapons.
43	G.S. 105-85	Laundries.
44	G.S. 105-86	Outdoor advertising.

1	G.S. 105-89	Automobiles, wholesale supply dealers, and service
2		stations.
3	G.S. 105-89.1	Motorcycle dealers.
4	G.S. 105-90	Emigrant and employment agents.
5	G.S. 105-91	Plumbers, heating contractors, and electricians.
6	G.S. 105-97	Manufacturers of ice cream.
7	G.S. 105-98	Branch or chain stores.
8	G.S. 105-99	Wholesale distributors of motor fuels.
9	G.S. 105-102.1	Certain cooperative associations.
10	G.S. 105-102.5	General business license.

11

12 (b) Barbershop and Salon Restriction. – A privilege license tax levied by a city
13 on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for
14 each barber, manicurist, cosmetologist, beautician, or other operator employed in the
15 barbershop or beauty salon.

16 (c) ~~Piped Gas Restriction. Prohibition.~~ – A city may not levy a privilege license
17 tax on a person who is engaged in the business of supplying piped natural gas and is
18 subject to tax under Article 5E of Chapter 105 of the General Statutes. impose a license,
19 franchise, or privilege tax on a person engaged in any of the businesses listed in this
20 subsection. These businesses are subject to a State tax for which the city receives a
21 share of the tax revenue.

22 (1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of
23 the General Statutes.

24 (2) Providing telecommunications service taxed under
25 G.S. 105-164.4(a)(4c).

26 (3) Providing video programming taxed under G.S. 105-164.4(a)(6).

27 (d) ~~Telecommunications Restriction.~~ – A city may not impose a license,
28 franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c)."

29 SECTION 13. G.S. 160A-214 is repealed.

30 SECTION 14. G.S. 160A-319(a) reads as rewritten:

31 "(a) A city shall have authority to grant upon reasonable terms franchises for the
32 ~~operation within the city of a telephone system and~~ any of the enterprises listed in
33 ~~G.S. 160A-311 and for the operation of telephone systems. G.S. 160A-311, except a~~
34 cable television system. A franchise granted by a city authorizes the operation of the
35 franchised activity within the city. No franchise shall be granted for a period of more
36 than 60 years, except that a franchise for solid waste collection or disposal systems and
37 facilities shall not be granted for a period of more than 30 years ~~and cable television~~
38 ~~franchises shall not be granted for a period of more than 20 years.~~ Except as otherwise
39 provided by law, when a city operates an enterprise, or upon granting a franchise, a city
40 may by ordinance make it unlawful to operate an enterprise without a franchise."

41 SECTION 15. An award of a State-issued franchise under Article 42 of
42 Chapter 66 of the General Statutes, as enacted by this act, does not affect a
43 determination of whether video programming provided by the holder of the franchise is
44 considered cable service provided over a cable system under federal law or under a state

1 law that applies substantially the same definitions of "cable service" and "cable system"
2 as federal law.

3 **SECTION 16.** If any provision of this act or its application is held invalid,
4 the invalidity does not affect other provisions or applications of this act that can be
5 given effect without the invalid provisions or application, and to this end the provisions
6 of this act are severable.

7 **SECTION 17.** The Revenue Laws Study Committee must review the effect
8 Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any
9 changes to the law are needed and must report its findings to the 2009 Session of the
10 North Carolina General Assembly:

- 11 (1) Competition in video programming services.
- 12 (2) The number of cable service subscribers, the price of cable service by
13 service tier, and the technology used to deliver the service.
- 14 (3) The deployment of broadband in the State.

15 **SECTION 18.** This act becomes effective January 1, 2007. Sections 7 and 8
16 of this act apply to the distribution made within 75 days after March 31, 2007, for the
17 quarter starting January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 1559*
PROPOSED COMMITTEE SUBSTITUTE S1559-CSRBx-52 [v.3]

6/8/2006 6:47:32 AM

Short Title: Video Service Competition Act.

(Public)

Sponsors:

Referred to:

May 18, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS
3 AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING
4 SERVICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 66 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 42.

9 "State Franchise for Cable Television Service.

10 "§ 66-350. Definitions.

11 The following definitions apply in this Article:

- 12 (1) Cable service. – Defined in G.S. 105-164.3.
13 (2) Cable system. – Defined in 47 U.S.C. § 522.
14 (3) Channel. – A portion of the electromagnetic frequency spectrum that is
15 used in a cable system and is capable of delivering a television
16 channel.
17 (4) Existing agreement. – A local franchise agreement that was awarded
18 under G.S. 153A-137 or G.S. 160A-319 and meets either of the
19 following:
20 a. Is in effect on January 1, 2007.
21 b. Expired before January 1, 2007, and the cable service provider
22 under the agreement provides cable service to subscribers in the
23 franchise area on January 1, 2007.
24 (5) Pass a household. – Make service available to a household, regardless
25 of whether the household subscribes to the service.
26 (6) PEG channel. – A public, educational, or governmental access channel
27 provided to a county or city.
28 (7) Secretary. – The Secretary of State.

1 "§ 66-351. State franchising authority.

2 (a) Authority. – The Secretary of State is designated the exclusive franchising
3 authority in this State for cable service provided over a cable system. This designation
4 replaces the authorization to counties and cities in former G.S. 153A-137 and
5 G.S. 160A-319 to award a franchise for cable service. This designation is effective
6 January 1, 2007. After this date, a county or city may not award or renew a franchise for
7 cable service.

8 (b) Award and Scope. – The Secretary is considered to have awarded a franchise
9 to a person who files a notice of franchise under G.S. 66-352. A franchise for cable
10 service authorizes the holder of the franchise to construct and operate a cable system
11 over public rights-of-way within the area to be served. Chapter 160A of the General
12 Statutes governs the regulation of public rights-of-way by a city.

13 "§ 66-352. Award of franchise and commencement of service.

14 (a) Notice of Franchise. – A person who intends to provide cable service over a
15 cable system in an area must file a notice of franchise with the Secretary before
16 providing the service. A person who files a notice of franchise must pay a fee in the
17 amount set in G.S. 57C-1-22 for filing articles of organization.

18 A notice of franchise is effective when it is filed with the Secretary. The notice of
19 franchise must include all of the following:

- 20 (1) The applicant's name, principal place of business, mailing address,
21 physical address, telephone number, and e-mail address.
22 (2) A description and map of the area to be served.
23 (3) A list of each county and city in which the described service area is
24 located, in whole or in part.
25 (4) A schedule indicating when service is expected to be offered in the
26 service area.

27 (b) Commencement of Service. – A person who files a notice of franchise under
28 subsection (a) of this section must begin providing cable service in the service area
29 described in the notice within 120 days after the notice is filed. If cable service does not
30 begin within this period, the notice of franchise terminates 130 days after it was filed. If
31 cable service begins within this period, the holder of the State-issued franchise must file
32 a notice of service with the Secretary within 10 days after the cable service begins.
33 Cable service begins when it passes one or more households in the described service
34 area. This subsection does not apply to a cable service provider who terminates an
35 existing agreement whose franchise area includes all of the service area described in a
36 notice of franchise filed by the provider under subsection (a) of this section.

37 A notice of service for a service area must include all of the following:

- 38 (1) The effective date of a notice of franchise for that area.
39 (2) A description and map of the service area.
40 (3) A statement that cable service has begun in the service area.

41 (c) Extension. – A person who intends to provide cable service over a cable
42 system in an area that is contiguous with but outside the service area described in a
43 notice of franchise on file with the Secretary must file a notice of franchise under
44 subsection (a) of this section that includes the proposed area. The initial service

1 requirements in subsection (b) of this section apply to the proposed area. If the map of
2 the area to be served includes any area that is part of the service area of another
3 State-issued franchise, the termination of a notice of franchise for the proposed area for
4 failure to begin service within the required time does not affect the status of the other
5 State-issued franchise.

6 (d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice
7 of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90
8 days before the service is withdrawn.

9 **"§ 66-353. Annual service report.**

10 A holder of a State-issued franchise must file an annual service report with the
11 Secretary. The report must be filed on or before July 31 of each year. The report must
12 be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report.
13 The report must include all of the following:

- 14 (1) The effective date of a notice of franchise for that area.
- 15 (2) A description and map of the service area.
- 16 (3) The approximate number of households in the service area.
- 17 (4) A description and a map of the households passed in the service area
18 as of July 1.
- 19 (5) The percentage of households passed in the service area as of July 1.
- 20 (6) The percentage of households passed in the service area as of July 1 of
21 any preceding year for which a report was required under this section.
- 22 (7) A report indicating the extent to which the holder has met the customer
23 service requirements under G.S. 66-356(b).
- 24 (8) A schedule indicating when service is expected to be offered in the
25 service area, to the extent the schedule differs from one included in the
26 notice of franchise or in a report previously submitted under this
27 section, and an explanation of the reason for the new schedule.

28 **"§ 66-354. General filing and report requirements.**

29 (a) General. – A document filed with the Secretary under this Article must be signed
30 by an officer or general partner of the person submitting the document. Within five days
31 after a person files a document with the Secretary under this Article, the person must
32 send a copy of the document to any county or city included in the service area described
33 in the document and to the registered agent of any cable service provider that is
34 providing cable service under an existing agreement in the service area described in the
35 document.

36 The provisions of Article 2 of Chapter 55D of the General Statutes apply to the
37 submission of a document under this Article. A document filed under this Article is a
38 public record as defined in G.S. 132-1. The Secretary must post a document filed under
39 this Article on its Internet Web site or indicate on its Internet Web site that the
40 document has been filed and is available for inspection.

41 A successor in interest to a person who has filed a notice of franchise is not required
42 to file another notice of franchise. When a change in ownership occurs, the owner must
43 file a notice of change in ownership with the Secretary within 14 days after the change
44 becomes effective.

1 **(b) Forfeiture.** – A person who offers cable service over a cable system without
2 filing a notice of franchise or a notice of service as required by this Article is subject to
3 forfeiture of the revenue received during the period of noncompliance from subscribers
4 to the cable service. This forfeiture does not affect the liability of the cable service
5 provider for sales tax due under G.S. 105-164.4 on cable service. A cable service
6 provider whose area includes the area in which a person is providing cable service
7 without complying with the notice of franchise and notice of service requirements may
8 bring a civil action for forfeiture. The amount required to be forfeited in the action must
9 be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

10 **"§ 66-355. Effect on existing local franchise agreement.**

11 **(a) Existing Agreement.** – This Article does not affect an existing agreement
12 except as follows:

13 **(1)** Effective January 1, 2007, gross revenue used to calculate the payment
14 of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does
15 not include gross receipts from cable service subject to sales tax under
16 G.S. 105-164.4. This exclusion does not otherwise affect the
17 calculation of gross revenue and the payment to counties and cities of
18 franchise tax revenue under existing agreements that have not been
19 terminated under subsection (b) of this section.

20 **(2)** A cable service provider under an existing agreement may terminate
21 the

22
23 the agreement in accordance with subsection (b) of this section in any of the
24 following circumstances:

25 **a.a.** AA notice of service filed under G.S. 66-352 indicates that one
26 or more households in the franchise area of the existing
27 agreement are passed by both the cable service provider under
28 the existing agreement and the holder of a State-issued
29 franchise.

30 **b.** As of January 1, 2007, a county or city has an existing
31 agreement with more than one cable service provider and at
32 least twenty-five percent (25%) of the households in the
33 franchise areas of the existing agreements are passed by more
34 than one cable service provider.

35 **c.** A person provides wireline competition in the franchise area of
36 the existing agreement by offering video programming, as
37 defined in G.S. 105-164.3, over wireline facilities by a method
38 that does not require a franchise under this Article. A notice of
39 termination filed on the basis of wireline competition must
40 include evidence of the competition in providing video
41 programming service, such as an advertisement announcing the
42 availability of the service, the acceptance of an order for the
43 service, and information on the provider's website about the
44 availability of the service. A county or city is allowed 60 days

1 to review the evidence. The effective date of the termination is
2 tolled during this review period. At the end of this period, the
3 termination proceeds unless the county or city brings a civil
4 action to stay the termination based on the cable service
5 provider's failure to establish the existence of wireline
6 competition in its franchise area.

7 **(b) Termination.** – To terminate an existing agreement, a cable service provider
8 must file a notice of termination with the affected county or city and file a notice of
9 franchise with the Secretary. A termination of an existing agreement becomes effective
10 at the end of the month in which the notice of termination is filed with the affected
11 county or city. A termination of an existing agreement ends the obligations under the
12 agreement and under any local cable regulatory ordinance that specifically authorizes
13 the agreement as of the effective date of the termination but does not affect the rights or
14 liabilities of the county or city, a taxpayer, or another person arising under the existing
15 agreement or local ordinance before the effective date of the termination.

16 **"§ 66-356. Service standards and requirements.**

17 **(a) Discrimination Prohibited.** – A person who provides cable service over a
18 cable system may not deny access to the service to any group of potential residential
19 subscribers within the filed service area because of the race or income of the residents.
20 A violation of this subsection is considered an unfair or deceptive act or practice under
21 G.S. 75-1.1.

22 In determining whether a cable service provider has violated this subsection with
23 respect to a group of potential residential subscribers in a service area, the following
24 factors must be considered:

- 25 (1) The length of time since the provider filed the notice of service for the
26 area. If less than a year has elapsed since the notice of service was
27 filed, it is conclusively presumed that a violation has not occurred.
- 28 (2) The cost of providing service to the affected group due to distance
29 from facilities, density, or other factors.
- 30 (3) Technological impediments to providing service to the affected group.
- 31 (4) Inability to obtain access to property required to provide service to the
32 affected group.
- 33 (5) Competitive pressure to respond to service offered by another cable
34 service provider.

35 **(b) FCC Standards.** – A person who provides cable service over a cable system
36 must comply with the customer service requirements in 47 C.F.R. Part 76 and
37 emergency alert requirements established by the Federal Communications Commission.

38 **(c) Complaints.** – The Consumer Protection Division of the Attorney General's
39 Office is designated as the State agency to receive and respond to customer complaints
40 concerning cable services. Persistent or repeated violations of the federal customer
41 service requirements or the terms and conditions of the cable service provider's
42 agreement with customers are considered unfair or deceptive acts or practices under
43 G.S. 75-1.1.

1 To facilitate the resolution of customer complaints, the cable service provider must
2 include the following statement on the customer's bill: "If you have a complaint about
3 your cable service, you should first contact customer service at the following telephone
4 number: (insert the cable service provider's customer service telephone number). If the
5 cable service provider does not satisfactorily resolve your complaint, contact the
6 Consumer Protection Division of the Attorney General's Office of the State of North
7 Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001, at www.ncdoj.com, or
8 at 1-877-5-NO-SCAM.

9 (d) No Build-Out. – No build-out requirements apply to a person who provides
10 cable service under a State-issued franchise.

11 **"§ 66-357. Availability and use of PEG channels.**

12 (a) Application. – This section applies to a person who provides cable service
13 under a State-issued franchise. It does not apply to a person who provides cable service
14 under an existing agreement.

15 (b) Local Request. – A county or city must make a written request to a cable
16 service provider for PEG channel capacity. The request must include a statement
17 describing the county's or city's plan to operate and program each channel requested.
18 The cable service provider must provide the requested PEG channel capacity within 120
19 days after it receives the written request.

20 (c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed
21 a minimum of three initial PEG channels plus any channels in excess of this minimum
22 that are activated, as of July 1, 2006, under the terms of an existing franchise agreement
23 whose franchise area includes the city. A city with a population of less than 50,000 is
24 allowed a minimum of two initial PEG channels plus any channels in excess of this
25 minimum that are activated, as of July 1, 2006, under the terms of an existing franchise
26 agreement whose franchise area includes the city. For a city included in the franchise
27 area of an existing agreement, the agreement determines the service tier placement and
28 transmission quality of the initial PEG channels. For a city that is not included in the
29 franchise area of an existing agreement, the initial PEG channels must be on a basic
30 service tier, and the transmission quality of the channels must be equivalent to those of
31 the closest city covered by an existing agreement.

32 A county is allowed a minimum of two initial PEG channels plus any channels in
33 excess of this minimum that are activated, as of July 1, 2006, under the terms of an
34 existing franchise agreement whose franchise area includes the county. For a county
35 included in the franchise area of an existing agreement, the agreement determines the
36 service tier placement and transmission quality of the initial PEG channels. For a county
37 that is not included in the franchise area of an existing agreement, the initial PEG
38 channels must be on a basic service tier and the transmission quality of the channels
39 must be equivalent to those of any city with PEG channels in the county.

40 The cable service provider must maintain the same channel designation for a PEG
41 channel unless the service area of the State-issued franchise includes PEG channels that
42 are operated by different counties or cities and those PEG channels have the same
43 channel designation. Each county and city whose PEG channels are served by the same

1 cable system headend must cooperate with each other and with the cable system
2 provider in sharing the capacity needed to provide the PEG channels.

3 (d) Additional PEG Channels. – A county or city that does not have seven PEG
4 channels, including the initial PEG channels, is eligible for an additional PEG channel if
5 it meets the programming requirements in this subsection. A county or city that has
6 seven PEG channels is not eligible for an additional channel.

7 A county or city that meets the programming requirements in this subsection may
8 make a written request under subsection (b) of this section for an additional channel.
9 The additional channel may be provided on any service tier. The transmission quality of
10 the additional channel must be at least equivalent to the transmission quality of the other
11 channels provided.

12 The PEG channels operated by a county or city must meet the following
13 programming requirements for at least 120 continuous days in order for the county or
14 city to obtain an additional channel:

15 (1) All of the PEG channels must have scheduled programming for at least
16 eight hours a day.

17 (2) The programming content of each of the PEG channels must not repeat
18 more than fifteen percent (15%) of the programming content on any of
19 the other PEG channels.

20 (3) No more than fifteen percent (15%) of the programming content on
21 any of the PEG channels may be character-generated programming.

22 (e) Use of Channels. – If a county or city no longer provides any programming
23 for transmission over a PEG channel it has activated, the channel may be reprogrammed
24 at the cable service provider's discretion. A cable service provider must give at least 60
25 days notice to a county or city before it reprograms a PEG channel that is not used. The
26 cable service provider must restore a previously lost PEG channel within 120 days of
27 the date a county or city certifies to the provider a schedule that demonstrates the
28 channel will be used.

29 (f) Operation of Channels. – A cable service provider is responsible only for the
30 transmission of a PEG channel. The county or city to which the PEG channel is
31 provided is responsible for the operation and content of the channel. A county or city
32 that provides content to a cable service provider for transmission on a PEG channel is
33 considered to have authorized the provider to transmit the content throughout the
34 provider's service area, regardless of whether part of the service area is outside the
35 boundaries of the county or city.

36 All programming on a PEG channel must be noncommercial. A cable service
37 provider may not brand content on a PEG channel with its logo, name, or other
38 identifying marks. A cable service provider is not required to transmit content on a PEG
39 channel that is branded with the logo, name, or other identifying marks of another cable
40 service provider.

41 **"§ 66-358. Transmission of PEG channels.**

42 (a) Service. – When a cable service provider operating under a State-issued
43 franchise begins providing cable service in an area, the service must include the
44 transmission of PEG channels by one of the following methods:

1 (1) Interconnection with another cable system operated in its service area.
2 A cable service provider operating in the same service area as a
3 provider under a State-issued franchise must interconnect its cable
4 system on reasonable and competitively neutral terms with the other
5 provider's cable system when it receives a written request for
6 interconnection and may not refuse to interconnect on these terms. The
7 terms include compensation for costs incurred in interconnecting.
8 Interconnection may be accomplished by direct cable, microwave link,
9 satellite, or another method of connection.

10 (2) Transmission of the signal from each PEG channel programmer's
11 origination site, if the origination site is in the provider's service area.

12 (b) Signal. – All PEG channel programming provided to a cable service provider
13 for transmission must meet the federal National Television System Committee standards
14 or the Advanced Television Systems Committee Standards. If a PEG channel
15 programmer complies with these standards and the cable service provider cannot
16 transmit the programming without altering the transmission signal, then the cable
17 service provider must do one of the following:

18 (1) Alter the transmission signal to make it compatible with the
19 technology or protocol the cable service provider uses to deliver its
20 cable service.

21 (2) Provide to the county or city the equipment needed to alter the
22 transmission signal to make it compatible with the technology or
23 protocol the cable service provider uses to deliver its cable service.

24 **"§ 66-359. PEG channel grants.**

25 (a) PEG Channel Fund. – The PEG Channel Fund is created as an
26 interest-bearing special revenue fund. It consists of revenue allocated to it under
27 G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority,
28 created under G.S. 143B-437.46, administers the Fund.

29 (b) Grants. – A county or city may apply to the e-NC Authority for a grant from
30 the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to
31 the extent possible select applicants from all parts of the State based upon need. Grants
32 from the Fund are subject to the following limitations:

33 (1) The grant may not exceed twenty-five thousand dollars (\$25,000).

34 (2) The applicant must match the grant on a dollar-for-dollar basis.

35 (3) The grant may be used only for capital expenditures necessary to
36 provide PEG channel programming.

37 (4) An applicant may receive no more than one grant per fiscal year.

38 (c) Reports. – The e-NC Authority must publish an annual report on grants
39 awarded under this section. The report must list each grant recipient, the amount of the
40 grant, and the purpose of the grant.

41 **"§ 66-360. Service to public building.**

42 At the written request of a county or city, a cable service provider operating under a
43 State-issued franchise must provide cable service without charge to a public building
44 located within 125 feet of the provider's cable system. The required service is the basic,

1 or lowest-priced, service the provider offers to customers. The terms and conditions that
2 apply to service provided to a residential retail customer apply to the service provided to
3 the public building. Only one service outlet is required for a building. The cable service
4 provider is not required to provide inside wiring and is not required to provide service
5 that conflicts with restrictions that apply in a program licensing agreement or another
6 contract. A public building is a building used as a public school, a charter school, a
7 county or city library, or a function of the county or city."

8 SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to
9 read:

10 "**§ 105-164.3. Definitions.**

11 The following definitions apply in this Article:

12 ...

13 (50c) Video programming. – Programming provided by, or generally
14 considered comparable to programming provided by, a television
15 broadcast station, regardless of the method of delivery."

16 SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

17 "(6) The combined general rate applies to the gross receipts derived from
18 providing ~~any of the following broadcast services~~ video programming
19 to a subscriber in this State. A cable service provider, a direct-to-home
20 satellite service provider, and any other person engaged in the business
21 of providing any of these services ~~video programming~~ is considered a
22 retailer under this ~~Article~~ Article.

23 a. ~~Direct-to-home satellite service.~~

24 b. ~~Cable service."~~

25 SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the
26 catch line "Bundled services."

27 SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads
28 as rewritten:

29 "**§ 105-164.4D. Bundled services.**

30 ~~Bundled Services.~~—When a taxable ~~telecommunications~~ service is bundled with a
31 service that is not taxable, the tax applies to the gross receipts from the taxable service
32 in the bundle as follows:

33 (1) If the service provider offers all the services in the bundle on an
34 unbundled basis, tax is due on the unbundled price of the taxable
35 service, less the discount resulting from the bundling. The discount for
36 a service as the result of bundling is the proportionate price decrease of
37 the service, determined on the basis of the total unbundled price of all
38 the services in the bundle compared to the bundled price of the
39 services.

40 (2) If the service provider does not offer one or more of the services in the
41 bundle on an unbundled basis, tax is due on the taxable service based
42 on a reasonable allocation of revenue to that service. If the service
43 provider maintains an account for revenue from a taxable service, the
44 service provider's allocation of revenue to that service for the purpose

1 of determining the tax due on the service must reflect its accounting
2 allocation of revenue to that service."

3 SECTION 6. The catch line to G.S. 105-164.12B reads as rewritten:

4 "§ 105-164.12B. Bundled transactions. Tangible personal property bundled with
5 service contract."

6 SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

7 "(a) Amount. – The Secretary must distribute to the cities part of the taxes
8 imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must
9 make the distribution within 75 days after the end of each calendar quarter. The amount
10 the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the
11 following percentages of the net proceeds of the taxes collected during the quarter,
12 quarter:

13 (1) Eighteen and three one-hundredths percent (18.03%), minus two
14 million six hundred twenty thousand nine hundred forty-eight dollars
15 (\$2,620,948).(\$2,620,948), must be distributed to cities in accordance
16 with this section. This–The deduction is one-fourth of the annual
17 amount by which the distribution to cities of the gross receipts
18 franchise tax on telephone companies, imposed by former G.S. 105-20,
19 was required to be reduced beginning in fiscal year 1995-96 as a result
20 of the "freeze deduction." ~~The Secretary must distribute the specified~~
21 ~~percentage of the proceeds, less the "freeze deduction" among the~~
22 ~~cities in accordance with this section.~~

23 (2) Seven and twenty-three one-hundredths percent (7.23%) must be
24 distributed to counties and cities as provided in G.S. 105-164.44I."

25 SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by
26 adding a new section to read:

27 "§ 105-164.44I. Distribution of part of sales tax on video programming service and
28 telecommunications service to counties and cities.

29 (a) Distribution. – The Secretary must distribute to the counties and cities part of
30 the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and
31 G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the
32 distribution within 75 days after the end of each calendar quarter. The amount the
33 Secretary must distribute is the sum of the revenue listed in this subsection. The
34 Secretary must distribute two million dollars (\$2,000,000) of this amount in accordance
35 with subsection (b) of this section and the remainder in accordance with subsections (c)
36 and (d) of this section. The revenue to be distributed under this section consists of the
37 following:

38 (1) The amount specified in G.S. 105-164.44F(a)(2).

39 (2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net
40 proceeds of the taxes collected during the quarter on video
41 programming, other than on direct-to-home satellite service.

42 (3) Thirty-seven percent (37%) of the net proceeds of the taxes collected
43 during the quarter on direct-to-home satellite service.

1 **(b) Supplemental PEG Support.** – The Secretary must include the applicable
2 amount of supplemental PEG channel support in each quarterly distribution to a county
3 or city. The amount to include is one-fourth of twenty-five thousand dollars (\$25,000)
4 for each qualifying PEG channel operated by the county or city. The amount of money
5 distributed under this subsection may not exceed two million dollars (\$2,000,000) in a
6 fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year
7 would otherwise exceed this maximum amount, the Secretary must proportionately
8 reduce the applicable amount distributable for each PEG channel. If the amount to be
9 distributed for qualifying PEG channels in a fiscal year is less than two million dollars
10 (\$2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund,
11 established in G.S. 66-359.

12 A county or city must certify to the Secretary by July 15 of each year the number of
13 qualifying PEG channels it operates. A qualifying PEG channel is one that meets the
14 programming requirements under G.S. 66-357(d). A county or city may not receive
15 PEG channel support under this subsection for more than three qualifying PEG
16 channels.

17 The amount included under this subsection in a distribution to a county or city is
18 intended to supplement the PEG channel support available in the amount distributed
19 under this section. The money distributed to a county or city under this subsection must
20 be used by it for the operation and support of PEG channels. For purposes of this
21 subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

22 **(c) 2006-2007 Fiscal Year Distribution.** – The share of a county or city is its
23 proportionate share of the amount to be distributed to all counties and cities under this
24 subsection. The proportionate share of a county or city is the base amount for the county
25 or city compared to the base amount for all other counties and cities. The base amount
26 of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or
27 G.S. 160A-214 before July 1, 2006, is two dollars (\$2.00) times the most recent annual
28 population estimate for that county or city. The base amount of a county or city that
29 imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July
30 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or
31 city certifies to the Secretary that it imposed during the first six months of the
32 2006-2007 fiscal year. A county or city must make this certification by January 15,
33 2007. The certification must specify the amount of revenue that is derived from the
34 cable franchise tax and the amount that is derived from the subscriber fee.

35 **(d) Subsequent Distributions.** – For subsequent fiscal years, the Secretary must
36 multiply the amount of a county's or city's share under this section for the preceding
37 fiscal year by the percentage change in its population for that fiscal year and add the
38 result to the county's or city's share for the preceding fiscal year to obtain the county's or
39 city's adjusted amount. Each county's or city's proportionate share for that year is its
40 adjusted amount compared to the sum of the adjusted amounts for all counties and
41 cities.

42 **(e) Use of Proceeds.** – A county or city that imposed subscriber fees during the
43 first six months of the 2006-2007 fiscal year must use a portion of the funds distributed
44 to it under subsections (c) and (d) of this section for the operation and support of PEG

1 channels. The amount of funds that must be used for PEG channel operation and
2 support is two times the amount of subscriber fee revenue the county or city certified to
3 the Secretary that it imposed during the first six months of the 2006-2007 fiscal year.
4 The remainder of the distribution may be used for any public purpose.

5 (f) Late Information. – A county or city that does not submit information that the
6 Secretary needs to make a distribution by the date the information is due is excluded
7 from the distribution. If the county or city later submits the required information, the
8 Secretary must include the county or city in the distribution for the quarter that begins
9 after the date the information is received.

10 (g) Population Determination. – In making population determinations under this
11 section, the Secretary must use the most recent annual population estimates certified to
12 the Secretary by the State Budget Officer. For purposes of the distributions made under
13 this section, the population of a county is the population of its unincorporated areas plus
14 the population of an ineligible city in the county, as determined under subsection (g) of
15 this section.

16 (h) City Changes. – The following changes apply when a city alters its corporate
17 structure or incorporates:

18 (1) If a city dissolves and is no longer incorporated, the proportional
19 shares of the remaining counties and cities must be recalculated to
20 adjust for the dissolution of that city.

21 (2) If two or more cities merge or otherwise consolidate, their proportional
22 shares are combined.

23 (3) If a city divides into two or more cities, the proportional share of the
24 city that divides is allocated among the new cities on a per capita basis.

25 (4) If a city incorporates after January 1, 2007, and the incorporation is not
26 addressed by subdivisions (2) or (3) of this subsection, the share of the
27 county in which the new city is located is allocated between the county
28 and the new city on a per capita basis.

29 (i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this
30 section. A city incorporated on or after January 1, 2000, is not eligible for a distribution
31 under this section unless it meets both of the following requirements:

32 (1) It is eligible to receive funds under G.S. 136-41.2.

33 (2) A majority of the mileage of its streets is open to the public.

34 (j) Nature. – The General Assembly finds that the revenue distributed under this
35 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
36 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
37 or withhold the distribution."

38 **SECTION 9.** G.S. 105-164.21B is repealed.

39 **SECTION 10.** G.S. 153A-137 is repealed.

40 **SECTION 11.** G.S. 153A-154 is repealed.

41 **SECTION 12.** G.S. 160A-211 reads as rewritten:

42 **"§ 160A-211. Privilege license taxes.**

43 (a) **Authority.** – Except as otherwise provided by law, a city shall have power to
44 levy privilege license taxes on all trades, occupations, professions, businesses, and

1 franchises carried on within the city. A city may levy privilege license taxes on the
2 businesses that were formerly taxed by the State under the following sections of Article
3 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities
4 to tax the businesses before the sections were repealed:

5		
6	G.S. 105-36	Amusements – Manufacturing, selling, leasing, or
7		distributing moving picture films.
8	G.S. 105-36.1	Amusements – Outdoor theatres.
9	G.S. 105-37	Amusements – Moving pictures – Admission.
10	G.S. 105-42	Private detectives and investigators.
11	G.S. 105-45	Collecting agencies.
12	G.S. 105-46	Undertakers and retail dealers in coffins.
13	G.S. 105-50	Pawnbrokers.
14	G.S. 105-51.1	Alarm systems.
15	G.S. 105-53	Peddlers, itinerant merchants, and specialty market
16		operators.
17	G.S. 105-54	Contractors and construction companies.
18	G.S. 105-55	Installing elevators and automatic sprinkler systems.
19	G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
20	G.S. 105-62	Restaurants.
21	G.S. 105-65	Music machines.
22	G.S. 105-65.1	Merchandising dispensers and weighing machines.
23	G.S. 105-66.1	Electronic video games.
24	G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
25	G.S. 105-77	Tobacco warehouses.
26	G.S. 105-80	Firearms dealers and dealers in other weapons.
27	G.S. 105-85	Laundries.
28	G.S. 105-86	Outdoor advertising.
29	G.S. 105-89	Automobiles, wholesale supply dealers, and service
30		stations.
31	G.S. 105-89.1	Motorcycle dealers.
32	G.S. 105-90	Emigrant and employment agents.
33	G.S. 105-91	Plumbers, heating contractors, and electricians.
34	G.S. 105-97	Manufacturers of ice cream.
35	G.S. 105-98	Branch or chain stores.
36	G.S. 105-99	Wholesale distributors of motor fuels.
37	G.S. 105-102.1	Certain cooperative associations.
38	G.S. 105-102.5	General business license.

39
40 (b) Barbershop and Salon Restriction. – A privilege license tax levied by a city
41 on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for
42 each barber, manicurist, cosmetologist, beautician, or other operator employed in the
43 barbershop or beauty salon.

1 (c) ~~Piped Gas Restriction-Prohibition.~~ A city may not levy a privilege license
2 tax on a person who is engaged in the business of supplying piped natural gas and is
3 subject to tax under Article 5E of Chapter 105 of the General Statutes. impose a license,
4 franchise, or privilege tax on a person engaged in any of the businesses listed in this
5 subsection. These businesses are subject to a State tax for which the city receives a
6 share of the tax revenue.

7 (1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of
8 the General Statutes.

9 (2) Providing telecommunications service taxed under
10 G.S. 105-164.4(a)(4c).

11 (3) Providing video programming taxed under G.S. 105-164.4(a)(6).

12 (d) ~~Telecommunications Restriction.~~ A city may not impose a license,
13 franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c)."

14 SECTION 13. G.S. 160A-214 is repealed.

15 SECTION 14. G.S. 160A-296(a) reads as rewritten:

16 "(a) A city shall have general authority and control over all public streets,
17 sidewalks, alleys, bridges, and other ways of public passage within its corporate limits
18 except to the extent that authority and control over certain streets and bridges is vested
19 in the Board of Transportation. General authority and control includes but is not limited
20 to: to all of the following:

21 (1) The duty to keep the public streets, sidewalks, alleys, and bridges in
22 proper ~~repair;~~repair.

23 (2) The duty to keep the public streets, sidewalks, alleys, and bridges open
24 for travel and free from unnecessary ~~obstructions;~~obstructions.

25 (3) The power to open new streets and alleys, and to widen, extend, pave,
26 clean, and otherwise improve existing streets, sidewalks, alleys, and
27 bridges, and to acquire the necessary land therefor by dedication and
28 acceptance, purchase, or eminent ~~domain;~~domain.

29 (4) The power to close any street or alley either permanently or
30 ~~temporarily;~~temporarily.

31 (5) The power to regulate the use of the public streets, sidewalks, alleys,
32 and ~~bridges;~~bridges.

33 (6) The power to regulate, license, and prohibit digging in the streets,
34 sidewalks, or alleys, or placing therein or thereon any pipes, poles,
35 wires, fixtures, or appliances of any kind either on, above, or below the
36 ~~surface;~~surface. In exercising this power, a city may not impose a fee
37 or charge for use of the public right-of-way unless the fee or charge
38 applies uniformly to all nonmunicipal users of the public right-of-way.

39 (7) The power to provide for lighting the streets, alleys, and bridges of the
40 ~~city;~~and city.

41 (8) The power to grant easements in street rights-of-way as permitted by
42 G.S. 160A-273."

43 SECTION 15. G.S. 160A-319(a) reads as rewritten:

1 "(a) A city shall have authority to grant upon reasonable terms franchises for ~~the~~
2 ~~operation within the city of a telephone system and any of the enterprises listed in~~
3 ~~G.S. 160A-311 and for the operation of telephone systems. G.S. 160A-311, except a~~
4 ~~cable television system. A franchise granted by a city authorizes the operation of the~~
5 ~~franchised activity within the city. No franchise shall be granted for a period of more~~
6 ~~than 60 years, except that a franchise for solid waste collection or disposal systems and~~
7 ~~facilities shall not be granted for a period of more than 30 years and cable television~~
8 ~~franchises shall not be granted for a period of more than 20 years. Except as otherwise~~
9 ~~provided by law, when a city operates an enterprise, or upon granting a franchise, a city~~
10 ~~may by ordinance make it unlawful to operate an enterprise without a franchise."~~

11 **SECTION 16.** To make the distribution required under G.S. 105-164.44I(c),
12 as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the
13 Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it
14 operates.

15 **SECTION 17.** A primary purpose of this act is to promote consumer choice
16 in video service providers. A premise of this goal is that increased competition will lead
17 to improved service. Under competition, a customer who is dissatisfied with service by
18 one cable service provider will have the option of choosing a different service provider.

19 G.S. 66-356, as enacted by this act, designates the Consumer Protection
20 Division of the Attorney General's Office as the agency to receive and respond to
21 unresolved customer complaints about cable service provided by the holder of a
22 State-issued franchise. The transition from local franchise agreements to State-issued
23 franchises will occur gradually.

24 Due to the expected improvement in customer service and the gradual change
25 to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the
26 staffing needs of the Consumer Protection Division is not clear. The Office of the
27 Attorney General is therefore requested to monitor the number and type of cable service
28 complaints it receives from customers in areas served under a local franchise agreement
29 and from areas served under a State-issued franchise to determine whether the
30 Consumer Protection Division needs additional staff to fulfill the duty imposed by new
31 G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of
32 the North Carolina General Assembly by April 1, 2007.

33 **SECTION 18.** The Secretary of State has no authority to determine whether
34 a person who is providing video programming is providing cable service over a cable
35 system. An award of a State-issued franchise under Article 42 of Chapter 66 of the
36 General Statutes, as enacted by this act, does not affect a determination of whether
37 video programming provided by the holder of the franchise is considered cable service
38 provided over a cable system under federal law or under a state law that applies
39 substantially the same definitions of "cable service" and "cable system" as federal law.
40 A person who provides video programming may obtain a State-issued franchise
41 under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, regardless
42 of whether the video programming the person provides is considered cable service
43 provided under a cable system under that Article or under federal law.
44

1 **SECTION 19.** If any provision of this act or its application is held invalid,
2 the invalidity does not affect other provisions or applications of this act that can be
3 given effect without the invalid provisions or application, and to this end the provisions
4 of this act are severable.

5 **SECTION 20.** The Revenue Laws Study Committee must review the effect
6 Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any
7 changes to the law are needed and must report its findings to the 2009 Session of the
8 North Carolina General Assembly:

9 (1) Competition in video programming services.

10 (2) The number of cable service subscribers, the price of cable service by
11 service tier, and the technology used to deliver the service.

12 (3) The deployment of broadband in the State.

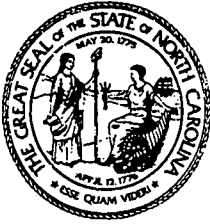
13 **SECTION 21.** This act becomes effective January 1, 2007. Sections 7 and 8
14 of this act apply to the distribution made within 75 days after March 31, 2007, for the
15 quarter starting January 1, 2007.

SB 1559 (PCS): VIDEO SERVICE COMPETITION ACT

June 8, 2006

Executive Summary for the Senate Commerce Meeting

- **Provides equal taxation of same service**
 - Defines video programming to include all programming comparable to television broadcast, regardless of provider
 - Repeals local authority to impose local franchise tax
 - Applies existing 7% State sales tax to video programming service
- **Promotes competition in video programming service**
 - Requires State franchising of cable service providers
 - Repeals local authority to award or renew a local cable franchise, effective January 1, 2007
- **Preserves local government revenue stream**
 - Distributes share of sales tax imposed on video programming to counties and cities
 - Distribution of video programming revenues based on the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 PLUS any subscriber revenues imposed during the first six months of fiscal year 06-07. Subsequent annual distributions adjusted for population growth
- **Protects PEG Channels**
 - Provides \$2 million for additional PEG support through direct distribution and through grants
 - Includes per subscriber revenue in local government distribution base and requires local governments that imposed a subscriber fee to use the amount of revenue derived from that fee for PEG channel operation and support
 - Sets number, service tier placement, and transmission quality of PEG channels
 - Provides mechanism to acquire additional PEG channels
 - Provides equipment assistance for transmitting PEG channel signals
- **Requires cable service provider to provide free basic service to local public buildings**
- **Preserves local regulation of rights-of-way**
- **Provides competitive neutrality**
 - Existing local franchises cannot be renewed
 - Opt out provision for cable service providers under existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise
- **Prohibits discrimination**
 - Bill specifically prohibits discrimination of service based on income or race
 - Violation of the law declared an unfair or deceptive trade practice
- **Preserves service standards**
 - Franchisee must comply with customer service standards and emergency alert requirements of FCC
 - Consumer Protection Division of the Attorney General's Office will receive and respond to complaints



SENATE BILL 1559: Video Service Competition Act

BILL ANALYSIS

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	Date:	June 7, 2006
Introduced by:	Sen. Clodfelter	Summary by:	Cindy Avrette
Version:	PCS to First Edition S1559-CSRBX-52		Committee Counsel

SUMMARY: *Senate Bill 1559 would provide equal taxation of video programming services regardless of how the service is delivered and it would replace locally negotiated franchises of cable service provided over a cable system with a State-issued franchise. The PCS for the bill addresses various issues and concerns raised by parties interested in the bill. The bill would become effective January 1, 2007.*

CURRENT LAW: North Carolina began taxing communication services when the technologies enabling the services were separate and distinct technologies and the providers of the services were separate and distinct taxpayers. Over the past several years, the technology used to provide these services has converged so that the line between the services is no longer separate and distinct. The Current Operations and Capital Improvements Appropriations Act of 2005 directed the Revenue Laws Study Committee to study the equity of taxation of providers of cable service, direct-to-home satellite service, satellite digital audio radio service, video programming service, and data service.

The Revenue Laws Study Committee spent a considerable amount of time on this issue.¹ The Committee found that the State taxes these services based upon who provides the service rather than the service itself. Despite the General Assembly's repeated attempts to provide tax equity among these providers, it is debatable whether that has been accomplished:

- The State imposes a 7% State sales tax on telecommunication services and it earmarks a percentage of the revenues to cities. The amount each city receives is based upon a per capita statutory formula. State law prohibits counties and cities from imposing local taxes on this service.
- The State imposes a 7% State sales tax on direct-to-home satellite service. Federal law prohibits a local tax on this service and it prohibits local regulation of this service. The tax revenue is not shared with local governments.
- The State imposes a 4.5% State sales tax and a 2.5% local sales tax on digital audio radio service.
- The State imposes a 7% State sales tax on cable services, with a credit equal to the amount of local franchise tax paid on the service. Counties and cities may impose a local franchise tax on this service; the tax may not exceed 5% of gross receipts. Cable service has been subject to local regulation since 1973. The local regulation of cable services varies from county to county and from city to city, depending on the terms of the locally negotiated agreements. The definition of

¹ The Revenue Laws Study Committee staff met separately with representatives of the cable industry, the telephone industry, the cable administrators, and the counties and cities. It also held a series of four meetings with all the affected parties and solicited comments from the parties on numerous occasions. The staff prepared a survey given to all the local governments in the State to determine their franchise fee collections and other nonmonetary contributions received in accordance with their cable franchise agreements.

Senate Bill 1559

Page 2

'gross receipts' may also vary from agreement to agreement. The cable boxes rented to customers is subject to the State and local sales tax. The gross receipts from the rental of these boxes may also be included in the company's gross receipts for local franchise tax purposes, depending upon how the term is defined in the local agreement.

The Revenue Laws Study Committee acknowledged that the method of taxation should not provide one provider of a service with a competitive advantage over another. The Committee expressed a goal to establish a method of taxation that applies equally to the same service, regardless of who provides it. The Committee established the following principles:

- Equal taxation of the same service.
- A tax system that is easy to administer.
- A tax and regulatory system that does not impede competition.
- Equal compensation to cities for the use of their public rights-of-way.
- PEG channels service a public purpose and should be supported.

Based upon those principles, it desired a bill that met the following goals:

- Applies the principles stated above.
- Contains no tax or fee increase.
- Preserves local government revenue stream.
- Promotes competition in the marketplace.
- Promotes deployment of broadband as a basic communication tool.

North Carolina is not alone in grappling with the issue of how to tax and regulate telecommunications and video programming services. Congress as well as other states is considering legislation on this issue. At this time, at least four states have enacted legislation changing the regulation and taxation of telecommunications and video programming services and at least eight other states have legislation pending on the issue.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 1559, *Video Service Competition Act*, establishes uniform taxes for video programming services and seeks to promote consumer choice. It establishes equal taxation of the same service by applying the State 7% sales tax to all video programming services, repealing the local authority to impose a local franchise tax, and repealing the sales tax credit allowed to cable companies for local franchise tax paid. It preserves the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 plus any subscriber fees imposed during that same period.

The bill promotes competition by providing a State franchise process, in lieu of the current locally negotiated franchise agreements. It seeks to ensure competitive neutrality by allowing cable providers to opt-out of existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise. The bill specifically prohibits discrimination in the provision of video programming services and declares a violation of this law to be an unfair or deceptive trade practice. The holder of a State-issued franchise must comply with customer service and emergency alert requirements established by the Federal Communications Commission. The

Senate Bill 1559

Page 3

bill designates the Consumer Protection Division of the Attorney General's Office as the State agency to receive customer complaints regarding video programming services.

The bill preserves local regulation of public rights-of-way and provides for PEG channel support and growth. The bill requires local governments that imposed subscriber fees to use a portion of the amount of revenue distributed to it for PEG channel operation and support. In addition to this mandated funding, the bill provides \$2 million for supplemental PEG support through direct appropriation for PEG channel support and operation and through grants. The bill provides that existing franchise agreements will determine the number, service tier placement, and transmission quality required of PEG channels under a State-issued franchise. In the absence of an existing agreement, the number of PEG channels a county or city may have is determined by the area's population. A local entity may acquire additional PEG channels, with the maximum number of channels set at seven. The bill also requires cable service providers to provide free basic service to local public buildings.

Section-by-section analysis of the proposed committee substitute:

Section 1 of the bill replaces the authorization to counties and cities to award a franchise for cable service with a State franchising authority, effective January 1, 2007. The bill provides that a county or city may not award or renew a franchise for cable service after this date. The bill designates the Secretary of State as the exclusive franchising authority in the State for cable service provided over a cable system. The terms 'cable service' and 'cable system' track the definitions in federal law. The bill would require the franchising of cable service that is required to be franchised under federal law. The bill does not expand the services that need to be franchised beyond those currently required to be franchised under federal law.

State issued franchise. The State franchise process is one of notice, not regulation. To receive a State-issued franchise, a person must file a notice of franchise with the Secretary of State and pay a fee of \$125.² A person who files a notice of franchise with the Secretary must begin providing cable service within 120 days after the notice is filed. If service is not provided within this period, the notice of franchise terminates 130 days after it was filed. The notice of franchise must include all of the following:

- The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.
- A description and map of the area to be served.
- A list of each county and city in which the described service area is located.
- A schedule indicating when service is expected to be offered in the service area.

Notice of Service. Once cable service is provided, the holder of a State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. The notice of service must include the effective date of the notice of franchise for that area, a description and map of the service area, and a statement that cable service has begun in the service area.

Annual Service Report. The holder of a State-issued franchise must also file an annual service report on or before July 31 of each year and pay a fee of \$200.³ The annual service report must include all of the following:

- The effective date of a notice of franchise for that area.

² Fee amount is the same as the filing fee for articles of organization of a limited liability company under G.S. 57C-1-22.

³ Fee amount is the same as the filing fee for an annual report of a limited liability company under G.S. 57C-1-22.

Senate Bill 1559

Page 4

- A description and map of the service area.
- The approximate number of households in the service area.
- A description and map of the households passed in the service area as of July 1.
- The percentage of households passed in the service area as of July 1.
- The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required.
- A report indicating the extent to which the holder has met the customer service requirements.
- A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted, and an explanation of the reason for the new schedule.

General filing and reporting requirements. A person who files a notice of franchise or an annual service report with the Secretary of State must send a copy of the document to any county or city included in the service area described in the document as well as to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area. The provisions of Article 2 of Chapter 55D apply to the submission of documents.⁴ The Secretary must either post the documents filed to its Internet Web site or indicate on its Internet Web site that the document has been filed and is available for inspection.

A person who offers cable service over a cable system without filing a notice of franchise or a notice of service is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service. A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice requirements may bring a civil action for forfeiture.

Existing agreements. An existing agreement is defined as a local franchise agreement that is in effect on January 1, 2007, or as one that expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007. The State franchising authority does not affect an existing agreement, except as follows:

- Effective January 1, 2007, gross revenue used to calculate the payment of a local franchise tax does not include gross receipts from cable service subject to the State sales tax.
- A local franchise agreement may be terminated in any one of the following circumstances:
 - When a notice of service indicates that one or more households in the franchise area of the existing agreement are passed by both the cable provider under the existing agreement and the holder of a State-issued franchise.
 - As of January 1, 2007, a county or city has an existing agreement with more than one cable service provider and at least 25% of the households in the franchise areas of the existing agreements are passed by more than one cable service provider.
 - A person provides wireline competition in the franchise area of the existing agreement by offering video programming, as defined in G.S. 105-164.3, over wireline facilities by

⁴ This Article contains several provisions: To be filed, a document must contain all the required information and be accompanied by the filing fee. The Secretary of State's filing of a document does not relate to the veracity of the document. A person who knowingly signs a false document filed with the Secretary is guilty of a Class 1 misdemeanor.

Senate Bill 1559

Page 5

a method that does not require a State-issued franchise. To terminate an existing agreement under this circumstance, a cable service provider must include evidence of the competition. A county or city is allowed 60 days to review the evidence. The termination becomes effective at the end of this 60-day period unless the county or city brings an action to stay the termination.

Termination of existing agreements. To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary of State. A notice of termination becomes effective at the end of a month. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance as of the effective date of the termination.

Service standards and requirements. The bill specifically prohibits discrimination in the provision of the cable service. A violation of the law is considered an unfair and deceptive trade practice under G.S. 75-1.1. In determining whether a cable service provider has violated the law, the following factors may be considered: the length of time since the provider filed the notice of service for the area, the cost of providing service to an area, technological impediments to providing service to an area, the inability to obtain access to property required to provide service to an area, and competitive pressure to respond to service offered by another cable provider. The information in the annual service reports may be used to help determine whether a violation of the law has occurred.

A cable service provider must comply with the customer service requirements and emergency alert requirements established by the Federal Communications Commission. The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to consumer complaints. Persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers will also be considered an unfair and deceptive trade practice under G.S. 75-1.1. Each individual violation of the federal requirements or the provider's agreement constitutes a separate violation. In a suit instituted by the Attorney General's office, the court may impose a civil penalty of up to \$5,000 a day for each violation if it finds the cable service provider violated G.S. 75-1.1. In a suit instituted by a person where the cable service provider is found to have violated G.S. 75-1.1, the person is entitled to treble the amount of damages fixed by the verdict.

PEG channels. The bill requires a cable service provider operating under a State-issued franchise to include the transmission of PEG channels. A county or city may make a written request for PEG channel capacity and the cable service provider must provide the requested capacity within 120 days after it receives the request. A city with a population of at least 50,000 is allowed a minimum of three PEG channels and a city with a population of less than \$50,000 is allowed a minimum of two PEG channels. A county is allowed a minimum of two PEG channels. This minimum number of initial PEG channels may be increased by the number of channels in excess of this minimum that are activated as of July 1, 2006, under the terms of an existing agreement whose franchise area includes the city or county.

The maximum number of PEG channels a cable service provider must provide to a county or city is seven. If a county or city does not have seven PEG channels, including the initial PEG channels, it may request additional channels. The additional channels may be provided on any service tier and the transmission quality of the additional channels must be at least equivalent to the transmission quality of the other channels provided. The PEG channels operated by a county or city must meet the following programming requirements in order for the county or city to obtain additional channels:

- All of the PEG channels must have scheduled programming for at least 8 hours a day.

Senate Bill 1559

Page 6

- The programming content of each PEG channel must not repeat more than 15% of the programming content on any of the other PEG channels.
- No more than 15% of the programming content on any PEG channel may be character-generated programming.

A cable service provider is responsible only for the transmission of a PEG channel. A county or city to which the PEG channel is provided is responsible for the operation and content of the channel.

PEG channel grants. The bill establishes the PEG Channel Fund as an interest-bearing special revenue fund. The purpose of the Fund is to provide matching grants to counties and cities for PEG channel support. The e-NC Authority administers the Fund.⁵ A grant may only be used for capital expenditures necessary to provide PEG channels. The size of a grant may not exceed \$25,000 and an applicant may receive no more than one grant per fiscal year. The applicant must match the grant on a dollar-for-dollar basis. The Authority must publish an annual report on the grants awarded from the Fund.

Service to public buildings. At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. Only one service outlet is required for a building. A public building is a building used as a public school, a charter school, a library, or a function of the county or city. A cable provider is not required to provide service that conflict with restrictions that apply in a program licensing agreement or another contract.

Sections 2 and 3 of the bill would apply the State sales tax equally to all video programming services, regardless of who provides the service. Section 2 defines the term 'video programming' to be programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery. The term is broader than 'cable service provided over a cable system'. It would include cable services offered over private rights-of-way as well as those offered over public rights-of-way. Section 3 imposes the State's 7% sales tax on the gross receipts derived from providing video programming to a subscriber in this State.⁶

Sections 4 through 6 of the bill would make technical and conforming changes to the provisions governing bundled transactions.

Sections 7 and 8 of the bill would distribute a share of the sales tax revenues imposed on video programming to counties and cities. The revenue distributed is local revenue, not a State expenditure. Therefore, the Governor may not reduce or withhold the distribution.

Section 7 would increase the amount of the sales tax revenue derived from telecommunication services distributed to cities and counties. Section 8 would distribute the following portion of the gross receipts derived from video programming to counties and cities: 22.61% of the net proceeds collected on video programming, other than on direct-to-home services and 37% of the net proceeds collected on direct-to-home satellite service.⁷ The distributions would be made quarterly.

The amount distributed would be allocated as follows:

- Two million dollars (\$2,000,000) a year would be distributed as supplement PEG channel support. A portion of this amount will be distributed to counties and cities with qualifying PEG

⁵ The e-NC Authority is charged with managing and promoting high-speed broadband Internet access.

⁶ Although the term video programming includes broadcast services, the provision of these services would not be taxed unless the provider sells the service to subscribers and thus realizes gross receipts from the provision of the services.

⁷ This percentage distribution from satellite TV services mirrors the 2.5% local sales tax on satellite radio services.

Senate Bill 1559

Page 7

channels.⁸ The amount per qualifying PEG channel would be \$25,000. A county or city could not receive supplemental PEG channel support for more than three PEG channels. The amount distributed to a county or city as supplemental PEG channel support must be used by it for the operation and support of PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than \$2,000,000, the Secretary must credit the excess amount to the PEG Channel Fund to be used for matching local grants for PEG channel support.

- The remainder of the revenues to be distributed would be allocated between the counties and cities on a proportional basis. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all counties and cities. The base amount for a county or city that did not impose a cable franchise tax before July 1, 2006, would be \$2 times the most recent annual population estimate for that county or city. The population of the county would be the population of its unincorporated areas plus the population of an ineligible city in the county. The base amount for a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary it imposed during the first six months of fiscal year 06-07. For subsequent fiscal years, the amount each county or city receives would be adjusted based upon its percentage change in population.

A county or city that imposed subscriber fee revenue must use a portion of the amount distributed to it for PEG channel operation and support. The amount it must use for this purpose is two times the amount of revenue it certified to the Secretary it imposed as subscriber fees during the first six months of fiscal year 06-07. The remainder of the money distributed to counties and cities may be used for any public purpose.

Section 9 would repeal the credit against the State sales tax on cable services for local franchise tax paid since the local franchise tax is repealed in Section 13.

Section 10 would repeal the county's authority to franchise cable television services.

Section 11 would repeal the county's authority to impose a franchise tax on cable services. Unlike a city, a county may only levy a privilege tax to the extent it is authorized by law. This section repeals the county's authorization.

Section 12 would specifically prohibit a city from imposing a tax on video programming services under the statute that gives cities the general authority to levy a privilege license tax on businesses and franchises unless prohibited from doing so by law. This section contains such a prohibition.

Section 13 would repeal the city's specific statutory authority to impose a franchise tax on cable services.

Section 14 would clarify that a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all non-municipal users of the public right-of-way.

Section 15 would repeal the city's authority to franchise cable television services.

Section 16 would require a county or city desiring to receive a distribution for supplemental PEG channel support under G.S. 105-164.44I(c) to certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

Section 17 recognizes that the staffing needs of the Consumer Protection Division of the Attorney General's Office may change if this bill is enacted. However, the section also finds that the impact of

⁸ A 'qualifying PEG channel' is a channel that meets the programming requirements under G.S. 66-357(d).

Senate Bill 1559

Page 8

this bill on the staffing needs of the Division is not clear. This section requests the Office of the Attorney General to monitor the number and type of cable service complaints it receives from customers and to determine whether the Division needs additional staff to fulfill the duty imposed by this bill on it. The Office of the Attorney General must make a report concerning its staffing needs to the Fiscal Research Division by April 1, 2007.

Section 18 would provide that an award of a State-issued franchise does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law.

Section 19 would provide that the provisions of this act are severable.

Section 20 would direct the Revenue Laws Study Committee to review the effects of this act on competition in video programming services, the number of cable service subscribers, the price of cable service by service tier, the technology used to deliver the service, and the deployment of broadband in the State. The Committee would see if any changes to the law are necessary and would report its findings and recommendations to the 2009 General Assembly.

EFFECTIVE DATE: The bill becomes effective January 1, 2007.

S1559e1-SMRB-CSR

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 7, 2006

TO: Senators Clodfelter, Dalton, Hartsell, Hoyle, Kerr, and Webster

FROM: Brenna Erford
Fiscal Research Division

RE: Senate Bill 1559 (Proposed Committee Substitute to 1st Edition)

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
REVENUES:					
General Fund	<u>No Impact to General Fund</u>				
Local governments	Possible net gain up to \$3.3 million; see Assumptions & Methodology				
EXPENDITURES:	See Assumptions & Methodology				
POSITIONS (cumulative):	See Assumptions & Methodology				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; Consumer Protection Division of the NC Office of the Attorney General; NC Secretary of State; NC Department of Revenue; e-NC Authority; local governments					
EFFECTIVE DATE: January 1, 2007					

BILL SUMMARY: The Consumer Choice in Cable and Uniform Taxation of Video Programming Services Act:

- Establishes a statewide video service franchising process;
- Makes changes to the regulatory treatment of existing local cable franchises;
- Eliminates local governments' authority to assess and collect cable franchise fees;
- Replaces local revenues from franchise fees with a new distribution of shared sales tax collections from telecommunications, cable service, and satellite television service;
- Removes the state tax credit for franchise fees paid to local governments;
- Provides for a proportional tax distribution to local governments based on previous revenues from cable, including franchise fees and per subscriber charges;
- Provides for public, educational, and governmental (PEG) channel funding via several mechanisms;
- Designates the North Carolina Secretary of State as the exclusive statewide video service franchising authority;
- Designates the Consumer Protection Division of the North Carolina Office of the Attorney General as the agency responsible for handling consumer complaints.

This bill does not raise taxes on cable service, telecommunications, or home satellite television services. All these services remain subject to the general shared sales tax rate of 7%. However, this bill significantly alters the calculation of the local share of shared sales tax and creates an entirely new distribution method for the local share of shared sales tax collections. The bill does four things that significantly alter the composition of the local share:

- Local governments will no longer be able to assess and collect cable franchise fees. This revenue will be replaced by the local distribution scheme set forth in the bill. Under this proposal, local governments will receive a portion of sales tax collections from cable service equal to 22.61%, an increased portion of the existing telecommunications sales tax, and a share of sales tax collections on satellite television service.
- The tax credit equal to the amount of franchise fees paid to local governments created in 2005 is eliminated.
- Local governments will effectively receive a larger portion of state sales tax collections on telecommunications. This new portion will be equal to 7.23% of total telecommunications sales tax collections, which is equivalent to 22.61% of total sales tax collections for telecommunications less the local share already received pursuant to G.S. 105-164.44F according to Fiscal Research estimates.
- Local governments will be granted a share of sales tax collections from home satellite television service equal to 2.5% of the 7% general sales tax, or approximately 37% of sales tax collections.

ASSUMPTIONS AND METHODOLOGY: Fiscal Research estimates that all North Carolina local governments will be effectively held harmless by this change. The sum of the local shares of these three industries (approximately \$65.3 million) is estimated to exceed actual aggregate local collections of cable franchise fees and per subscriber charges by approximately \$3.3 million.

Current Law and Estimated Tax Collections by Industry

During the 2005 session, cable service, telecommunications, and home satellite television service were brought under the general state sales tax rate of 7%.

The chart below shows estimated total sales tax collections for cable service, telecommunications, and home satellite television service for FY 2005-06. These amounts have been adjusted to reflect the 2005 rate changes. The municipal share amount shows the amount received or collected by local governments under current law.

Estimated Sales Tax Collections by Industry and State/Local Share under Current Law			
	2005-06 Adjusted		
	Net collections	State share	Local share*
Telecommunications sales tax	395,714,195	334,850,718	60,863,477
Cable service**	91,350,000	26,100,000	65,250,000
Satellite	43,220,000	43,220,000	N/A
Total, all industries	530,284,195	404,170,718	126,113,477

*Local share reflects 18.03% of total telecommunications sales tax less the "freeze deduction" as required in G.S. 105-164.44F

**Net collections for cable have been estimated from municipal share. The local share (\$65.3 million) reflects estimated total cable revenues collected directly by local governments, not by the state.

- For telecommunications, the \$60.9 million local share is the 18.03% of telecommunications sales tax less a "freeze distribution" created under G.S. 105-164.44F. This portion of local share is not altered by this legislation.
- For cable service, the local share shown (\$65.3 million) is the estimated amount of cable revenues assessed and collected by local governments in 2005. Currently this money is collected directly by local governments, primarily in the form of cable franchise fees. Under federal law, local government units can assess a franchise fee of up to 5% on a locally negotiated definition of gross revenues. This is also the estimated amount of the cable tax credit.
- Sales tax collections from home satellite television service are not currently shared with local governments.

The following sections outline the change in calculation of the local share of cable, telecommunications, and satellite sales tax collections as well as the change in distribution to local governments as it pertains to each industry.

Telecommunications

In 2005, the tax on telecommunications was increased from 6.0% to the general sales tax rate of 7.0%. The change was effective Oct. 1, 2005. Under G.S. 105-164.44F local governments receive a per capita distribution of 18.03% of sales tax collections on telecommunications service less a "freeze deduction" of \$2,620,948 on a quarterly basis. This legislation does not alter this portion of the local government share of sales tax on telecommunications. Under this bill, local governments will continue to receive a distribution of total sales tax collections on telecommunications pursuant to G.S. 105-164.44F, plus an additional share of collections equal to 7.23% of gross sales tax collections on telecommunications. This additional share of collections is estimated at \$28.6 million based on 2005-06 estimated collections.

Cable Service

Effective January 1, 2006, the general sales tax rate of 7% was applied to cable service, which had previously only been taxed at the local level. Taxpayers also receive an approximate 5% credit against this tax for local cable franchise taxes paid,¹ which is removed by the bill.

At this time, collections data available for this tax expenditure are not sufficient to estimate the credit's actual cost, so this memo assumes an estimated \$65.3 million for the cost of the cable tax credit.² However, survey research conducted by the Fiscal Research Division suggests that the actual amount of cable franchise fees and per subscriber charges collected by North Carolina local governments is approximately \$62 million, which suggests that local governments may gain up to \$3.3 million in new money from this legislation.

The local share of cable sales tax collections under the distribution established by this bill is estimated at \$20.7 million based on 2005-06 estimated collections.

Satellite

The tax on home satellite television service was increased from 5.0% to 7.0% effective Oct. 1, 2005. Currently, all collections of this tax go to the General Fund. Under this legislation, 37% (or 2.5% of the 7.0% general sales tax rate) of satellite tax collections would be shared with local governments.

Based on early Department of Revenue data, satellite tax collections are exhibiting a rapid rate of growth, especially in relation to collections from cable service. This estimate for satellite uses a conservative annual growth rate of 8%.

Fiscal Research estimates that sales tax collections for satellite will be approximately \$43.2 million for FY 2005-06. The 37% local share would be \$16.0 million based on 2005-06 estimated collections.

Proposed Local Share of Sales Tax Collections by Industry

The chart below illustrates the local share of sales tax collections by industry. **This local share calculation is intended to hold local governments whole with the elimination of local franchise fees and to supply local governments with funds for PEG channel support.** The \$65.3 million local share calculated through this distribution equals the estimated 2005 cable franchise fee revenues that would be foregone under this legislation.

¹ Federal law caps local franchise taxes at 5% of gross revenues, suggesting 2% of the 7% state sales tax goes to the state. Fiscal Research Division survey research suggests that not all North Carolina local governments with cable franchises assess franchise fees at the maximum 5% rate, and that the actual value of the tax credit may be somewhat less than 5% of cable's total sales tax liability.

² The cost of the cable tax credit was estimated at \$65 million in the 2005 Tax Expenditure Report published by the North Carolina Department of Revenue

Proposed Local Share of Sales Tax Collections by Industry	
2005-06 Adjusted	
Industry	Local share
Telecommunications	28,607,502
Cable	20,654,235
<i>Subtotal</i>	<i>49,261,737</i>
Satellite	15,991,400
Total	65,253,137

Distribution of Sales Tax to Local Governments

Under this bill, the combined 7.23% of sales tax collections on telecommunications, 22.61% of state sales tax collections on cable service and 37% of sales tax collections on home satellite television service would be distributed to North Carolina local governments on a proportional basis. The proportionate share for each local government is calculated by dividing a local government's actual collections, including actual franchise fee collections and any per subscriber charges for PEG support, by the total of all local government cable revenues. The base amount of a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary was imposed during the first six months of FY 2006-07 (July 1, 2006 through January 1, 2007). The purpose of this time period is to capture the effect of franchise fee rate increases enacted by local governments for the 2006-07 fiscal year. The bill also provides that counties or cities that did not impose a cable franchise fee before July 1, 2006, are entitled to a share equal to \$2.00 times the most recent population estimate for the city or county in question. Fiscal Research estimates that sixty-five cities and two counties do not currently impose a franchise fee. The total population of those sixty-seven local governments is approximately 223,584, which at a \$2.00 pro rata share creates a \$447,168 addition into the distribution.³

In subsequent years, the proportionate share for each municipality will be recalculated to reflect per capita growth. The distribution would be effective January 1, 2007.

Based on available data, Fiscal Research believes that under this distribution scheme no municipality will receive less revenue than they would have received

Public, Educational, and Governmental (PEG) Channel Support

This bill contains three mechanisms to provide financial support for public, educational, and governmental (PEG) channels. Local governments are required to certify revenues received from franchise fees and from per subscriber charges to the Department of Revenue. If a local government has been receiving per subscriber charges for PEG support, a portion of the revenue

³ This change does not reduce the \$2 million available for PEG funding via lump-sum payments and grants. It reduces the residual unreserved amount remaining after the subtraction of PEG lump-sum payments, the hold harmless local distribution, and the deposit into the PEG Grant Fund. The residual amount is the additional revenue that will be available for distribution directly to local governments.

that local government receives from the Department of Revenue via the distribution created in this bill equal to the amount of per subscriber fees collected must be used for PEG channel support.

In addition, the bill allows local governments that operate PEG channels providing local programming to collect \$25,000 per channel, up to 3 channels, per year in the form of four quarterly installments of \$6,250. These funds are to be deducted from the total local share of sales tax collections before the local distribution formula is applied. The bill caps the amount of annual PEG support to local governments at \$2 million. Reliable data on the number of qualifying PEG channels in North Carolina is not available, but based on discussions with public programming interest groups, this memo assumes there are 36 PEG channels currently operating in North Carolina that would qualify for this funding. In total, the impact of this provision is estimated at \$900,000 annually.

The bill also creates the PEG Grant Fund. Any funds **not** disbursed to local governments for PEG support (\$25,000 per qualifying PEG channel), up to \$2 million, are to be deposited in the PEG Grant Fund for the purpose of making grants to local governments to fund capital expenditures for PEG channels. The e-NC Authority is responsible for administering the fund and awarding grants subject to the following limitations:

- The size of a grant may not exceed \$25,000
- The local government applicant must match the grant on a dollar-for-dollar basis
- The grant may only be used for capital expenditures necessary to provide PEG channels
- An applicant may only receive one grant per year

In addition, the e-NC Authority must publish an annual report on grants awarded. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

The chart below provides detail on the total amount of revenue set aside for PEG channel support pursuant to this legislation. **The per subscriber fee portion of these funds (\$1,195,888) is included in the proportional distribution; therefore PEG funding does not utilize the entire \$3.3 million possible gain to local governments.**

Total funds to local governments restricted for PEG support	
Per subscriber fees	\$ 1,195,888
PEG support funding (\$25,000 per qualifying channel)	\$ 900,000
Grants from PEG Grant Fund	\$ 1,100,000
Total PEG funding	\$ 3,195,888

State Franchising Authority

The Secretary of State is named as the exclusive state franchising authority for cable service provided over a cable system. Applicants must file a notice of franchise with the Secretary and pay a filing fee equal to the filing fee for articles of incorporation, currently \$125. A person who files a notice of franchise is required to begin providing service in the designated area within 120 days of filing. In addition, a person providing service must submit an annual service report on or before July 31 of each year and pay a \$200 filing fee.

In lieu of earlier penalty provisions, a person who provides video service but fails to file a notice of franchise or a notice of service must forfeit all revenue received during the period of noncompliance. The forfeiture does not affect the liability of the service provider for sales tax. In the event of such forfeiture, the amount must be remitted to the Civil Penalty and Forfeiture Fund.

Based on the number of forms received by the Texas Utilities Commission since its establishment as franchising authority last fall, it is estimated that the Secretary of State may receive between 50 to 70 applications. Although the impact on the Secretary of State will be minimal, costs incurred would be offset by the designation of fees for use by the Secretary of State.

Consumer Complaints

The Consumer Protection Division of the North Carolina Office of the Attorney General is named as the agency responsible for addressing consumer complaints. Fiscal Research is currently in the process of reviewing the Attorney General’s funding request.

Conclusion

The chart below contrasts current law with the proposed tax changes in this bill and illustrates how the total shared sales tax revenue to both the state and local governments is held the same.

Comparison of State and Local Share under Current and Proposed Law						
	(in millions)					
	Current law		Proposed		Change	
	State	Local	State	Local	State	Local
Telecommunications	334.8	60.9	306.2	89.5	(28.6)	28.6
Cable service	26.1	65.3	70.7	20.7	44.6	(44.6)
Satellite	43.2	-	27.2	16.0	(16.0)	16.0
Total	404.1	126.2	404.1	126.2	-	-

SOURCES OF DATA: North Carolina Department of Revenue, North Carolina Fiscal Research Division, North Carolina State Data Center, Federal Communications Commission, U.S. Census Bureau, North Carolina Utilities Commission

TECHNICAL CONSIDERATIONS: None



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1559*

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

S1559-ARB-83 [v.2]

Page 1 of 2

Date JUNE 8 , 2006

Comm. Sub. [NO]
Amends Title [NO]
S1559-CSRbx-52

Senator Berger of Franklin

- 1 moves to amend the bill on page on page 1, line 4, by rewriting the line to read:
- 2 "SERVICES AND TO APPROPRIATE FUNDS TO THE E-NC AUTHORITY FOR
- 3 BROADBAND CONNECTIVITY INCENTIVE GRANTS.";
- 4
- 5 And on page ¹⁶~~15~~, lines ^{12 and 13}~~35 and 36~~, by inserting a new section between those lines to read;
- 6 "SECTION 21. There is appropriated from the General Fund to the e-NC
- 7 Authority the sum of ten million dollars (\$10,000,000) for the 2006-2007 fiscal year for
- 8 broadband connectivity incentive grants. These funds shall not revert. It is the intent of
- 9 the General Assembly that these funds shall be used to allow at least seventy percent
- 10 (70%) of the households in each county to have the ability to access broadband services
- 11 by 2008. Funds for connectivity incentives should be committed to service providers by
- 12 July 1, 2008. These incentive grants shall be competitive and shall require at least a fifty
- 13 percent (50%) cash match from the participating service providers. Companies must
- 14 ensure the number of additional households to be served as a result of this funding. The
- 15 e-NC Authority may use up to five percent (5%) of these funds to cover its expenses in
- 16 grant letting and monitoring.";




NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1559*

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

S1559-ARB-83 [v.2]

Page 2 of 2

- 1
- 2 And on page ¹⁶15, line ¹³36, by rewriting the line to read:
- 3 "SECTION 22. Sections 21 and 22 of this act become effective July 1,
- 4 2006. The remainder of this act becomes effective January 1, 2006. Sections 7 and 8".

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

1

SENATE BILL 1688

Short Title: Remove Expense Reserve Ceil'g/Real Est. Comm.

(Public)

Sponsors: Senator Rand.

Referred to: Commerce.

May 18, 2006

A BILL TO BE ENTITLED

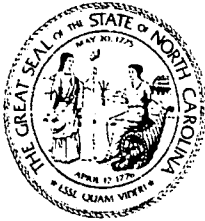
1
2 AN ACT AUTHORIZING THE NORTH CAROLINA REAL ESTATE
3 COMMISSION TO REMOVE THE TEN PERCENT CEILING ON ITS EXPENSE
4 RESERVE FUND UNDER THE REAL ESTATE LICENSING LAWS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 93A-3(b) reads as rewritten:

7 "(b) The provisions of G.S. 93B-5 notwithstanding, members of the Commission
8 shall receive as compensation for each day spent on work for the Commission a per
9 diem in an amount established by the Commission by rule, and mileage reimbursement
10 for transportation by privately owned automobile at the business standard mileage rate
11 set by the Internal Revenue Service per mile of travel along with actual cost of tolls
12 paid. The total expense of the administration of this Chapter shall not exceed the total
13 income therefrom; and none of the expenses of said Commission or the compensation or
14 expenses of any office thereof or any employee shall ever be paid or payable out of the
15 treasury of the State of North Carolina; and neither the Commission nor any officer or
16 employee thereof shall have any power or authority to make or incur any expense, debt
17 or other financial obligation binding upon the State of North Carolina. After all
18 expenses of operation, the Commission may set aside an expense reserve each year ~~not~~
19 ~~to exceed ten percent (10%) of the previous year's gross income; then any surplus shall~~
20 ~~go to the general fund of the State of North Carolina in the amount of the entire balance~~
21 remaining from the gross income of the previous year. Nothing shall revert to the
22 General Fund of the State of North Carolina. The Commission may deposit moneys in
23 accounts, certificates of deposit, or time deposits as the Commission may approve, in
24 any bank, savings and loan association, or trust company. Moneys also may be invested
25 in the same classes of securities referenced in G.S. 159-30(c)."

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



SENATE BILL 1688: Remove Expense Reserve Ceil'g/Real Est. Comm

BILL ANALYSIS

Committee:	Senate Ref to Commerce. If fav, re-ref to Appropriations/Base Budget	Date:	June 8, 2006
Introduced by:	Sen. Rand	Summary by:	O. Walker Reagan Committee Co-Counsel
Version:	First Edition		

SUMMARY: *Senate Bill 1688 would remove the requirement that amounts in the Expense Reserve Fund of the NC Real Estate Commission in excess of ten percent of the Commission's previous year's gross income go to the General Fund.*

CURRENT LAW: The NC Real Estate Commission is a self-supporting, fee-supported licensing regulatory agency. Fees charged to persons regulated by the Commission are used to cover the expenses of the Commission including the regulating and licensing of real estate brokers. Since the Commission is not permitted to incur more expenses than funds available, the Commission is authorized to establish an expense reserve fund of up to 10% of the Commission's previous year's gross income. Any unspent annual revenue in excess of 10% of the gross income goes to the General Fund of the State.

BILL ANALYSIS: Senate Bill 1688 would allow all excess income held by the Real Estate Commission to be retained by the Commission, regardless of the amount, and none of the receipts would be paid to the General Fund.

EFFECTIVE DATE: This act is effective when it becomes law.

S1688e1-SMRU

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 8, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Al Ripley	NC Justice Ctr
Bill Willson	NC AARP
Rob Thompson	NC Pirg
Serothy Dandridge	TCA
John McIner	MFL
Kathleen Edwards	UNC-CH Daily Bulletin
LATHARRIS	LATHA
J Brown-Bland	Greensboro
L. Miles	Greensboro
Wendy Hargrove	Brookline
Mary Tatcher	Brookline

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 8, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Sammy Robertson	SuddenLink Communications - Greenville, NC
Steve Parrott	EMBARQ Wake Forest, NC
Steve Brewer	Embarq Raleigh NC
Eatherine Davis	Electricities
Roy Loflin	Freedom Works
Kathy Hartkopf	Freedom Works
Lemuel Hinton	NCUC Staff
Joel H. Brown	NC SOS
Dan Long	NCUC Staff
ANNA WHITLEY	TPC 8
Pam Melton	EMBARQ Raleigh, NC

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 8, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Marty Boccock	EMBARGO - RALEIGH
Byron Nelson	Nelson Associate - WS
Adam Tarkenton	Smith Anderson - Raleigh
Dana Simpson	Smith Anderson
Blake Simpson	Smith Anderson
Emily Day	Smith Anderson
Doris Weaver	Communications Workers of America
Emily Kirby	NC Conservation Network
John [Signature]	NCFPC
Andy Romanet	NCLM
Alanna [Signature]	Taylor & Spence

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 8, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Fred, [unclear]	TWC
Herb Crandall	BellSouth
Chad Johnston	NC Coalition of Community Medical Centers
Ed TURLINGTON	BP
Tom ADAMS	TWC
Jack Stanley	TWC
Stan Pace	Verizon
Mickayla	Kayla Lane Freni
Robert [unclear]	TWC
[unclear]	SPR
Bob [unclear]	NCFR

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 8, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME

FIRM OR AGENCY AND ADDRESS

Jessie Beragun Cona	Capstrat
Pat Smith	Time Warner Cable
Bob Hillam	Public Staff-NCUC
Bill Fowl	NC Justice Center
Connie White	SST
SUSANNE STILES	NCKA
Anna Mitchell	NC DOR
Andy Sabol	NC DOR
Kathy Hawkins	Progress Energy
Lisa Bemler	SECURE
Haley Montgomery	SOS

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 8, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Leonard	DCSR
Mark Mason	Capital Group
Bob Welch	W. C. Telco Alliance
Josh Stein	NCPOT
MJBH #	NAAAP
Frank W. Folger	Helms Mulliss & Wicker
Banc Meyer	NEACC
Paul Pully	NCATL
[Signature]	Bella
[Signature]	[Signature]
Paula L. Stief	Central Park of NC

**Senate Commerce Committee
Tuesday, June 13, 2006, 11:00 AM
1027 LB**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 818 Workers Comp./Drivers' Status.
SB 1559 Video Service Competition Act.

Representative Sutton
Senator Clodfelter

Other Business

Adjournment

SENATE COMMERCE COMMITTEE

Tuesday, June 13, 2006 at 11:00 AM

Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 13, 2006, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator Tony Rand, Vice Chair, presided.

Senator Rand introduced the pages and thanked them for their assistance: Nan Daniels from Smithfield, sponsored by Senator Fred Smith; Courtney Frazelle from Kinston, sponsored by Senator Jeanne Lucas; Kelly Hall from Wilmington sponsored by Senator Julia Boseman; Jenel Egerer from Wilmington, sponsored by Senator Julia Boseman; Thomas Barker from Eden, sponsored by Senator Phil Berger; and Grant Fitzgerald from Raleigh, sponsored by Senator Neal Hunt.

Senator Rand recognized Representative Ronnie Sutton to present House Bill 818, Workers Comp./Drivers' Status, for consideration. Senator David Hoyle moved for a favorable report of the bill. The motion carried unanimously.

Senator Rand recognized Senator Dan Clodfelter to continue consideration of a proposed committee substitute for Senate Bill 1559, Video Service Competition Act. Senator Dorsett moved the adoption of an amendment to increase the number of feet from which a franchise must provide cable service without charge to a public building from 125 feet to 500 feet. Senator Rand deferred a vote on the amendment until several people spoke on the bill:


- Bill Wilson, representing AARP, spoke in favor of competition, but had questions about the build out provisions of the bill. He favored Senator Dorsett's amendment.
- Rob Thompson, representing NC PIRG, also spoke in favor of competition, but shared concerns on cherry picking and build out provisions. He also mentioned a problem with the increase in the number of consumer complaints.
- Alfred Ripley, representing the NC Justice Center was concerned with discrimination, the build out provision and how low wealth and rural families would benefit from the bill
- Reverend William Barber, representing the NC NAACP said he favored making sure the current system works and mentioned his fear that the bill would increase the digital divide and discrimination. He also said allowing for minority participation in developing the systems should be a part of the plan from the beginning, not as an add on after the development started.
- Steve Parrott, representing EMBARQ (formerly Sprint), and the NC Telecommunications Association, asked for support of the bill as presented by Senator Clodfelter to allow telecommunications companies to have the same opportunity as cable companies to develop new consumers.

- Kathy Hartkopf, representing NC Freedomworks Citizens for a Sound Economy, want cable choice, access and competition.
- Chad Johnson, representing the NC Coalition of Communication Media Centers, said his organization offers education and access to citizens. He said the bill as currently written does not adequately support PEG (public, educational or governmental) centers and virtually eliminates the possibility for new PEG centers. He also said he agrees with all that NAACP and NC PIRG said in their statements.
- Josh Stein, representing the Attorney General's Consumer Protection Office, spoke in support of the bill, but expressed concern that his office has been designated to handle both consumer complaints and complaints of discrimination without additional resources.
- Randy Fraser, representing Time Warner Cable and the NC Telecommunications Association as a board member, said they are not opposed to competition, but the amendment offered by Senator Dorsett to extend the provision of free cable service to a public building from 125 to 500 feet is a significant issue for them.
- Debra DeCamillis, a consumer, said she favors competition and likes the choices the bill would bring about.
- Erroll Reese, representing EWI Technologies, spoke in favor of the bill. He stated that a build out requirement for small or new players in the market is a complete show stopper.
- ToNola Brown-Bland, appearing on behalf of the City of Greensboro, spoke in favor of the bill. The Mayor of Greensboro is concerned about some form of required expansion of service, even if it is gradual and even if it is years out. There is nothing in the bill to assure that new areas brought in will not be left stranded without service. Greensboro also supports the Dorsett amendment. While the bill has programming requirements against repeat programming, the internal closed circuit channel as part of the accreditation program has to repeat programs, so she asked that that provision be addressed.
- Wally Bowen, representing the North Carolina Coalition of Community Media Centers, Inc., Executive Director of the Nonprofit Mountain Area Information Network, and a charter member of the Knowledge Coalition and Telecommunications Infrastructure Subcommittee of the Knowledge Coalition, which led to the creation of a publicly funded fiber network called ERC. He addressed the economic opportunity being missed in the bill. The national trend is for the PEG channels to be combined into a community media center where local entrepreneurs and young people can meet in mentoring relationships, produce programs, create new software, plug into the film and video industry the state is trying to promote. North Carolina is behind the national trend. The bill needs to provide adequate funding for the community media centers.
- Michael Williams, representing the City of Raleigh, said the franchising process drove the cable industry to where it is now. The City supports competition, but does not support the bill as it is because it does not meet the needs. He added that he believed the

distance to extend the provision of free cable service to a public building should be more than 125 but somewhat less than 500 feet.

Senator Dorsett withdrew her amendment. Senator Martin Nesbitt moved adoption of Amendment #2. Senator Clodfelter spoke against the amendment. The motion failed. Senator Boseman moved an unfavorable report of the bill, but favorable as to the proposed committee substitute. The motion carried.

The meeting adjourned at 12:00 noon.



Senator Tony Rand, Presiding



Dot Waugaman, Committee Assjstant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Tuesday, June 13, 2006

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

FAVORABLE

H.B.	818	Workers Comp./Drivers' Status.	
		Sequential Referral:	None
		Recommended Referral:	None

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

S.B.	1559	Video Service Competition Act.	
		Draft Number:	PCS35430
		Sequential Referral:	Finance
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 818

Short Title: Workers Comp./Drivers' Status.

(Public)

Sponsors: Representative Sutton.

Referred to: Judiciary III.

March 21, 2005

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO THE CURRENT STATUS OF DRIVERS AS EMPLOYEES
3 OR INDEPENDENT CONTRACTORS UNDER THE WORKERS'
4 COMPENSATION ACT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 97-19.1 reads as rewritten:

7 "§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or
8 independent contractor.

9 (a) An individual in the interstate or intrastate carrier industry who operates a
10 truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle
11 regulatory agency may be an employee or an independent contractor under this Article
12 dependent upon the application of the common law test for determining employment
13 status.

14 Any principal contractor, intermediate contractor, or subcontractor, irrespective of
15 whether such contractor regularly employs three or more employees, who contracts with
16 an individual in the interstate or intrastate carrier industry who operates a truck, tractor,
17 or truck tractor trailer licensed by a governmental motor vehicle regulatory agency and
18 who has not secured the payment of compensation in the manner provided for
19 employers set forth in G.S. 97-93 for himself personally and for his employees and
20 subcontractors, if any, shall be liable as an employer under this Article for the payment
21 of compensation and other benefits on account of the injury or death of the independent
22 contractor and his employees or subcontractors due to an accident arising out of and in
23 the course of the performance of the work covered by such contract.

24 (b) Notwithstanding subsection (a) of this section, a principal contractor,
25 intermediate contractor, or subcontractor shall not be liable as an employer under this
26 Article for the payment of compensation on account of the injury or death of the
27 independent contractor if the principal contractor, intermediate contractor, or
28 subcontractor (i) contracts with an independent contractor that is licensed by a

1 governmental motor vehicle regulatory agency and (ii) the independent contractor is
2 operating the vehicle pursuant to that license.

3 (c) The principal contractor, intermediate contractor, or subcontractor may insure
4 any and all of his independent contractors and their employees or subcontractors in a
5 blanket policy, and when insured, the independent contractors, subcontractors, and
6 employees will be entitled to compensation benefits under the blanket policy.

7 A principal contractor, intermediate contractor, or subcontractor may include in the
8 governing contract with an independent contractor in the interstate or intrastate carrier
9 industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental
10 motor vehicle regulatory agency an agreement for the independent contractor to
11 reimburse the cost of covering that independent contractor under the principal
12 contractor's, intermediate contractor's, or subcontractor's coverage of his business."

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



HOUSE BILL 818: Workers Comp./Drivers' Status

BILL ANALYSIS

Committee: Senate Commerce
Introduced by: Rep. Sutton
Version: First Edition

Date: June 10, 2006
Summary by: Tim Hovis
Committee Counsel

BACKGROUND: Prior to the enactment of G.S. 97-19.1 during the 2003 Session, a ruling by the North Carolina Supreme Court controlled some aspects of the relationship between truck drivers and shippers and carriers. Specifically, this ruling, Brown v. L.H. Bottoms Truck Lines, Inc., 227 N.C. 299 (1947), held that a truck driver leasing their truck to a licensed interstate motor carrier and operating their truck under the carrier's license was considered to be an employee of the carrier or trucking company. As such, the carrier was required to provide workers' compensation insurance for the trucker.

In the 2003 Session, the General Assembly enacted G.S. 97-19.1 (HB 892). G.S. 19.1 (second paragraph) provides that a principal contractor, intermediate contractor, or subcontractor (typically a shipper or carrier) whether or not the contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate industry who operates a truck licensed by a governmental motor vehicle agency, and who has not secured payment of compensation as provided in G.S. 97-93, is liable for payment of compensation as an employer for the injury or death of the independent contractor. G.S. 97-93 provides that employers subject to the Workers' Compensation Act shall insure and keep insured their liability under the Act.

Essentially, the existing G.S. 97-19.1 requires a contractor to provide workers' compensation coverage for independent contractors or secure the payment of compensation from the independent contractors.

SUMMARY: *HB 818 makes changes governing the law concerning a truck driver's status as an employee or independent contractor. The bill adds a new subsection (b) to G.S. 97-19.1 to provide that, notwithstanding the existing provisions of subsection (a), a principal contractor, intermediate contractor or subcontractor is not liable as an employer for the payment of compensation on account of the injury or death of an independent contractor if the principal contractor, intermediate contractor, or subcontractor contracts (i) with an independent contractor licensed by a governmental regulatory agency and (ii) the independent contractor is operating the vehicle pursuant to that license.*

EFFECTIVE DATE: This act is effective when it becomes law.

H0818c1-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

1

SENATE BILL 1559*

Short Title: Video Service Competition Act.

(Public)

Sponsors: Senators Clodfelter, Dalton, Hartsell, Hoyle, Kerr, and Webster.

Referred to: Commerce.

May 18, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS
3 AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING
4 SERVICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 66 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 42.

9 "State Franchise for Cable Television Service.

10 "§ 66-350. Definitions.

11 The following definitions apply in this Article:

12 (1) Cable service. – Defined in G.S. 105-164.3.

13 (2) Cable system. – Defined in 47 U.S.C. § 522.

14 (3) Channel. – A portion of the electromagnetic frequency spectrum that is
15 used in a cable system and is capable of delivering a television
16 channel.

17 (4) Commission. – The North Carolina Utilities Commission.

18 (5) Existing agreement. – A local franchise agreement that was awarded
19 under G.S. 153A-137 or G.S. 160A-319 and is in effect on January 1,
20 2007.

21 (6) Pass a household. – Make service available to a household, regardless
22 of whether the household subscribes to the service.

23 (7) PEG channel. – A public, educational, or governmental access channel
24 provided to a county or city.

25 "§ 66-351. State franchising authority.

26 (a) Authority. – The North Carolina Utilities Commission is designated the
27 exclusive franchising authority in this State for cable service provided over a cable
28 system. This designation replaces the authorization to counties and cities in former
29 G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This

1 designation is effective January 1, 2007. After this date, a county or city may not award
2 or renew a franchise for cable service.

3 (b) Award and Scope. – The Commission is considered to have awarded a
4 franchise to a person who files a notice of service under G.S. 66-352. A franchise for
5 cable service authorizes the holder of the franchise to construct and operate a cable
6 system over public rights-of-way within the area to be served. Chapter 160A of the
7 General Statutes governs the regulation of public rights-of-way by a city.

8 **"§ 66-352. Notice and commencement of service.**

9 (a) Notice of Service. – A person who intends to provide cable service over a
10 cable system in an area must file a notice of service with the Commission before
11 providing the service. The notice is effective when it is filed with the Commission. The
12 notice of service must include all of the following:

13 (1) The applicant's name and principal place of business.

14 (2) A description and map of the area to be served.

15 (3) A list of each county and city in which the described service area is
16 located, in whole or in part.

17 (4) A schedule indicating when service is expected to be offered in part or
18 all of the service area.

19 (b) Initial Service. – A person who files a notice of service under subsection (a)
20 of this section must begin providing cable service in the service area described in the
21 notice within 120 days after the notice is filed. If cable service does not begin within
22 this period, the notice of service terminates 130 days after it was filed. If cable service
23 begins within this period, the holder of the State-issued franchise must file a report of
24 initial service with the Commission within 10 days after the cable service begins. Cable
25 service begins when it passes one or more households in the described service area. This
26 subsection does not apply to a cable service provider who terminates an existing
27 agreement whose franchise area includes all of the service area described in a notice of
28 service filed by the provider under subsection (a) of this section.

29 A report of initial service for a service area must include all of the following:

30 (1) The effective date of a notice of service for that area.

31 (2) A description and map of the service area.

32 (3) A statement that cable service has begun in the service area.

33 (c) Extension. – A person who intends to provide cable service over a cable
34 system in an area that is contiguous with but outside the service area described in a
35 notice of service on file with the Commission must file a notice of service under
36 subsection (a) of this section that includes the proposed area. The initial service
37 requirements in subsection (b) of this section apply to the proposed area. If the map of
38 the area to be served includes any area that is part of the service area of another
39 State-issued franchise, the termination of a notice of service for the proposed area for
40 failure to begin service within the required time does not affect the status of the other
41 State-issued franchise.

42 (d) Withdrawal. – A person may withdraw a notice of service by filing a notice
43 of withdrawal with the Commission. The notice of withdrawal must be filed at least 90
44 days before the service is withdrawn.

"§ 66-353. Annual service report.

A holder of a State-issued franchise must file an annual service report with the Commission. The report must be filed on or before July 15 of each year. The report must include all of the following:

- (1) The effective date of a notice of service for that area.
- (2) A description and map of the service area.
- (3) The approximate number of households in the service area.
- (4) A description and a map of the households passed in the service area as of July 1.
- (5) The percentage of households passed in the service area as of July 1.
- (6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this subsection.
- (7) A schedule indicating when service is expected to be offered in part or all of the service area, to the extent the schedule differs from one included in the notice of service or in a report previously submitted under this subsection, and an explanation of the reason for the new schedule.

"§ 66-354. General filing and report requirements.

A document filed with the Commission under this section must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Commission under this section, the person must send a copy of the document to any county or city included in the service area described in the document. A document filed under this section is a public record as defined in G.S. 132-1.

A successor in interest to a person who has filed a notice of service is not required to file another notice of service. When a change in ownership occurs, the owner must file a notice of change in ownership with the Commission within 14 days after the change becomes effective.

"§ 66-355. Effect on existing local franchise agreement.

(a) Existing Agreement. – This Article does not affect an existing agreement except as follows:

- (1) Effective January 1, 2007, gross revenue used to calculate the payment of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does not include gross receipts from cable service subject to sales tax under G.S. 105-164.4. This exclusion does not otherwise affect the calculation of gross revenue and the payment to counties and cities of franchise tax revenue under existing agreements that have not been terminated under subsection (b) of this section.
- (2) A cable service provider under an existing agreement may terminate the agreement in accordance with subsection (b) of this section when a report of initial service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are

1 passed by both the cable service provider under the existing agreement
2 and the holder of a State-issued franchise.

3 (b) Termination. – To terminate an existing agreement, a cable service provider
4 must file a notice of termination with the affected county or city and file a notice of
5 service with the Commission. A termination of an existing agreement becomes effective
6 at the end of a calendar quarter that is at least 30 days after the notice of termination is
7 filed with the affected county or city. A termination of an existing agreement ends the
8 obligations under the agreement as of the effective date of the termination but does not
9 affect the rights or liabilities of the county or city, a taxpayer, or another person arising
10 under the existing agreement before the effective date of the termination.

11 **"§ 66-356. Service standards and requirements.**

12 (a) Discrimination Prohibited. – A person who provides cable service over a
13 cable system may not deny access to the service to any group of potential residential
14 subscribers within the filed service area because of the race or income of the residents.
15 A violation of this subsection is considered an unfair or deceptive act or practice under
16 G.S. 75-1.1.

17 In determining whether a cable service provider has violated this subsection with
18 respect to a group of potential residential subscribers in a service area, the following
19 factors must be considered:

- 20 (1) The length of time since the provider filed the notice of service for the
21 area. If less than a year has elapsed since the notice of service was
22 filed, it is conclusively presumed that a violation has not occurred.
23 (2) The cost of providing service to the affected group due to distance
24 from facilities, density, or other factors.
25 (3) Technological impediments to providing service to the affected group.
26 (4) Inability to obtain access to property required to provide service to the
27 affected group.

28 (b) FCC Standards. – A person who provides cable service over a cable system
29 must comply with the customer service requirements in 47 C.F.R. § 76.309 and
30 emergency alert requirements established by the Federal Communications Commission.
31 The Consumer Protection Division of the Attorney General's office is designated as the
32 State agency to receive and respond to customer complaints concerning cable service.
33 The number for the Division must be printed on the customer's bill.

34 (c) No Build-Out. – No build-out requirements apply to a person who provides
35 cable service under a State-issued franchise.

36 **"§ 66-357. Availability and use of PEG channels.**

37 (a) Application. – This section applies to a person who provides cable service
38 under a State-issued franchise. It does not apply to a person who provides cable service
39 under an existing agreement.

40 (b) Local Request. – A county or city must make a written request to a cable
41 service provider for PEG channel capacity. The request must include a statement
42 describing the county's or city's plan to operate and program each channel requested.
43 The cable service provider must provide the requested PEG channel capacity within 120
44 days after it receives the written request.

1 (c) Initial PEG Channels. – If an area is included in both the franchise area of an
2 existing agreement and the service area of a State-issued franchise, the terms of the
3 existing agreement, as of the filing date on the notice of service for the State-issued
4 franchise, determine the required number, service tier placement, and transmission
5 quality of initial PEG channels. The cable service provider must provide the number of
6 PEG channels activated under those terms, giving equivalent service tier placement and
7 transmission quality to those channels. The cable service provider must maintain the
8 same channel designation for a PEG channel unless the service area of the State-issued
9 franchise includes PEG channels that are operated by different counties or cities and
10 those PEG channels have the same channel designation. The expiration of an existing
11 agreement after January 1, 2007, does not affect the requirements in this subsection.

12 If no existing agreement includes any part of the service area of a State-issued
13 franchise, then the number, service tier placement, and transmission quality of the initial
14 PEG channels a cable service provider must provide depends upon the population of the
15 city in which part or all of the service area is located. If the city's population is at least
16 50,000, the cable service provider must provide up to three PEG channels on a basic
17 service tier. If the city's population is less than 50,000, a cable service provider must
18 provide up to two PEG channels on a basic service tier. The transmission quality of
19 these PEG channels must be equivalent to those of the closest city covered by an
20 existing agreement.

21 (d) Additional PEG Channels. – A county or city that does not have seven PEG
22 channels, including the initial PEG channels, is eligible for an additional PEG channel if
23 it meets the programming requirements in this subsection. A county or city that has
24 seven PEG channels is not eligible for an additional channel.

25 A county or city that meets the programming requirements in this subsection may
26 make a written request under subsection (b) of this section for an additional channel.
27 The additional channel may be provided on any service tier. The transmission quality of
28 the additional channel must be at least equivalent to the transmission quality of the other
29 channels provided.

30 The PEG channels operated by a county or city must meet the following
31 programming requirements in order for the county or city to obtain an additional
32 channel:

- 33 (1) All of the PEG channels must have scheduled programming for at least
34 eighty percent (80%) of the time for at least eight hours a day.
- 35 (2) The programming content of each of the PEG channels must not repeat
36 more than fifteen percent (15%) of the programming content on any of
37 the other PEG channels.
- 38 (3) No more than fifteen percent (15%) of the programming content on
39 any of the PEG channels may be character-generated programming.

40 (e) Use of Channels. – If a county or city no longer provides any programming
41 for transmission over a PEG channel it has activated, the channel may be reprogrammed
42 at the cable service provider's discretion. A cable service provider must give at least 60
43 days notice to a county or city before it reprograms a PEG channel that is not used. The
44 cable service provider must restore a previously lost PEG channel within 120 days of

1 the date a county or city certifies to the provider a schedule that demonstrates the
2 channel will be used.

3 (f) Operation of Channels. – A cable service provider is responsible only for the
4 transmission of a PEG channel. The county or city to which the PEG channel is
5 provided is responsible for the operation and content of the channel. A county or city
6 that provides content to a cable service provider for transmission on a PEG channel is
7 considered to have authorized the provider to transmit the content throughout the
8 provider's service area, regardless of whether part of the service area is outside the
9 boundaries of the county or city.

10 All programming on a PEG channel must be noncommercial. A cable service
11 provider is not required to transmit content on a PEG channel that is branded with the
12 logo, name, or other identifying marks of another cable service provider.

13 **"§ 66-358. Transmission of PEG channels.**

14 (a) Service. – When a cable service provider operating under a State-issued
15 franchise begins providing cable service in an area, the service must include the
16 transmission of PEG channels by one of the following methods:

17 (1) Interconnection of its cable system on reasonable and competitively
18 neutral terms with any other cable system operated in its franchise or
19 service area. Interconnection may be accomplished by direct cable,
20 microwave link, satellite, or other method of connection.

21 (2) Transmission of the signal from each PEG channel programmer's
22 origination site.

23 (b) Signal. – All PEG channel programming must meet the minimum recognized
24 technical standards for the format used. If a PEG channel programmer transmits its
25 signal in a format a cable service provider cannot transmit without altering the
26 transmission signal, then the cable service provider must do one of the following:

27 (1) Alter the transmission signal to make it compatible with the
28 technology or protocol the cable service provider uses to deliver its
29 cable service.

30 (2) Provide to the county or city equipment needed to alter the
31 transmission signal to make it compatible with the technology or
32 protocol the cable service provider uses to deliver its cable service.

33 **"§ 66-359. Service to public building.**

34 At the written request of a county or city, a cable service provider operating under a
35 State-issued franchise must provide cable service without charge to a public building
36 located within 125 feet of the provider's cable system. The required service is the basic,
37 or lowest-priced, service the provider offers to customers. The terms and conditions that
38 apply to service provided to a retail customer apply to the service provided to the public
39 building. Only one service outlet is required for a building. The cable service provider is
40 not required to provide concealed inside wiring. A public building is a building used as
41 a public school, a charter school, a county or city library, or a function of the county or
42 city."

43 **SECTION 2.** G.S. 105-164.3 is amended by adding a new subdivision to
44 read:

1 **"§ 105-164.3. Definitions.**

2 The following definitions apply in this Article:

3 ...
4 (50c) Video programming. – Programming provided by, or generally
5 considered comparable to programming provided by, a television
6 broadcast station, regardless of the method of delivery."

7 **SECTION 3.** G.S. 105-164.4(a)(6) reads as rewritten:

8 "(6) The combined general rate applies to the gross receipts derived from
9 providing ~~any of the following broadcast services~~ video programming
10 to a subscriber in this State. A cable service provider, a direct-to-home
11 satellite service provider, and any other person engaged in the business
12 of providing any of these services video programming is considered a
13 retailer under this ~~Article~~:Article.

14 a. ~~Direct-to-home satellite service.~~

15 b. ~~Cable service."~~

16 **SECTION 4.** G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the
17 catchline "Bundled services."

18 **SECTION 5.** G.S. 105-164.4D, as recodified by Section 4 of this act, reads
19 as rewritten:

20 **"§ 105-164.4D. Bundled services.**

21 ~~Bundled Services.~~—When a taxable ~~telecommunications~~ service is bundled with a
22 service that is not taxable, the tax applies to the gross receipts from the taxable service
23 in the bundle as follows:

24 (1) If the service provider offers all the services in the bundle on an
25 unbundled basis, tax is due on the unbundled price of the taxable
26 service, less the discount resulting from the bundling. The discount for
27 a service as the result of bundling is the proportionate price decrease of
28 the service, determined on the basis of the total unbundled price of all
29 the services in the bundle compared to the bundled price of the
30 services.

31 (2) If the service provider does not offer one or more of the services in the
32 bundle on an unbundled basis, tax is due on the taxable service based
33 on a reasonable allocation of revenue to that service. If the service
34 provider maintains an account for revenue from a taxable service, the
35 service provider's allocation of revenue to that service for the purpose
36 of determining the tax due on the service must reflect its accounting
37 allocation of revenue to that service."

38 **SECTION 6.** The catchline to G.S. 105-164.12B reads as rewritten:

39 **"§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with**
40 **service contract."**

41 **SECTION 7.** G.S. 105-164.44F(a) reads as rewritten:

42 "(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes
43 imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must
44 make the distribution within 75 days after the end of each calendar quarter. The amount

1 the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the
2 following percentages of the net proceeds of the taxes collected during the ~~quarter,~~
3 quarter:

4 (1) Eighteen and three one-hundredths percent (18.03%), minus two
5 million six hundred twenty thousand nine hundred forty-eight dollars
6 (\$2,620,948).(\$2,620,948), must be distributed to cities in accordance
7 with this section. ~~This~~ The deduction is one-fourth of the annual
8 amount by which the distribution to cities of the gross receipts
9 franchise tax on telephone companies, imposed by former G.S. 105-20,
10 was required to be reduced beginning in fiscal year 1995-96 as a result
11 of the "freeze deduction." ~~The Secretary must distribute the specified~~
12 ~~percentage of the proceeds, less the "freeze deduction" among the~~
13 ~~cities in accordance with this section.~~

14 (2) Seven and twenty-three one-hundredths percent (7.23%) must be
15 distributed to counties and cities as provided in G.S. 105-164.44I."

16 **SECTION 8.** Article 5 of Chapter 105 of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 105-164.44I. Distribution of part of sales tax on video programming service and**
19 **telecommunications service to counties and cities.**

20 (a) Distribution. – The Secretary must distribute to the counties and cities part of
21 the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and
22 G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the
23 distribution within 75 days after the end of each calendar quarter. The amount the
24 Secretary must distribute is the sum of the following:

25 (1) The amount specified in G.S. 105-164.44F(a)(2).

26 (2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net
27 proceeds of the taxes collected during the quarter on video
28 programming, other than on direct-to-home satellite service.

29 (3) Thirty-seven percent (37%) of the net proceeds of the taxes collected
30 during the quarter on direct-to-home satellite service.

31 (b) Supplemental PEG Support. – The Secretary must include the applicable
32 amount of supplemental PEG channel support in each quarterly distribution to a county
33 or city. The amount to include is one-fourth of sixteen thousand dollars (\$16,000) for
34 each qualifying PEG channel operated by the county or city. The amount of money
35 distributed under this subsection may not exceed two million dollars (\$2,000,000) in a
36 calendar year. If the amount to be distributed for qualifying PEG channels in a calendar
37 year would otherwise exceed this maximum amount, the Secretary must proportionately
38 reduce the applicable amount distributable for each PEG channel. The amount included
39 under this subsection in a distribution to a county or city is intended to supplement the
40 PEG channel support available in the amount distributed under this section.

41 A county or city must certify to the Secretary by January 15 of each year the number
42 of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the
43 programming requirements under G.S. 66-357(d). A county or city may not receive
44 PEG channel support for more than three qualifying PEG channels.

1 The money distributed to a county or city under this subsection must be used by it
2 for the operation and support of PEG channels. For purposes of this subsection, the term
3 "PEG channel" has the same meaning as in G.S. 66-350.

4 (c) Counties and Cities Without Local Cable Revenue. – The share of a county
5 that did not impose a cable franchise tax under G.S. 153A-154 before January 1, 2007,
6 is one dollar (\$1.00) times the most recent annual population estimate for that county.
7 The share of a city that did not impose a cable franchise tax under G.S. 160A-214
8 before January 1, 2007, is two dollars (\$2.00) times the most recent annual population
9 estimate for that city.

10 (d) Counties and Cities With Local Cable Revenue. – The share of a county or
11 city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214
12 before January 1, 2007, is its proportionate share of the amount to be distributed to all
13 counties and to all cities eligible to receive a distribution under this subsection. The
14 amount to be distributed under this subsection is the amount determined under
15 subsection (a) of this section, minus the amount distributed under subsections (b) and
16 (c) of this section. A county's and city's proportionate share is the amount of cable
17 franchise tax it received under G.S. 153A-154 or G.S. 160A-214 during the 2005-2006
18 fiscal year plus the amount of a subscriber fee imposed during the 2005-2006 fiscal year
19 compared to the amount of cable franchise tax revenue and subscriber fee revenue all
20 counties and cities received in that fiscal year. Each county or city that imposed a
21 franchise tax under G.S. 153A-154 or G.S. 160A-214 must certify to the Secretary by
22 January 15, 2007, the amount of cable franchise tax revenue and subscriber fee revenue
23 it received in the 2005-2006 fiscal year.

24 For subsequent fiscal years, the Secretary must multiply the amount of a county's or
25 city's share under this subsection for the preceding year by the percentage change in its
26 population for that fiscal year and add the result to the county's or city's share for the
27 preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or
28 city's proportionate share for that year is its adjusted amount compared to the sum of the
29 adjusted amounts for all counties and cities.

30 (e) Population Determination. – In making population determinations under this
31 section, the Secretary must use the most recent annual population estimates certified to
32 the Secretary by the State Budget Officer. For purposes of the distributions made under
33 this section, the population of a county is the population of its unincorporated areas plus
34 the population of an ineligible city in the county, as determined under subsection (g) of
35 this section.

36 (f) Change in City Structure. – The following changes apply when a city alters
37 its corporate structure:

38 (1) If a city dissolves and is no longer incorporated, the proportional
39 shares of the remaining counties and cities must be recalculated to
40 adjust for the dissolution of that city.

41 (2) If two or more cities merge or otherwise consolidate, their proportional
42 shares are combined.

43 (3) If a city divides into two or more cities, the proportional share of the
44 city that divides is allocated among the new cities on a per capita basis.

1 (g) Ineligible Cities. – An ineligible city is disregarded for all purposes under this
 2 section. A city incorporated on or after January 1, 2000, is not eligible for a distribution
 3 under this section unless it meets both of the following requirements:

- 4 (1) It is eligible to receive funds under G.S. 136-41.2.
- 5 (2) A majority of the mileage of its streets is open to the public.

6 (h) Nature. – The General Assembly finds that the revenue distributed under this
 7 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
 8 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
 9 or withhold the distribution."

10 SECTION 9. G.S. 105-164.21B is repealed.

11 SECTION 10. G.S. 153A-137 is repealed.

12 SECTION 11. G.S. 153A-154 is repealed.

13 SECTION 12. G.S. 160A-211 reads as rewritten:

14 "§ 160A-211. Privilege license taxes.

15 (a) Authority. – Except as otherwise provided by law, a city shall have power to
 16 levy privilege license taxes on all trades, occupations, professions, businesses, and
 17 franchises carried on within the city. A city may levy privilege license taxes on the
 18 businesses that were formerly taxed by the State under the following sections of Article
 19 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities
 20 to tax the businesses before the sections were repealed:

21		
22	G.S. 105-36	Amusements – Manufacturing, selling, leasing, or
23		distributing moving picture films.
24	G.S. 105-36.1	Amusements – Outdoor theatres.
25	G.S. 105-37	Amusements – Moving pictures – Admission.
26	G.S. 105-42	Private detectives and investigators.
27	G.S. 105-45	Collecting agencies.
28	G.S. 105-46	Undertakers and retail dealers in coffins.
29	G.S. 105-50	Pawnbrokers.
30	G.S. 105-51.1	Alarm systems.
31	G.S. 105-53	Peddlers, itinerant merchants, and specialty market
32		operators.
33	G.S. 105-54	Contractors and construction companies.
34	G.S. 105-55	Installing elevators and automatic sprinkler systems.
35	G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
36	G.S. 105-62	Restaurants.
37	G.S. 105-65	Music machines.
38	G.S. 105-65.1	Merchandising dispensers and weighing machines.
39	G.S. 105-66.1	Electronic video games.
40	G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
41	G.S. 105-77	Tobacco warehouses.
42	G.S. 105-80	Firearms dealers and dealers in other weapons.
43	G.S. 105-85	Laundries.
44	G.S. 105-86	Outdoor advertising.

1	G.S. 105-89	Automobiles, wholesale supply dealers, and service
2		stations.
3	G.S. 105-89.1	Motorcycle dealers.
4	G.S. 105-90	Emigrant and employment agents.
5	G.S. 105-91	Plumbers, heating contractors, and electricians.
6	G.S. 105-97	Manufacturers of ice cream.
7	G.S. 105-98	Branch or chain stores.
8	G.S. 105-99	Wholesale distributors of motor fuels.
9	G.S. 105-102.1	Certain cooperative associations.
10	G.S. 105-102.5	General business license.

11

12 (b) Barbershop and Salon Restriction. – A privilege license tax levied by a city
13 on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for
14 each barber, manicurist, cosmetologist, beautician, or other operator employed in the
15 barbershop or beauty salon.

16 (c) ~~Piped Gas Restriction. Prohibition.~~ – A city may not levy a privilege license
17 tax on a person who is engaged in the business of supplying piped natural gas and is
18 subject to tax under Article 5E of Chapter 105 of the General Statutes. impose a license,
19 franchise, or privilege tax on a person engaged in any of the businesses listed in this
20 subsection. These businesses are subject to a State tax for which the city receives a
21 share of the tax revenue.

22 (1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of
23 the General Statutes.

24 (2) Providing telecommunications service taxed under
25 G.S. 105-164.4(a)(4c).

26 (3) Providing video programming taxed under G.S. 105-164.4(a)(6).

27 (d) ~~Telecommunications Restriction.~~ – A city may not impose a license,
28 franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c)."

29 **SECTION 13.** G.S. 160A-214 is repealed.

30 **SECTION 14.** G.S. 160A-319(a) reads as rewritten:

31 "(a) A city shall have authority to grant upon reasonable terms franchises for the
32 ~~operation within the city of a telephone system and any of the enterprises listed in~~
33 ~~G.S. 160A-311 and for the operation of telephone systems. G.S. 160A-311, except a~~
34 cable television system. A franchise granted by a city authorizes the operation of the
35 franchised activity within the city. No franchise shall be granted for a period of more
36 than 60 years, except that a franchise for solid waste collection or disposal systems and
37 facilities shall not be granted for a period of more than 30 years and cable television
38 franchises shall not be granted for a period of more than 20 years. Except as otherwise
39 provided by law, when a city operates an enterprise, or upon granting a franchise, a city
40 may by ordinance make it unlawful to operate an enterprise without a franchise."

41 **SECTION 15.** An award of a State-issued franchise under Article 42 of
42 Chapter 66 of the General Statutes, as enacted by this act, does not affect a
43 determination of whether video programming provided by the holder of the franchise is
44 considered cable service provided over a cable system under federal law or under a state

1 law that applies substantially the same definitions of "cable service" and "cable system"
2 as federal law.

3 **SECTION 16.** If any provision of this act or its application is held invalid,
4 the invalidity does not affect other provisions or applications of this act that can be
5 given effect without the invalid provisions or application, and to this end the provisions
6 of this act are severable.

7 **SECTION 17.** The Revenue Laws Study Committee must review the effect
8 Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any
9 changes to the law are needed and must report its findings to the 2009 Session of the
10 North Carolina General Assembly:

- 11 (1) Competition in video programming services.
- 12 (2) The number of cable service subscribers, the price of cable service by
13 service tier, and the technology used to deliver the service.
- 14 (3) The deployment of broadband in the State.

15 **SECTION 18.** This act becomes effective January 1, 2007. Sections 7 and 8
16 of this act apply to the distribution made within 75 days after March 31, 2007, for the
17 quarter starting January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 1559*
PROPOSED COMMITTEE SUBSTITUTE S1559-CSRbx-52 [v.3]

6/8/2006 6:47:32 AM

Short Title: Video Service Competition Act.

(Public)

Sponsors:

Referred to:

May 18, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS
3 AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING
4 SERVICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 66 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 42.

9 "State Franchise for Cable Television Service.

10 "§ 66-350. Definitions.

11 The following definitions apply in this Article:

- 12 (1) Cable service. – Defined in G.S. 105-164.3.
13 (2) Cable system. – Defined in 47 U.S.C. § 522.
14 (3) Channel. – A portion of the electromagnetic frequency spectrum that is
15 used in a cable system and is capable of delivering a television
16 channel.
17 (4) Existing agreement. – A local franchise agreement that was awarded
18 under G.S. 153A-137 or G.S. 160A-319 and meets either of the
19 following:
20 a. Is in effect on January 1, 2007.
21 b. Expired before January 1, 2007, and the cable service provider
22 under the agreement provides cable service to subscribers in the
23 franchise area on January 1, 2007.
24 (5) Pass a household. – Make service available to a household, regardless
25 of whether the household subscribes to the service.
26 (6) PEG channel. – A public, educational, or governmental access channel
27 provided to a county or city.
28 (7) Secretary. – The Secretary of State.

1 "§ 66-351. State franchising authority.

2 (a) Authority. – The Secretary of State is designated the exclusive franchising
3 authority in this State for cable service provided over a cable system. This designation
4 replaces the authorization to counties and cities in former G.S. 153A-137 and
5 G.S. 160A-319 to award a franchise for cable service. This designation is effective
6 January 1, 2007. After this date, a county or city may not award or renew a franchise for
7 cable service.

8 (b) Award and Scope. – The Secretary is considered to have awarded a franchise
9 to a person who files a notice of franchise under G.S. 66-352. A franchise for cable
10 service authorizes the holder of the franchise to construct and operate a cable system
11 over public rights-of-way within the area to be served. Chapter 160A of the General
12 Statutes governs the regulation of public rights-of-way by a city.

13 "§ 66-352. Award of franchise and commencement of service.

14 (a) Notice of Franchise. – A person who intends to provide cable service over a
15 cable system in an area must file a notice of franchise with the Secretary before
16 providing the service. A person who files a notice of franchise must pay a fee in the
17 amount set in G.S. 57C-1-22 for filing articles of organization.

18 A notice of franchise is effective when it is filed with the Secretary. The notice of
19 franchise must include all of the following:

- 20 (1) The applicant's name, principal place of business, mailing address,
21 physical address, telephone number, and e-mail address.
22 (2) A description and map of the area to be served.
23 (3) A list of each county and city in which the described service area is
24 located, in whole or in part.
25 (4) A schedule indicating when service is expected to be offered in the
26 service area.

27 (b) Commencement of Service. – A person who files a notice of franchise under
28 subsection (a) of this section must begin providing cable service in the service area
29 described in the notice within 120 days after the notice is filed. If cable service does not
30 begin within this period, the notice of franchise terminates 130 days after it was filed. If
31 cable service begins within this period, the holder of the State-issued franchise must file
32 a notice of service with the Secretary within 10 days after the cable service begins.
33 Cable service begins when it passes one or more households in the described service
34 area. This subsection does not apply to a cable service provider who terminates an
35 existing agreement whose franchise area includes all of the service area described in a
36 notice of franchise filed by the provider under subsection (a) of this section.

37 A notice of service for a service area must include all of the following:

- 38 (1) The effective date of a notice of franchise for that area.
39 (2) A description and map of the service area.
40 (3) A statement that cable service has begun in the service area.

41 (c) Extension. – A person who intends to provide cable service over a cable
42 system in an area that is contiguous with but outside the service area described in a
43 notice of franchise on file with the Secretary must file a notice of franchise under
44 subsection (a) of this section that includes the proposed area. The initial service

1 requirements in subsection (b) of this section apply to the proposed area. If the map of
2 the area to be served includes any area that is part of the service area of another
3 State-issued franchise, the termination of a notice of franchise for the proposed area for
4 failure to begin service within the required time does not affect the status of the other
5 State-issued franchise.

6 (d) **Withdrawal.** – A person may withdraw a notice of franchise by filing a notice
7 of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90
8 days before the service is withdrawn.

9 **"§ 66-353. Annual service report.**

10 A holder of a State-issued franchise must file an annual service report with the
11 Secretary. The report must be filed on or before July 31 of each year. The report must
12 be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report.
13 The report must include all of the following:

14 (1) **The effective date of a notice of franchise for that area.**

15 (2) **A description and map of the service area.**

16 (3) **The approximate number of households in the service area.**

17 (4) **A description and a map of the households passed in the service area**
18 **as of July 1.**

19 (5) **The percentage of households passed in the service area as of July 1.**

20 (6) **The percentage of households passed in the service area as of July 1 of**
21 **any preceding year for which a report was required under this section.**

22 (7) **A report indicating the extent to which the holder has met the customer**
23 **service requirements under G.S. 66-356(b).**

24 (8) **A schedule indicating when service is expected to be offered in the**
25 **service area, to the extent the schedule differs from one included in the**
26 **notice of franchise or in a report previously submitted under this**
27 **section, and an explanation of the reason for the new schedule.**

28 **"§ 66-354. General filing and report requirements.**

29 (a) **General.** – A document filed with the Secretary under this Article must be signed
30 by an officer or general partner of the person submitting the document. Within five days
31 after a person files a document with the Secretary under this Article, the person must
32 send a copy of the document to any county or city included in the service area described
33 in the document and to the registered agent of any cable service provider that is
34 providing cable service under an existing agreement in the service area described in the
35 document.

36 The provisions of Article 2 of Chapter 55D of the General Statutes apply to the
37 submission of a document under this Article. A document filed under this Article is a
38 public record as defined in G.S. 132-1. The Secretary must post a document filed under
39 this Article on its Internet Web site or indicate on its Internet Web site that the
40 document has been filed and is available for inspection.

41 A successor in interest to a person who has filed a notice of franchise is not required
42 to file another notice of franchise. When a change in ownership occurs, the owner must
43 file a notice of change in ownership with the Secretary within 14 days after the change
44 becomes effective.

1 **(b) Forfeiture.** – A person who offers cable service over a cable system without
2 filing a notice of franchise or a notice of service as required by this Article is subject to
3 forfeiture of the revenue received during the period of noncompliance from subscribers
4 to the cable service. This forfeiture does not affect the liability of the cable service
5 provider for sales tax due under G.S. 105-164.4 on cable service. A cable service
6 provider whose area includes the area in which a person is providing cable service
7 without complying with the notice of franchise and notice of service requirements may
8 bring a civil action for forfeiture. The amount required to be forfeited in the action must
9 be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

10 **"§ 66-355. Effect on existing local franchise agreement.**

11 **(a) Existing Agreement.** – This Article does not affect an existing agreement
12 except as follows:

13 **(1)** Effective January 1, 2007, gross revenue used to calculate the payment
14 of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does
15 not include gross receipts from cable service subject to sales tax under
16 G.S. 105-164.4. This exclusion does not otherwise affect the
17 calculation of gross revenue and the payment to counties and cities of
18 franchise tax revenue under existing agreements that have not been
19 terminated under subsection (b) of this section.

20 **(2)** A cable service provider under an existing agreement may terminate
21 the

22
23 the agreement in accordance with subsection (b) of this section in any of the
24 following circumstances:

25 **a.a.** AA notice of service filed under G.S. 66-352 indicates that one
26 or more households in the franchise area of the existing
27 agreement are passed by both the cable service provider under
28 the existing agreement and the holder of a State-issued
29 franchise.

30 **b.** As of January 1, 2007, a county or city has an existing
31 agreement with more than one cable service provider and at
32 least twenty-five percent (25%) of the households in the
33 franchise areas of the existing agreements are passed by more
34 than one cable service provider.

35 **c.** A person provides wireline competition in the franchise area of
36 the existing agreement by offering video programming, as
37 defined in G.S. 105-164.3, over wireline facilities by a method
38 that does not require a franchise under this Article. A notice of
39 termination filed on the basis of wireline competition must
40 include evidence of the competition in providing video
41 programming service, such as an advertisement announcing the
42 availability of the service, the acceptance of an order for the
43 service, and information on the provider's website about the
44 availability of the service. A county or city is allowed 60 days

1 to review the evidence. The effective date of the termination is
2 tolled during this review period. At the end of this period, the
3 termination proceeds unless the county or city brings a civil
4 action to stay the termination based on the cable service
5 provider's failure to establish the existence of wireline
6 competition in its franchise area.

7 **(b) Termination.** – To terminate an existing agreement, a cable service provider
8 must file a notice of termination with the affected county or city and file a notice of
9 franchise with the Secretary. A termination of an existing agreement becomes effective
10 at the end of the month in which the notice of termination is filed with the affected
11 county or city. A termination of an existing agreement ends the obligations under the
12 agreement and under any local cable regulatory ordinance that specifically authorizes
13 the agreement as of the effective date of the termination but does not affect the rights or
14 liabilities of the county or city, a taxpayer, or another person arising under the existing
15 agreement or local ordinance before the effective date of the termination.

16 **"§ 66-356. Service standards and requirements.**

17 **(a) Discrimination Prohibited.** – A person who provides cable service over a
18 cable system may not deny access to the service to any group of potential residential
19 subscribers within the filed service area because of the race or income of the residents.
20 A violation of this subsection is considered an unfair or deceptive act or practice under
21 G.S. 75-1.1.

22 In determining whether a cable service provider has violated this subsection with
23 respect to a group of potential residential subscribers in a service area, the following
24 factors must be considered:

- 25 (1) The length of time since the provider filed the notice of service for the
26 area. If less than a year has elapsed since the notice of service was
27 filed, it is conclusively presumed that a violation has not occurred.
- 28 (2) The cost of providing service to the affected group due to distance
29 from facilities, density, or other factors.
- 30 (3) Technological impediments to providing service to the affected group.
- 31 (4) Inability to obtain access to property required to provide service to the
32 affected group.
- 33 (5) Competitive pressure to respond to service offered by another cable
34 service provider.

35 **(b) FCC Standards.** – A person who provides cable service over a cable system
36 must comply with the customer service requirements in 47 C.F.R. Part 76 and
37 emergency alert requirements established by the Federal Communications Commission.

38 **(c) Complaints.** – The Consumer Protection Division of the Attorney General's
39 Office is designated as the State agency to receive and respond to customer complaints
40 concerning cable services. Persistent or repeated violations of the federal customer
41 service requirements or the terms and conditions of the cable service provider's
42 agreement with customers are considered unfair or deceptive acts or practices under
43 G.S. 75-1.1.

1 To facilitate the resolution of customer complaints, the cable service provider must
2 include the following statement on the customer's bill: "If you have a complaint about
3 your cable service, you should first contact customer service at the following telephone
4 number: (insert the cable service provider's customer service telephone number). If the
5 cable service provider does not satisfactorily resolve your complaint, contact the
6 Consumer Protection Division of the Attorney General's Office of the State of North
7 Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001, at www.ncdoj.com, or
8 at 1-877-5-NO-SCAM.

9 (d) No Build-Out. – No build-out requirements apply to a person who provides
10 cable service under a State-issued franchise.

11 **"§ 66-357. Availability and use of PEG channels.**

12 (a) Application. – This section applies to a person who provides cable service
13 under a State-issued franchise. It does not apply to a person who provides cable service
14 under an existing agreement.

15 (b) Local Request. – A county or city must make a written request to a cable
16 service provider for PEG channel capacity. The request must include a statement
17 describing the county's or city's plan to operate and program each channel requested.
18 The cable service provider must provide the requested PEG channel capacity within 120
19 days after it receives the written request.

20 (c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed
21 a minimum of three initial PEG channels plus any channels in excess of this minimum
22 that are activated, as of July 1, 2006, under the terms of an existing franchise agreement
23 whose franchise area includes the city. A city with a population of less than 50,000 is
24 allowed a minimum of two initial PEG channels plus any channels in excess of this
25 minimum that are activated, as of July 1, 2006, under the terms of an existing franchise
26 agreement whose franchise area includes the city. For a city included in the franchise
27 area of an existing agreement, the agreement determines the service tier placement and
28 transmission quality of the initial PEG channels. For a city that is not included in the
29 franchise area of an existing agreement, the initial PEG channels must be on a basic
30 service tier, and the transmission quality of the channels must be equivalent to those of
31 the closest city covered by an existing agreement.

32 A county is allowed a minimum of two initial PEG channels plus any channels in
33 excess of this minimum that are activated, as of July 1, 2006, under the terms of an
34 existing franchise agreement whose franchise area includes the county. For a county
35 included in the franchise area of an existing agreement, the agreement determines the
36 service tier placement and transmission quality of the initial PEG channels. For a county
37 that is not included in the franchise area of an existing agreement, the initial PEG
38 channels must be on a basic service tier and the transmission quality of the channels
39 must be equivalent to those of any city with PEG channels in the county.

40 The cable service provider must maintain the same channel designation for a PEG
41 channel unless the service area of the State-issued franchise includes PEG channels that
42 are operated by different counties or cities and those PEG channels have the same
43 channel designation. Each county and city whose PEG channels are served by the same

1 cable system headend must cooperate with each other and with the cable system
2 provider in sharing the capacity needed to provide the PEG channels.

3 (d) Additional PEG Channels. – A county or city that does not have seven PEG
4 channels, including the initial PEG channels, is eligible for an additional PEG channel if
5 it meets the programming requirements in this subsection. A county or city that has
6 seven PEG channels is not eligible for an additional channel.

7 A county or city that meets the programming requirements in this subsection may
8 make a written request under subsection (b) of this section for an additional channel.
9 The additional channel may be provided on any service tier. The transmission quality of
10 the additional channel must be at least equivalent to the transmission quality of the other
11 channels provided.

12 The PEG channels operated by a county or city must meet the following
13 programming requirements for at least 120 continuous days in order for the county or
14 city to obtain an additional channel:

15 (1) All of the PEG channels must have scheduled programming for at least
16 eight hours a day.

17 (2) The programming content of each of the PEG channels must not repeat
18 more than fifteen percent (15%) of the programming content on any of
19 the other PEG channels.

20 (3) No more than fifteen percent (15%) of the programming content on
21 any of the PEG channels may be character-generated programming.

22 (e) Use of Channels. – If a county or city no longer provides any programming
23 for transmission over a PEG channel it has activated, the channel may be reprogrammed
24 at the cable service provider's discretion. A cable service provider must give at least 60
25 days notice to a county or city before it reprograms a PEG channel that is not used. The
26 cable service provider must restore a previously lost PEG channel within 120 days of
27 the date a county or city certifies to the provider a schedule that demonstrates the
28 channel will be used.

29 (f) Operation of Channels. – A cable service provider is responsible only for the
30 transmission of a PEG channel. The county or city to which the PEG channel is
31 provided is responsible for the operation and content of the channel. A county or city
32 that provides content to a cable service provider for transmission on a PEG channel is
33 considered to have authorized the provider to transmit the content throughout the
34 provider's service area, regardless of whether part of the service area is outside the
35 boundaries of the county or city.

36 All programming on a PEG channel must be noncommercial. A cable service
37 provider may not brand content on a PEG channel with its logo, name, or other
38 identifying marks. A cable service provider is not required to transmit content on a PEG
39 channel that is branded with the logo, name, or other identifying marks of another cable
40 service provider.

41 **"§ 66-358. Transmission of PEG channels.**

42 (a) Service. – When a cable service provider operating under a State-issued
43 franchise begins providing cable service in an area, the service must include the
44 transmission of PEG channels by one of the following methods:

1 (1) Interconnection with another cable system operated in its service area.
2 A cable service provider operating in the same service area as a
3 provider under a State-issued franchise must interconnect its cable
4 system on reasonable and competitively neutral terms with the other
5 provider's cable system when it receives a written request for
6 interconnection and may not refuse to interconnect on these terms. The
7 terms include compensation for costs incurred in interconnecting.
8 Interconnection may be accomplished by direct cable, microwave link,
9 satellite, or another method of connection.

10 (2) Transmission of the signal from each PEG channel programmer's
11 origination site, if the origination site is in the provider's service area.

12 (b) Signal. – All PEG channel programming provided to a cable service provider
13 for transmission must meet the federal National Television System Committee standards
14 or the Advanced Television Systems Committee Standards. If a PEG channel
15 programmer complies with these standards and the cable service provider cannot
16 transmit the programming without altering the transmission signal, then the cable
17 service provider must do one of the following:

18 (1) Alter the transmission signal to make it compatible with the
19 technology or protocol the cable service provider uses to deliver its
20 cable service.

21 (2) Provide to the county or city the equipment needed to alter the
22 transmission signal to make it compatible with the technology or
23 protocol the cable service provider uses to deliver its cable service.

24 **"§ 66-359. PEG channel grants.**

25 (a) PEG Channel Fund. – The PEG Channel Fund is created as an
26 interest-bearing special revenue fund. It consists of revenue allocated to it under
27 G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority,
28 created under G.S. 143B-437.46, administers the Fund.

29 (b) Grants. – A county or city may apply to the e-NC Authority for a grant from
30 the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to
31 the extent possible select applicants from all parts of the State based upon need. Grants
32 from the Fund are subject to the following limitations:

33 (1) The grant may not exceed twenty-five thousand dollars (\$25,000).

34 (2) The applicant must match the grant on a dollar-for-dollar basis.

35 (3) The grant may be used only for capital expenditures necessary to
36 provide PEG channel programming.

37 (4) An applicant may receive no more than one grant per fiscal year.

38 (c) Reports. – The e-NC Authority must publish an annual report on grants
39 awarded under this section. The report must list each grant recipient, the amount of the
40 grant, and the purpose of the grant.

41 **"§ 66-360. Service to public building.**

42 At the written request of a county or city, a cable service provider operating under a
43 State-issued franchise must provide cable service without charge to a public building
44 located within 125 feet of the provider's cable system. The required service is the basic,

1 or lowest-priced, service the provider offers to customers. The terms and conditions that
2 apply to service provided to a residential retail customer apply to the service provided to
3 the public building. Only one service outlet is required for a building. The cable service
4 provider is not required to provide inside wiring and is not required to provide service
5 that conflicts with restrictions that apply in a program licensing agreement or another
6 contract. A public building is a building used as a public school, a charter school, a
7 county or city library, or a function of the county or city."

8 SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to
9 read:

10 "**§ 105-164.3. Definitions.**

11 The following definitions apply in this Article:

12 ...
13 (50c) Video programming. – Programming provided by, or generally
14 considered comparable to programming provided by, a television
15 broadcast station, regardless of the method of delivery."

16 SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

17 "(6) The combined general rate applies to the gross receipts derived from
18 providing ~~any of the following broadcast services~~ video programming
19 to a subscriber in this State. A cable service provider, a direct-to-home
20 satellite service provider, and any other person engaged in the business
21 of providing any of these services ~~video programming~~ is considered a
22 retailer under this ~~Article~~:Article.

23 a. ~~Direct-to-home satellite service.~~

24 b. ~~Cable service."~~

25 SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the
26 catch line "Bundled services."

27 SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads
28 as rewritten:

29 "**§ 105-164.4D. Bundled services.**

30 ~~Bundled Services.~~—When a taxable ~~telecommunications~~ service is bundled with a
31 service that is not taxable, the tax applies to the gross receipts from the taxable service
32 in the bundle as follows:

33 (1) If the service provider offers all the services in the bundle on an
34 unbundled basis, tax is due on the unbundled price of the taxable
35 service, less the discount resulting from the bundling. The discount for
36 a service as the result of bundling is the proportionate price decrease of
37 the service, determined on the basis of the total unbundled price of all
38 the services in the bundle compared to the bundled price of the
39 services.

40 (2) If the service provider does not offer one or more of the services in the
41 bundle on an unbundled basis, tax is due on the taxable service based
42 on a reasonable allocation of revenue to that service. If the service
43 provider maintains an account for revenue from a taxable service, the
44 service provider's allocation of revenue to that service for the purpose

1 of determining the tax due on the service must reflect its accounting
2 allocation of revenue to that service."

3 SECTION 6. The catch line to G.S. 105-164.12B reads as rewritten:

4 "§ 105-164.12B. ~~Bundled transactions.~~ Tangible personal property bundled with
5 service contract."

6 SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

7 "(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes
8 imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must
9 make the distribution within 75 days after the end of each calendar quarter. The amount
10 the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the
11 following percentages of the net proceeds of the taxes collected during the ~~quarter,~~
12 quarter:

13 (1) Eighteen and three one-hundredths percent (18.03%), minus two
14 million six hundred twenty thousand nine hundred forty-eight dollars
15 (\$2,620,948). ~~(\$2,620,948),~~ must be distributed to cities in accordance
16 with this section. ~~This~~ The deduction is one-fourth of the annual
17 amount by which the distribution to cities of the gross receipts
18 franchise tax on telephone companies, imposed by former G.S. 105-20,
19 was required to be reduced beginning in fiscal year 1995-96 as a result
20 of the "freeze deduction." ~~The Secretary must distribute the specified~~
21 ~~percentage of the proceeds, less the "freeze deduction" among the~~
22 ~~cities in accordance with this section.~~

23 (2) Seven and twenty-three one-hundredths percent (7.23%) must be
24 distributed to counties and cities as provided in G.S. 105-164.44I."

25 SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by
26 adding a new section to read:

27 "§ 105-164.44I. Distribution of part of sales tax on video programming service and
28 telecommunications service to counties and cities.

29 (a) Distribution. – The Secretary must distribute to the counties and cities part of
30 the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and
31 G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the
32 distribution within 75 days after the end of each calendar quarter. The amount the
33 Secretary must distribute is the sum of the revenue listed in this subsection. The
34 Secretary must distribute two million dollars (\$2,000,000) of this amount in accordance
35 with subsection (b) of this section and the remainder in accordance with subsections (c)
36 and (d) of this section. The revenue to be distributed under this section consists of the
37 following:

38 (1) The amount specified in G.S. 105-164.44F(a)(2).

39 (2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net
40 proceeds of the taxes collected during the quarter on video
41 programming, other than on direct-to-home satellite service.

42 (3) Thirty-seven percent (37%) of the net proceeds of the taxes collected
43 during the quarter on direct-to-home satellite service.

1 (b) Supplemental PEG Support. – The Secretary must include the applicable
2 amount of supplemental PEG channel support in each quarterly distribution to a county
3 or city. The amount to include is one-fourth of twenty-five thousand dollars (\$25,000)
4 for each qualifying PEG channel operated by the county or city. The amount of money
5 distributed under this subsection may not exceed two million dollars (\$2,000,000) in a
6 fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year
7 would otherwise exceed this maximum amount, the Secretary must proportionately
8 reduce the applicable amount distributable for each PEG channel. If the amount to be
9 distributed for qualifying PEG channels in a fiscal year is less than two million dollars
10 (\$2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund,
11 established in G.S. 66-359.

12 A county or city must certify to the Secretary by July 15 of each year the number of
13 qualifying PEG channels it operates. A qualifying PEG channel is one that meets the
14 programming requirements under G.S. 66-357(d). A county or city may not receive
15 PEG channel support under this subsection for more than three qualifying PEG
16 channels.

17 The amount included under this subsection in a distribution to a county or city is
18 intended to supplement the PEG channel support available in the amount distributed
19 under this section. The money distributed to a county or city under this subsection must
20 be used by it for the operation and support of PEG channels. For purposes of this
21 subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

22 (c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its
23 proportionate share of the amount to be distributed to all counties and cities under this
24 subsection. The proportionate share of a county or city is the base amount for the county
25 or city compared to the base amount for all other counties and cities. The base amount
26 of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or
27 G.S. 160A-214 before July 1, 2006, is two dollars (\$2.00) times the most recent annual
28 population estimate for that county or city. The base amount of a county or city that
29 imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July
30 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or
31 city certifies to the Secretary that it imposed during the first six months of the
32 2006-2007 fiscal year. A county or city must make this certification by January 15,
33 2007. The certification must specify the amount of revenue that is derived from the
34 cable franchise tax and the amount that is derived from the subscriber fee.

35 (d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must
36 multiply the amount of a county's or city's share under this section for the preceding
37 fiscal year by the percentage change in its population for that fiscal year and add the
38 result to the county's or city's share for the preceding fiscal year to obtain the county's or
39 city's adjusted amount. Each county's or city's proportionate share for that year is its
40 adjusted amount compared to the sum of the adjusted amounts for all counties and
41 cities.

42 (e) Use of Proceeds. – A county or city that imposed subscriber fees during the
43 first six months of the 2006-2007 fiscal year must use a portion of the funds distributed
44 to it under subsections (c) and (d) of this section for the operation and support of PEG

1 channels. The amount of funds that must be used for PEG channel operation and
2 support is two times the amount of subscriber fee revenue the county or city certified to
3 the Secretary that it imposed during the first six months of the 2006-2007 fiscal year.
4 The remainder of the distribution may be used for any public purpose.

5 (f) Late Information. – A county or city that does not submit information that the
6 Secretary needs to make a distribution by the date the information is due is excluded
7 from the distribution. If the county or city later submits the required information, the
8 Secretary must include the county or city in the distribution for the quarter that begins
9 after the date the information is received.

10 (g) Population Determination. – In making population determinations under this
11 section, the Secretary must use the most recent annual population estimates certified to
12 the Secretary by the State Budget Officer. For purposes of the distributions made under
13 this section, the population of a county is the population of its unincorporated areas plus
14 the population of an ineligible city in the county, as determined under subsection (g) of
15 this section.

16 (h) City Changes. – The following changes apply when a city alters its corporate
17 structure or incorporates:

18 (1) If a city dissolves and is no longer incorporated, the proportional
19 shares of the remaining counties and cities must be recalculated to
20 adjust for the dissolution of that city.

21 (2) If two or more cities merge or otherwise consolidate, their proportional
22 shares are combined.

23 (3) If a city divides into two or more cities, the proportional share of the
24 city that divides is allocated among the new cities on a per capita basis.

25 (4) If a city incorporates after January 1, 2007, and the incorporation is not
26 addressed by subdivisions (2) or (3) of this subsection, the share of the
27 county in which the new city is located is allocated between the county
28 and the new city on a per capita basis.

29 (i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this
30 section. A city incorporated on or after January 1, 2000, is not eligible for a distribution
31 under this section unless it meets both of the following requirements:

32 (1) It is eligible to receive funds under G.S. 136-41.2.

33 (2) A majority of the mileage of its streets is open to the public.

34 (j) Nature. – The General Assembly finds that the revenue distributed under this
35 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
36 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
37 or withhold the distribution."

38 **SECTION 9.** G.S. 105-164.21B is repealed.

39 **SECTION 10.** G.S. 153A-137 is repealed.

40 **SECTION 11.** G.S. 153A-154 is repealed.

41 **SECTION 12.** G.S. 160A-211 reads as rewritten:

42 **"§ 160A-211. Privilege license taxes.**

43 (a) Authority. – Except as otherwise provided by law, a city shall have power to
44 levy privilege license taxes on all trades, occupations, professions, businesses, and

1 franchises carried on within the city. A city may levy privilege license taxes on the
 2 businesses that were formerly taxed by the State under the following sections of Article
 3 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities
 4 to tax the businesses before the sections were repealed:

5		
6	G.S. 105-36	Amusements – Manufacturing, selling, leasing, or
7		distributing moving picture films.
8	G.S. 105-36.1	Amusements – Outdoor theatres.
9	G.S. 105-37	Amusements – Moving pictures – Admission.
10	G.S. 105-42	Private detectives and investigators.
11	G.S. 105-45	Collecting agencies.
12	G.S. 105-46	Undertakers and retail dealers in coffins.
13	G.S. 105-50	Pawnbrokers.
14	G.S. 105-51.1	Alarm systems.
15	G.S. 105-53	Peddlers, itinerant merchants, and specialty market
16		operators.
17	G.S. 105-54	Contractors and construction companies.
18	G.S. 105-55	Installing elevators and automatic sprinkler systems.
19	G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
20	G.S. 105-62	Restaurants.
21	G.S. 105-65	Music machines.
22	G.S. 105-65.1	Merchandising dispensers and weighing machines.
23	G.S. 105-66.1	Electronic video games.
24	G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
25	G.S. 105-77	Tobacco warehouses.
26	G.S. 105-80	Firearms dealers and dealers in other weapons.
27	G.S. 105-85	Laundries.
28	G.S. 105-86	Outdoor advertising.
29	G.S. 105-89	Automobiles, wholesale supply dealers, and service
30		stations.
31	G.S. 105-89.1	Motorcycle dealers.
32	G.S. 105-90	Emigrant and employment agents.
33	G.S. 105-91	Plumbers, heating contractors, and electricians.
34	G.S. 105-97	Manufacturers of ice cream.
35	G.S. 105-98	Branch or chain stores.
36	G.S. 105-99	Wholesale distributors of motor fuels.
37	G.S. 105-102.1	Certain cooperative associations.
38	G.S. 105-102.5	General business license.

39
 40 (b) Barbershop and Salon Restriction. – A privilege license tax levied by a city
 41 on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for
 42 each barber, manicurist, cosmetologist, beautician, or other operator employed in the
 43 barbershop or beauty salon.

1 (c) ~~Piped Gas Restriction. Prohibition.~~ A city may not levy a ~~privilege license~~
2 ~~tax on a person who is engaged in the business of supplying piped natural gas and is~~
3 ~~subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license,
4 franchise, or privilege tax on a person engaged in any of the businesses listed in this
5 subsection. These businesses are subject to a State tax for which the city receives a
6 share of the tax revenue.

7 (1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of
8 the General Statutes.

9 (2) Providing telecommunications service taxed under
10 G.S. 105-164.4(a)(4c).

11 (3) Providing video programming taxed under G.S. 105-164.4(a)(6).

12 (d) ~~Telecommunications Restriction.~~ A city may not ~~impose a license,~~
13 ~~franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c)."~~

14 SECTION 13. G.S. 160A-214 is repealed.

15 SECTION 14. G.S. 160A-296(a) reads as rewritten:

16 "(a) A city shall have general authority and control over all public streets,
17 sidewalks, alleys, bridges, and other ways of public passage within its corporate limits
18 except to the extent that authority and control over certain streets and bridges is vested
19 in the Board of Transportation. General authority and control includes but is not limited
20 to: to all of the following:

21 (1) The duty to keep the public streets, sidewalks, alleys, and bridges in
22 proper repair; repair.

23 (2) The duty to keep the public streets, sidewalks, alleys, and bridges open
24 for travel and free from unnecessary obstructions; obstructions.

25 (3) The power to open new streets and alleys, and to widen, extend, pave,
26 clean, and otherwise improve existing streets, sidewalks, alleys, and
27 bridges, and to acquire the necessary land therefor by dedication and
28 acceptance, purchase, or eminent ~~domain; domain.~~

29 (4) The power to close any street or alley either permanently or
30 temporarily; temporarily.

31 (5) The power to regulate the use of the public streets, sidewalks, alleys,
32 and bridges; bridges.

33 (6) The power to regulate, license, and prohibit digging in the streets,
34 sidewalks, or alleys, or placing therein or thereon any pipes, poles,
35 wires, fixtures, or appliances of any kind either on, above, or below the
36 surface; surface. In exercising this power, a city may not impose a fee
37 or charge for use of the public right-of-way unless the fee or charge
38 applies uniformly to all nonmunicipal users of the public right-of-way.

39 (7) The power to provide for lighting the streets, alleys, and bridges of the
40 city; and city.

41 (8) The power to grant easements in street rights-of-way as permitted by
42 G.S. 160A-273."

43 SECTION 15. G.S. 160A-319(a) reads as rewritten:

1 "(a) A city shall have authority to grant upon reasonable terms franchises for ~~the~~
2 ~~operation within the city of a telephone system and any of the enterprises listed in~~
3 ~~G.S. 160A-311 and for the operation of telephone systems. G.S. 160A-311, except a~~
4 ~~cable television system. A franchise granted by a city authorizes the operation of the~~
5 ~~franchised activity within the city. No franchise shall be granted for a period of more~~
6 ~~than 60 years, except that a franchise for solid waste collection or disposal systems and~~
7 ~~facilities shall not be granted for a period of more than 30 years and cable television~~
8 ~~franchises shall not be granted for a period of more than 20 years. Except as otherwise~~
9 ~~provided by law, when a city operates an enterprise, or upon granting a franchise, a city~~
10 ~~may by ordinance make it unlawful to operate an enterprise without a franchise."~~

11 **SECTION 16.** To make the distribution required under G.S. 105-164.44I(c),
12 as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the
13 Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it
14 operates.

15 **SECTION 17.** A primary purpose of this act is to promote consumer choice
16 in video service providers. A premise of this goal is that increased competition will lead
17 to improved service. Under competition, a customer who is dissatisfied with service by
18 one cable service provider will have the option of choosing a different service provider.

19 G.S. 66-356, as enacted by this act, designates the Consumer Protection
20 Division of the Attorney General's Office as the agency to receive and respond to
21 unresolved customer complaints about cable service provided by the holder of a
22 State-issued franchise. The transition from local franchise agreements to State-issued
23 franchises will occur gradually.

24 Due to the expected improvement in customer service and the gradual change
25 to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the
26 staffing needs of the Consumer Protection Division is not clear. The Office of the
27 Attorney General is therefore requested to monitor the number and type of cable service
28 complaints it receives from customers in areas served under a local franchise agreement
29 and from areas served under a State-issued franchise to determine whether the
30 Consumer Protection Division needs additional staff to fulfill the duty imposed by new
31 G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of
32 the North Carolina General Assembly by April 1, 2007.

33 **SECTION 18.** The Secretary of State has no authority to determine whether
34 a person who is providing video programming is providing cable service over a cable
35 system. An award of a State-issued franchise under Article 42 of Chapter 66 of the
36 General Statutes, as enacted by this act, does not affect a determination of whether
37 video programming provided by the holder of the franchise is considered cable service
38 provided over a cable system under federal law or under a state law that applies
39 substantially the same definitions of "cable service" and "cable system" as federal law.
40 A person who provides video programming may obtain a State-issued franchise
41 under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, regardless
42 of whether the video programming the person provides is considered cable service
43 provided under a cable system under that Article or under federal law.

44

1 **SECTION 19.** If any provision of this act or its application is held invalid,
2 the invalidity does not affect other provisions or applications of this act that can be
3 given effect without the invalid provisions or application, and to this end the provisions
4 of this act are severable.

5 **SECTION 20.** The Revenue Laws Study Committee must review the effect
6 Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any
7 changes to the law are needed and must report its findings to the 2009 Session of the
8 North Carolina General Assembly:

9 (1) Competition in video programming services.

10 (2) The number of cable service subscribers, the price of cable service by
11 service tier, and the technology used to deliver the service.

12 (3) The deployment of broadband in the State.

13 **SECTION 21.** This act becomes effective January 1, 2007. Sections 7 and 8
14 of this act apply to the distribution made within 75 days after March 31, 2007, for the
15 quarter starting January 1, 2007.

SB 1559 (PCS): VIDEO SERVICE COMPETITION ACT

June 8, 2006

Executive Summary for the Senate Commerce Meeting

- **Provides equal taxation of same service**
 - Defines video programming to include all programming comparable to television broadcast, regardless of provider
 - Repeals local authority to impose local franchise tax
 - Applies existing 7% State sales tax to video programming service
- **Promotes competition in video programming service**
 - Requires State franchising of cable service providers
 - Repeals local authority to award or renew a local cable franchise, effective January 1, 2007
- **Preserves local government revenue stream**
 - Distributes share of sales tax imposed on video programming to counties and cities
 - Distribution of video programming revenues based on the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 PLUS any subscriber revenues imposed during the first six months of fiscal year 06-07. Subsequent annual distributions adjusted for population growth
- **Protects PEG Channels**
 - Provides \$2 million for additional PEG support through direct distribution and through grants
 - Includes per subscriber revenue in local government distribution base and requires local governments that imposed a subscriber fee to use the amount of revenue derived from that fee for PEG channel operation and support
 - Sets number, service tier placement, and transmission quality of PEG channels
 - Provides mechanism to acquire additional PEG channels
 - Provides equipment assistance for transmitting PEG channel signals
- **Requires cable service provider to provide free basic service to local public buildings**
- **Preserves local regulation of rights-of-way**
- **Provides competitive neutrality**
 - Existing local franchises cannot be renewed
 - Opt out provision for cable service providers under existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise
- **Prohibits discrimination**
 - Bill specifically prohibits discrimination of service based on income or race
 - Violation of the law declared an unfair or deceptive trade practice
- **Preserves service standards**
 - Franchisee must comply with customer service standards and emergency alert requirements of FCC
 - Consumer Protection Division of the Attorney General's Office will receive and respond to complaints



SENATE BILL 1559: Video Service Competition Act

BILL ANALYSIS

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	Date:	June 7, 2006
Introduced by:	Sen. Clodfelter	Summary by:	Cindy Avrette
Version:	PCS to First Edition S1559-CSR BX-52		Committee Counsel

SUMMARY: *Senate Bill 1559 would provide equal taxation of video programming services regardless of how the service is delivered and it would replace locally negotiated franchises of cable service provided over a cable system with a State-issued franchise. The PCS for the bill addresses various issues and concerns raised by parties interested in the bill. The bill would become effective January 1, 2007.*

CURRENT LAW: North Carolina began taxing communication services when the technologies enabling the services were separate and distinct technologies and the providers of the services were separate and distinct taxpayers. Over the past several years, the technology used to provide these services has converged so that the line between the services is no longer separate and distinct. The Current Operations and Capital Improvements Appropriations Act of 2005 directed the Revenue Laws Study Committee to study the equity of taxation of providers of cable service, direct-to-home satellite service, satellite digital audio radio service, video programming service, and data service.

The Revenue Laws Study Committee spent a considerable amount of time on this issue.¹ The Committee found that the State taxes these services based upon who provides the service rather than the service itself. Despite the General Assembly's repeated attempts to provide tax equity among these providers, it is debatable whether that has been accomplished:

- The State imposes a 7% State sales tax on telecommunication services and it earmarks a percentage of the revenues to cities. The amount each city receives is based upon a per capita statutory formula. State law prohibits counties and cities from imposing local taxes on this service.
- The State imposes a 7% State sales tax on direct-to-home satellite service. Federal law prohibits a local tax on this service and it prohibits local regulation of this service. The tax revenue is not shared with local governments.
- The State imposes a 4.5% State sales tax and a 2.5% local sales tax on digital audio radio service.
- The State imposes a 7% State sales tax on cable services, with a credit equal to the amount of local franchise tax paid on the service. Counties and cities may impose a local franchise tax on this service; the tax may not exceed 5% of gross receipts. Cable service has been subject to local regulation since 1973. The local regulation of cable services varies from county to county and from city to city, depending on the terms of the locally negotiated agreements. The definition of

¹ The Revenue Laws Study Committee staff met separately with representatives of the cable industry, the telephone industry, the cable administrators, and the counties and cities. It also held a series of four meetings with all the affected parties and solicited comments from the parties on numerous occasions. The staff prepared a survey given to all the local governments in the State to determine their franchise fee collections and other nonmonetary contributions received in accordance with their cable franchise agreements.

Senate Bill 1559

Page 2

'gross receipts' may also vary from agreement to agreement. The cable boxes rented to customers is subject to the State and local sales tax. The gross receipts from the rental of these boxes may also be included in the company's gross receipts for local franchise tax purposes, depending upon how the term is defined in the local agreement.

The Revenue Laws Study Committee acknowledged that the method of taxation should not provide one provider of a service with a competitive advantage over another. The Committee expressed a goal to establish a method of taxation that applies equally to the same service, regardless of who provides it. The Committee established the following principles:

- Equal taxation of the same service.
- A tax system that is easy to administer.
- A tax and regulatory system that does not impede competition.
- Equal compensation to cities for the use of their public rights-of-way.
- PEG channels service a public purpose and should be supported.

Based upon those principles, it desired a bill that met the following goals:

- Applies the principles stated above.
- Contains no tax or fee increase.
- Preserves local government revenue stream.
- Promotes competition in the marketplace.
- Promotes deployment of broadband as a basic communication tool.

North Carolina is not alone in grappling with the issue of how to tax and regulate telecommunications and video programming services. Congress as well as other states is considering legislation on this issue. At this time, at least four states have enacted legislation changing the regulation and taxation of telecommunications and video programming services and at least eight other states have legislation pending on the issue.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 1559, *Video Service Competition Act*, establishes uniform taxes for video programming services and seeks to promote consumer choice. It establishes equal taxation of the same service by applying the State 7% sales tax to all video programming services, repealing the local authority to impose a local franchise tax, and repealing the sales tax credit allowed to cable companies for local franchise tax paid. It preserves the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 plus any subscriber fees imposed during that same period.

The bill promotes competition by providing a State franchise process, in lieu of the current locally negotiated franchise agreements. It seeks to ensure competitive neutrality by allowing cable providers to opt-out of existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise. The bill specifically prohibits discrimination in the provision of video programming services and declares a violation of this law to be an unfair or deceptive trade practice. The holder of a State-issued franchise must comply with customer service and emergency alert requirements established by the Federal Communications Commission. The

Senate Bill 1559

Page 3

bill designates the Consumer Protection Division of the Attorney General's Office as the State agency to receive customer complaints regarding video programming services.

The bill preserves local regulation of public rights-of-way and provides for PEG channel support and growth. The bill requires local governments that imposed subscriber fees to use a portion of the amount of revenue distributed to it for PEG channel operation and support. In addition to this mandated funding, the bill provides \$2 million for supplemental PEG support through direct appropriation for PEG channel support and operation and through grants. The bill provides that existing franchise agreements will determine the number, service tier placement, and transmission quality required of PEG channels under a State-issued franchise. In the absence of an existing agreement, the number of PEG channels a county or city may have is determined by the area's population. A local entity may acquire additional PEG channels, with the maximum number of channels set at seven. The bill also requires cable service providers to provide free basic service to local public buildings.

Section-by-section analysis of the proposed committee substitute:

Section 1 of the bill replaces the authorization to counties and cities to award a franchise for cable service with a State franchising authority, effective January 1, 2007. The bill provides that a county or city may not award or renew a franchise for cable service after this date. The bill designates the Secretary of State as the exclusive franchising authority in the State for cable service provided over a cable system. The terms 'cable service' and 'cable system' track the definitions in federal law. The bill would require the franchising of cable service that is required to be franchised under federal law. The bill does not expand the services that need to be franchised beyond those currently required to be franchised under federal law.

State issued franchise. The State franchise process is one of notice, not regulation. To receive a State-issued franchise, a person must file a notice of franchise with the Secretary of State and pay a fee of \$125.² A person who files a notice of franchise with the Secretary must begin providing cable service within 120 days after the notice is filed. If service is not provided within this period, the notice of franchise terminates 130 days after it was filed. The notice of franchise must include all of the following:

- The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.
- A description and map of the area to be served.
- A list of each county and city in which the described service area is located.
- A schedule indicating when service is expected to be offered in the service area.

Notice of Service. Once cable service is provided, the holder of a State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. The notice of service must include the effective date of the notice of franchise for that area, a description and map of the service area, and a statement that cable service has begun in the service area.

Annual Service Report. The holder of a State-issued franchise must also file an annual service report on or before July 31 of each year and pay a fee of \$200.³ The annual service report must include all of the following:

- The effective date of a notice of franchise for that area.

² Fee amount is the same as the filing fee for articles of organization of a limited liability company under G.S. 57C-1-22.

³ Fee amount is the same as the filing fee for an annual report of a limited liability company under G.S. 57C-1-22.

Senate Bill 1559

Page 4

- A description and map of the service area.
- The approximate number of households in the service area.
- A description and map of the households passed in the service area as of July 1.
- The percentage of households passed in the service area as of July 1.
- The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required.
- A report indicating the extent to which the holder has met the customer service requirements.
- A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted, and an explanation of the reason for the new schedule.

General filing and reporting requirements. A person who files a notice of franchise or an annual service report with the Secretary of State must send a copy of the document to any county or city included in the service area described in the document as well as to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area. The provisions of Article 2 of Chapter 55D apply to the submission of documents.⁴ The Secretary must either post the documents filed to its Internet Web site or indicate on its Internet Web site that the document has been filed and is available for inspection.

A person who offers cable service over a cable system without filing a notice of franchise or a notice of service is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service. A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice requirements may bring a civil action for forfeiture.

Existing agreements. An existing agreement is defined as a local franchise agreement that is in effect on January 1, 2007, or as one that expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007. The State franchising authority does not affect an existing agreement, except as follows:

- Effective January 1, 2007, gross revenue used to calculate the payment of a local franchise tax does not include gross receipts from cable service subject to the State sales tax.
- A local franchise agreement may be terminated in any one of the following circumstances:
 - When a notice of service indicates that one or more households in the franchise area of the existing agreement are passed by both the cable provider under the existing agreement and the holder of a State-issued franchise.
 - As of January 1, 2007, a county or city has an existing agreement with more than one cable service provider and at least 25% of the households in the franchise areas of the existing agreements are passed by more than one cable service provider.
 - A person provides wireline competition in the franchise area of the existing agreement by offering video programming, as defined in G.S. 105-164.3, over wireline facilities by

⁴ This Article contains several provisions: To be filed, a document must contain all the required information and be accompanied by the filing fee. The Secretary of State's filing of a document does not relate to the veracity of the document. A person who knowingly signs a false document filed with the Secretary is guilty of a Class 1 misdemeanor.

Senate Bill 1559

Page 5

a method that does not require a State-issued franchise. To terminate an existing agreement under this circumstance, a cable service provider must include evidence of the competition. A county or city is allowed 60 days to review the evidence. The termination becomes effective at the end of this 60-day period unless the county or city brings an action to stay the termination.

Termination of existing agreements. To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary of State. A notice of termination becomes effective at the end of a month. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance as of the effective date of the termination.

Service standards and requirements. The bill specifically prohibits discrimination in the provision of the cable service. A violation of the law is considered an unfair and deceptive trade practice under G.S. 75-1.1. In determining whether a cable service provider has violated the law, the following factors may be considered: the length of time since the provider filed the notice of service for the area, the cost of providing service to an area, technological impediments to providing service to an area, the inability to obtain access to property required to provide service to an area, and competitive pressure to respond to service offered by another cable provider. The information in the annual service reports may be used to help determine whether a violation of the law has occurred.

A cable service provider must comply with the customer service requirements and emergency alert requirements established by the Federal Communications Commission. The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to consumer complaints. Persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers will also be considered an unfair and deceptive trade practice under G.S. 75-1.1. Each individual violation of the federal requirements or the provider's agreement constitutes a separate violation. In a suit instituted by the Attorney General's office, the court may impose a civil penalty of up to \$5,000 a day for each violation if it finds the cable service provider violated G.S. 75-1.1. In a suit instituted by a person where the cable service provider is found to have violated G.S. 75-1.1, the person is entitled to treble the amount of damages fixed by the verdict.

PEG channels. The bill requires a cable service provider operating under a State-issued franchise to include the transmission of PEG channels. A county or city may make a written request for PEG channel capacity and the cable service provider must provide the requested capacity within 120 days after it receives the request. A city with a population of at least 50,000 is allowed a minimum of three PEG channels and a city with a population of less than \$50,000 is allowed a minimum of two PEG channels. A county is allowed a minimum of two PEG channels. This minimum number of initial PEG channels may be increased by the number of channels in excess of this minimum that are activated as of July 1, 2006, under the terms of an existing agreement whose franchise area includes the city or county.

The maximum number of PEG channels a cable service provider must provide to a county or city is seven. If a county or city does not have seven PEG channels, including the initial PEG channels, it may request additional channels. The additional channels may be provided on any service tier and the transmission quality of the additional channels must be at least equivalent to the transmission quality of the other channels provided. The PEG channels operated by a county or city must meet the following programming requirements in order for the county or city to obtain additional channels:

- All of the PEG channels must have scheduled programming for at least 8 hours a day.

Senate Bill 1559

Page 6

- The programming content of each PEG channel must not repeat more than 15% of the programming content on any of the other PEG channels.
- No more than 15% of the programming content on any PEG channel may be character-generated programming.

A cable service provider is responsible only for the transmission of a PEG channel. A county or city to which the PEG channel is provided is responsible for the operation and content of the channel.

PEG channel grants. The bill establishes the PEG Channel Fund as an interest-bearing special revenue fund. The purpose of the Fund is to provide matching grants to counties and cities for PEG channel support. The e-NC Authority administers the Fund.⁵ A grant may only be used for capital expenditures necessary to provide PEG channels. The size of a grant may not exceed \$25,000 and an applicant may receive no more than one grant per fiscal year. The applicant must match the grant on a dollar-for-dollar basis. The Authority must publish an annual report on the grants awarded from the Fund.

Service to public buildings. At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. Only one service outlet is required for a building. A public building is a building used as a public school, a charter school, a library, or a function of the county or city. A cable provider is not required to provide service that conflict with restrictions that apply in a program licensing agreement or another contract.

Sections 2 and 3 of the bill would apply the State sales tax equally to all video programming services, regardless of who provides the service. Section 2 defines the term 'video programming' to be programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery. The term is broader than 'cable service provided over a cable system'. It would include cable services offered over private rights-of-way as well as those offered over public rights-of-way. Section 3 imposes the State's 7% sales tax on the gross receipts derived from providing video programming to a subscriber in this State.⁶

Sections 4 through 6 of the bill would make technical and conforming changes to the provisions governing bundled transactions.

Sections 7 and 8 of the bill would distribute a share of the sales tax revenues imposed on video programming to counties and cities. The revenue distributed is local revenue, not a State expenditure. Therefore, the Governor may not reduce or withhold the distribution.

Section 7 would increase the amount of the sales tax revenue derived from telecommunication services distributed to cities and counties. Section 8 would distribute the following portion of the gross receipts derived from video programming to counties and cities: 22.61% of the net proceeds collected on video programming, other than on direct-to-home services and 37% of the net proceeds collected on direct-to-home satellite service.⁷ The distributions would be made quarterly.

The amount distributed would be allocated as follows:

- Two million dollars (\$2,000,000) a year would be distributed as supplement PEG channel support. A portion of this amount will be distributed to counties and cities with qualifying PEG

⁵ The e-NC Authority is charged with managing and promoting high-speed broadband Internet access.

⁶ Although the term video programming includes broadcast services, the provision of these services would not be taxed unless the provider sells the service to subscribers and thus realizes gross receipts from the provision of the services.

⁷ This percentage distribution from satellite TV services mirrors the 2.5% local sales tax on satellite radio services.

Senate Bill 1559

Page 7

channels.⁸ The amount per qualifying PEG channel would be \$25,000. A county or city could not receive supplemental PEG channel support for more than three PEG channels. The amount distributed to a county or city as supplemental PEG channel support must be used by it for the operation and support of PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than \$2,000,000, the Secretary must credit the excess amount to the PEG Channel Fund to be used for matching local grants for PEG channel support.

- The remainder of the revenues to be distributed would be allocated between the counties and cities on a proportional basis. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all counties and cities. The base amount for a county or city that did not impose a cable franchise tax before July 1, 2006, would be \$2 times the most recent annual population estimate for that county or city. The population of the county would be the population of its unincorporated areas plus the population of an ineligible city in the county. The base amount for a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary it imposed during the first six months of fiscal year 06-07. For subsequent fiscal years, the amount each county or city receives would be adjusted based upon its percentage change in population.

A county or city that imposed subscriber fee revenue must use a portion of the amount distributed to it for PEG channel operation and support. The amount it must use for this purpose is two times the amount of revenue it certified to the Secretary it imposed as subscriber fees during the first six months of fiscal year 06-07. The remainder of the money distributed to counties and cities may be used for any public purpose.

Section 9 would repeal the credit against the State sales tax on cable services for local franchise tax paid since the local franchise tax is repealed in Section 13.

Section 10 would repeal the county's authority to franchise cable television services.

Section 11 would repeal the county's authority to impose a franchise tax on cable services. Unlike a city, a county may only levy a privilege tax to the extent it is authorized by law. This section repeals the county's authorization.

Section 12 would specifically prohibit a city from imposing a tax on video programming services under the statute that gives cities the general authority to levy a privilege license tax on businesses and franchises unless prohibited from doing so by law. This section contains such a prohibition.

Section 13 would repeal the city's specific statutory authority to impose a franchise tax on cable services.

Section 14 would clarify that a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all non-municipal users of the public right-of-way.

Section 15 would repeal the city's authority to franchise cable television services.

Section 16 would require a county or city desiring to receive a distribution for supplemental PEG channel support under G.S. 105-164.44I(c) to certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

Section 17 recognizes that the staffing needs of the Consumer Protection Division of the Attorney General's Office may change if this bill is enacted. However, the section also finds that the impact of

⁸ A 'qualifying PEG channel' is a channel that meets the programming requirements under G.S. 66-357(d).

Senate Bill 1559

Page 8

this bill on the staffing needs of the Division is not clear. This section requests the Office of the Attorney General to monitor the number and type of cable service complaints it receives from customers and to determine whether the Division needs additional staff to fulfill the duty imposed by this bill on it. The Office of the Attorney General must make a report concerning its staffing needs to the Fiscal Research Division by April 1, 2007.

Section 18 would provide that an award of a State-issued franchise does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law.

Section 19 would provide that the provisions of this act are severable.

Section 20 would direct the Revenue Laws Study Committee to review the effects of this act on competition in video programming services, the number of cable service subscribers, the price of cable service by service tier, the technology used to deliver the service, and the deployment of broadband in the State. The Committee would see if any changes to the law are necessary and would report its findings and recommendations to the 2009 General Assembly.

EFFECTIVE DATE: The bill becomes effective January 1, 2007.

S1559e1-SMRB-CSR

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 7, 2006

TO: Senators Clodfelter, Dalton, Hartsell, Hoyle, Kerr, and Webster

FROM: Brenna Erford
Fiscal Research Division

RE: Senate Bill 1559 (Proposed Committee Substitute to 1st Edition)

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
REVENUES:					
General Fund			<u>No Impact to General Fund</u>		
Local governments		Possible net gain up to \$3.3 million; see Assumptions & Methodology			
EXPENDITURES:			See Assumptions & Methodology		
POSITIONS (cumulative):			See Assumptions & Methodology		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; Consumer Protection Division of the NC Office of the Attorney General; NC Secretary of State; NC Department of Revenue; e-NC Authority; local governments					
EFFECTIVE DATE: January 1, 2007					

BILL SUMMARY: The Consumer Choice in Cable and Uniform Taxation of Video Programming Services Act:

- Establishes a statewide video service franchising process;
- Makes changes to the regulatory treatment of existing local cable franchises;
- Eliminates local governments' authority to assess and collect cable franchise fees;
- Replaces local revenues from franchise fees with a new distribution of shared sales tax collections from telecommunications, cable service, and satellite television service;
- Removes the state tax credit for franchise fees paid to local governments;
- Provides for a proportional tax distribution to local governments based on previous revenues from cable, including franchise fees and per subscriber charges;
- Provides for public, educational, and governmental (PEG) channel funding via several mechanisms;
- Designates the North Carolina Secretary of State as the exclusive statewide video service franchising authority;
- Designates the Consumer Protection Division of the North Carolina Office of the Attorney General as the agency responsible for handling consumer complaints.

This bill does not raise taxes on cable service, telecommunications, or home satellite television services. All these services remain subject to the general shared sales tax rate of 7%. However, this bill significantly alters the calculation of the local share of shared sales tax and creates an entirely new distribution method for the local share of shared sales tax collections. The bill does four things that significantly alter the composition of the local share:

- Local governments will no longer be able to assess and collect cable franchise fees. This revenue will be replaced by the local distribution scheme set forth in the bill. Under this proposal, local governments will receive a portion of sales tax collections from cable service equal to 22.61%, an increased portion of the existing telecommunications sales tax, and a share of sales tax collections on satellite television service.
- The tax credit equal to the amount of franchise fees paid to local governments created in 2005 is eliminated.
- Local governments will effectively receive a larger portion of state sales tax collections on telecommunications. This new portion will be equal to 7.23% of total telecommunications sales tax collections, which is equivalent to 22.61% of total sales tax collections for telecommunications less the local share already received pursuant to G.S. 105-164.44F according to Fiscal Research estimates.
- Local governments will be granted a share of sales tax collections from home satellite television service equal to 2.5% of the 7% general sales tax, or approximately 37% of sales tax collections.

ASSUMPTIONS AND METHODOLOGY: Fiscal Research estimates that all North Carolina local governments will be effectively held harmless by this change. The sum of the local shares of these three industries (approximately \$65.3 million) is estimated to exceed actual aggregate local collections of cable franchise fees and per subscriber charges by approximately \$3.3 million.

Current Law and Estimated Tax Collections by Industry

During the 2005 session, cable service, telecommunications, and home satellite television service were brought under the general state sales tax rate of 7%.

The chart below shows estimated total sales tax collections for cable service, telecommunications, and home satellite television service for FY 2005-06. These amounts have been adjusted to reflect the 2005 rate changes. The municipal share amount shows the amount received or collected by local governments under current law.

Estimated Sales Tax Collections by Industry and State/Local Share under Current Law			
	2005-06 Adjusted		
	Net collections	State share	Local share*
Telecommunications sales tax	395,714,195	334,850,718	60,863,477
Cable service**	91,350,000	26,100,000	65,250,000
Satellite	43,220,000	43,220,000	N/A
Total, all industries	530,284,195	404,170,718	126,113,477

*Local share reflects 18.03% of total telecommunications sales tax less the "freeze deduction" as required in G.S. 105-164.44F

**Net collections for cable have been estimated from municipal share. The local share (\$65.3 million) reflects estimated total cable revenues collected directly by local governments, not by the state.

- For telecommunications, the \$60.9 million local share is the 18.03% of telecommunications sales tax less a "freeze distribution" created under G.S. 105-164.44F. This portion of local share is not altered by this legislation.
- For cable service, the local share shown (\$65.3 million) is the estimated amount of cable revenues assessed and collected by local governments in 2005. Currently this money is collected directly by local governments, primarily in the form of cable franchise fees. Under federal law, local government units can assess a franchise fee of up to 5% on a locally negotiated definition of gross revenues. This is also the estimated amount of the cable tax credit.
- Sales tax collections from home satellite television service are not currently shared with local governments.

The following sections outline the change in calculation of the local share of cable, telecommunications, and satellite sales tax collections as well as the change in distribution to local governments as it pertains to each industry.

Telecommunications

In 2005, the tax on telecommunications was increased from 6.0% to the general sales tax rate of 7.0%. The change was effective Oct. 1, 2005. Under G.S. 105-164.44F local governments receive a per capita distribution of 18.03% of sales tax collections on telecommunications service less a "freeze deduction" of \$2,620,948 on a quarterly basis. This legislation does not alter this portion of the local government share of sales tax on telecommunications. Under this bill, local governments will continue to receive a distribution of total sales tax collections on telecommunications pursuant to G.S. 105-164.44F, plus an additional share of collections equal to 7.23% of gross sales tax collections on telecommunications. This additional share of collections is estimated at \$28.6 million based on 2005-06 estimated collections.

Cable Service

Effective January 1, 2006, the general sales tax rate of 7% was applied to cable service, which had previously only been taxed at the local level. Taxpayers also receive an approximate 5% credit against this tax for local cable franchise taxes paid,¹ which is removed by the bill.

At this time, collections data available for this tax expenditure are not sufficient to estimate the credit's actual cost, so this memo assumes an estimated \$65.3 million for the cost of the cable tax credit.² However, survey research conducted by the Fiscal Research Division suggests that the actual amount of cable franchise fees and per subscriber charges collected by North Carolina local governments is approximately \$62 million, which suggests that local governments may gain up to \$3.3 million in new money from this legislation.

The local share of cable sales tax collections under the distribution established by this bill is estimated at \$20.7 million based on 2005-06 estimated collections.

Satellite

The tax on home satellite television service was increased from 5.0% to 7.0% effective Oct. 1, 2005. Currently, all collections of this tax go to the General Fund. Under this legislation, 37% (or 2.5% of the 7.0% general sales tax rate) of satellite tax collections would be shared with local governments.

Based on early Department of Revenue data, satellite tax collections are exhibiting a rapid rate of growth, especially in relation to collections from cable service. This estimate for satellite uses a conservative annual growth rate of 8%.

Fiscal Research estimates that sales tax collections for satellite will be approximately \$43.2 million for FY 2005-06. The 37% local share would be \$16.0 million based on 2005-06 estimated collections.

Proposed Local Share of Sales Tax Collections by Industry

The chart below illustrates the local share of sales tax collections by industry. **This local share calculation is intended to hold local governments whole with the elimination of local franchise fees and to supply local governments with funds for PEG channel support.** The \$65.3 million local share calculated through this distribution equals the estimated 2005 cable franchise fee revenues that would be foregone under this legislation.

¹ Federal law caps local franchise taxes at 5% of gross revenues, suggesting 2% of the 7% state sales tax goes to the state. Fiscal Research Division survey research suggests that not all North Carolina local governments with cable franchises assess franchise fees at the maximum 5% rate, and that the actual value of the tax credit may be somewhat less than 5% of cable's total sales tax liability.

² The cost of the cable tax credit was estimated at \$65 million in the 2005 Tax Expenditure Report published by the North Carolina Department of Revenue

Proposed Local Share of Sales Tax Collections by Industry	
2005-06 Adjusted	
Industry	Local share
Telecommunications	28,607,502
Cable	20,654,235
<i>Subtotal</i>	<i>49,261,737</i>
Satellite	15,991,400
Total	65,253,137

Distribution of Sales Tax to Local Governments

Under this bill, the combined 7.23% of sales tax collections on telecommunications, 22.61% of state sales tax collections on cable service and 37% of sales tax collections on home satellite television service would be distributed to North Carolina local governments on a proportional basis. The proportionate share for each local government is calculated by dividing a local government's actual collections, including actual franchise fee collections and any per subscriber charges for PEG support, by the total of all local government cable revenues. The base amount of a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary was imposed during the first six months of FY 2006-07 (July 1, 2006 through January 1, 2007). The purpose of this time period is to capture the effect of franchise fee rate increases enacted by local governments for the 2006-07 fiscal year. The bill also provides that counties or cities that did not impose a cable franchise fee before July 1, 2006, are entitled to a share equal to \$2.00 times the most recent population estimate for the city or county in question. Fiscal Research estimates that sixty-five cities and two counties do not currently impose a franchise fee. The total population of those sixty-seven local governments is approximately 223,584, which at a \$2.00 pro rata share creates a \$447,168 addition into the distribution.³

In subsequent years, the proportionate share for each municipality will be recalculated to reflect per capita growth. The distribution would be effective January 1, 2007.

Based on available data, Fiscal Research believes that under this distribution scheme no municipality will receive less revenue than they would have received

Public, Educational, and Governmental (PEG) Channel Support

This bill contains three mechanisms to provide financial support for public, educational, and governmental (PEG) channels. Local governments are required to certify revenues received from franchise fees and from per subscriber charges to the Department of Revenue. If a local government has been receiving per subscriber charges for PEG support, a portion of the revenue

³ This change does not reduce the \$2 million available for PEG funding via lump-sum payments and grants. It reduces the residual unreserved amount remaining after the subtraction of PEG lump-sum payments, the hold harmless local distribution, and the deposit into the PEG Grant Fund. The residual amount is the additional revenue that will be available for distribution directly to local governments.

that local government receives from the Department of Revenue via the distribution created in this bill equal to the amount of per subscriber fees collected must be used for PEG channel support.

In addition, the bill allows local governments that operate PEG channels providing local programming to collect \$25,000 per channel, up to 3 channels, per year in the form of four quarterly installments of \$6,250. These funds are to be deducted from the total local share of sales tax collections before the local distribution formula is applied. The bill caps the amount of annual PEG support to local governments at \$2 million. Reliable data on the number of qualifying PEG channels in North Carolina is not available, but based on discussions with public programming interest groups, this memo assumes there are 36 PEG channels currently operating in North Carolina that would qualify for this funding. In total, the impact of this provision is estimated at \$900,000 annually.

The bill also creates the PEG Grant Fund. Any funds **not** disbursed to local governments for PEG support (\$25,000 per qualifying PEG channel), up to \$2 million, are to be deposited in the PEG Grant Fund for the purpose of making grants to local governments to fund capital expenditures for PEG channels. The e-NC Authority is responsible for administering the fund and awarding grants subject to the following limitations:

- The size of a grant may not exceed \$25,000
- The local government applicant must match the grant on a dollar-for-dollar basis
- The grant may only be used for capital expenditures necessary to provide PEG channels
- An applicant may only receive one grant per year

In addition, the e-NC Authority must publish an annual report on grants awarded. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

The chart below provides detail on the total amount of revenue set aside for PEG channel support pursuant to this legislation. **The per subscriber fee portion of these funds (\$1,195,888) is included in the proportional distribution; therefore PEG funding does not utilize the entire \$3.3 million possible gain to local governments.**

Total funds to local governments restricted for PEG support	
Per subscriber fees	\$ 1,195,888
PEG support funding (\$25,000 per qualifying channel)	\$ 900,000
Grants from PEG Grant Fund	\$ 1,100,000
Total PEG funding	\$ 3,195,888

State Franchising Authority

The Secretary of State is named as the exclusive state franchising authority for cable service provided over a cable system. Applicants must file a notice of franchise with the Secretary and pay a filing fee equal to the filing fee for articles of incorporation, currently \$125. A person who files a notice of franchise is required to begin providing service in the designated area within 120 days of filing. In addition, a person providing service must submit an annual service report on or before July 31 of each year and pay a \$200 filing fee.

In lieu of earlier penalty provisions, a person who provides video service but fails to file a notice of franchise or a notice of service must forfeit all revenue received during the period of noncompliance. The forfeiture does not affect the liability of the service provider for sales tax. In the event of such forfeiture, the amount must be remitted to the Civil Penalty and Forfeiture Fund.

Based on the number of forms received by the Texas Utilities Commission since its establishment as franchising authority last fall, it is estimated that the Secretary of State may receive between 50 to 70 applications. Although the impact on the Secretary of State will be minimal, costs incurred would be offset by the designation of fees for use by the Secretary of State.

Consumer Complaints

The Consumer Protection Division of the North Carolina Office of the Attorney General is named as the agency responsible for addressing consumer complaints. Fiscal Research is currently in the process of reviewing the Attorney General’s funding request.

Conclusion

The chart below contrasts current law with the proposed tax changes in this bill and illustrates how the total shared sales tax revenue to both the state and local governments is held the same.

Comparison of State and Local Share under Current and Proposed Law						
	(in millions)					
	Current law		Proposed		Change	
	State	Local	State	Local	State	Local
Telecommunications	334.8	60.9	306.2	89.5	(28.6)	28.6
Cable service	26.1	65.3	70.7	20.7	44.6	(44.6)
Satellite	43.2	-	27.2	16.0	(16.0)	16.0
Total	404.1	126.2	404.1	126.2	-	-

SOURCES OF DATA: North Carolina Department of Revenue, North Carolina Fiscal Research Division, North Carolina State Data Center, Federal Communications Commission, U.S. Census Bureau, North Carolina Utilities Commission

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. 1559-CSRBx-52

DATE June 13, 2006

Amendment No. #1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Dorsett

Sen.)

1 moves to amend the bill on page 8, line 44

2 () WHICH CHANGES THE TITLE
3 by deleting "125" and substituting "500".

4 _____

5 _____

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18 _____

19 _____

SIGNED Fatee L. Dorsett

ADOPTED _____ FAILED _____ TABLED _____

withdrawn



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1559*

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S1559-ARB-82 [v.3]

Page 1 of 2

Date June 13, 2006

Comm. Sub. [NO]
Amends Title [NO]
S1559-CSRbx-52

Senator Nesbitt

1 moves to amend the bill on page 6, lines 9 and 10, by rewriting the lines to read:

2 "(d) Service Area. – A person who provides cable service under a State-issued
3 franchise must make cable service available to (i) all of the occupied residential
4 dwelling units in each filed service area selected by the cable service provider within
5 three years of the date of the grant of the State-issued franchise and (ii) 65% of the
6 occupied residential dwelling units in the area in a municipality, and in the area of a
7 county outside municipalities, in which the cable service provider has one or more filed
8 service areas and telephone facilities, within seven years of the date of the grant of the
9 State-issued franchise.

10 A cable service provider is not required to meet the service provisions of this
11 subsection in the following circumstances:

- 12 (1) For periods of force majeure.
- 13 (2) For periods of delay resulting from the cable service provider's
14 inability to obtain authority to access rights-of-way in the service area.
- 15 (3) In areas where developments or buildings are subject to claimed
16 exclusive arrangements.
- 17 (4) In developments or buildings that the cable service provider cannot
18 access under industry standard terms and conditions after good faith
19 negotiation.
- 20 (5) In developments or buildings where the cable service provider is
21 unable to provide cable service for technical reasons or that require
22 facilities that are not available or cannot be deployed on a
23 commercially reasonable basis.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1559*

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

S1559-ARB-82 [v.3]

Page 2 of 2

1
2
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- (6) In areas where it is not technically feasible to provide cable service due to the technology used by the cable service provider to provide cable service.
- (7) In areas where the average occupied residential household density is less than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the cable service provider's active cable system.
- (8) When the cable service provider's prior service, payment, or theft of service history with a subscriber or potential subscriber has been unfavorable."

SIGNED *Mark Nabett*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 1559*
PROPOSED COMMITTEE SUBSTITUTE S1559-PCS35430-RBx-51

Short Title: Video Service Competition Act.

(Public)

Sponsors:

Referred to:

May 18, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS
3 AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING
4 SERVICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 66 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 42.

9 "State Franchise for Cable Television Service.

10 "§ 66-350. Definitions.

11 The following definitions apply in this Article:

12 (1) Cable service. – Defined in G.S. 105-164.3.

13 (2) Cable system. – Defined in 47 U.S.C. § 522.

14 (3) Channel. – A portion of the electromagnetic frequency spectrum that is
15 used in a cable system and is capable of delivering a television
16 channel.

17 (4) Existing agreement. – A local franchise agreement that was awarded
18 under G.S. 153A-137 or G.S. 160A-319 and meets either of the
19 following:

20 a. Is in effect on January 1, 2007.

21 b. Expired before January 1, 2007, and the cable service provider
22 under the agreement provides cable service to subscribers in the
23 franchise area on January 1, 2007.

24 (5) Pass a household. – Make service available to a household, regardless
25 of whether the household subscribes to the service.

26 (6) PEG channel. – A public, educational, or governmental access channel
27 provided to a county or city.

28 (7) Secretary. – The Secretary of State.

1 **"§ 66-351. State franchising authority.**

2 (a) Authority. – The Secretary of State is designated the exclusive franchising
3 authority in this State for cable service provided over a cable system. This designation
4 replaces the authorization to counties and cities in former G.S. 153A-137 and
5 G.S. 160A-319 to award a franchise for cable service. This designation is effective
6 January 1, 2007. After this date, a county or city may not award or renew a franchise for
7 cable service.

8 (b) Award and Scope. – The Secretary is considered to have awarded a franchise
9 to a person who files a notice of franchise under G.S. 66-352. A franchise for cable
10 service authorizes the holder of the franchise to construct and operate a cable system
11 over public rights-of-way within the area to be served. Chapter 160A of the General
12 Statutes governs the regulation of public rights-of-way by a city.

13 **"§ 66-352. Award of franchise and commencement of service.**

14 (a) Notice of Franchise. – A person who intends to provide cable service over a
15 cable system in an area must file a notice of franchise with the Secretary before
16 providing the service. A person who files a notice of franchise must pay a fee in the
17 amount set in G.S. 57C-1-22 for filing articles of organization.

18 A notice of franchise is effective when it is filed with the Secretary. The notice of
19 franchise must include all of the following:

- 20 (1) The applicant's name, principal place of business, mailing address,
21 physical address, telephone number, and e-mail address.
22 (2) A description and map of the area to be served.
23 (3) A list of each county and city in which the described service area is
24 located, in whole or in part.
25 (4) A schedule indicating when service is expected to be offered in the
26 service area.

27 (b) Commencement of Service. – A person who files a notice of franchise under
28 subsection (a) of this section must begin providing cable service in the service area
29 described in the notice within 120 days after the notice is filed. If cable service does not
30 begin within this period, the notice of franchise terminates 130 days after it was filed. If
31 cable service begins within this period, the holder of the State-issued franchise must file
32 a notice of service with the Secretary within 10 days after the cable service begins.
33 Cable service begins when it passes one or more households in the described service
34 area. This subsection does not apply to a cable service provider who terminates an
35 existing agreement whose franchise area includes all of the service area described in a
36 notice of franchise filed by the provider under subsection (a) of this section.

37 A notice of service for a service area must include all of the following:

- 38 (1) The effective date of a notice of franchise for that area.
39 (2) A description and map of the service area.
40 (3) A statement that cable service has begun in the service area.

41 (c) Extension. – A person who intends to provide cable service over a cable
42 system in an area that is contiguous with but outside the service area described in a
43 notice of franchise on file with the Secretary must file a notice of franchise under
44 subsection (a) of this section that includes the proposed area. The initial service

1 requirements in subsection (b) of this section apply to the proposed area. If the map of
2 the area to be served includes any area that is part of the service area of another
3 State-issued franchise, the termination of a notice of franchise for the proposed area for
4 failure to begin service within the required time does not affect the status of the other
5 State-issued franchise.

6 (d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice
7 of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90
8 days before the service is withdrawn.

9 **"§ 66-353. Annual service report.**

10 A holder of a State-issued franchise must file an annual service report with the
11 Secretary. The report must be filed on or before July 31 of each year. The report must
12 be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report.
13 The report must include all of the following:

- 14 (1) The effective date of a notice of franchise for that area.
- 15 (2) A description and map of the service area.
- 16 (3) The approximate number of households in the service area.
- 17 (4) A description and a map of the households passed in the service area
18 as of July 1.
- 19 (5) The percentage of households passed in the service area as of July 1.
- 20 (6) The percentage of households passed in the service area as of July 1 of
21 any preceding year for which a report was required under this section.
- 22 (7) A report indicating the extent to which the holder has met the customer
23 service requirements under G.S. 66-356(b).
- 24 (8) A schedule indicating when service is expected to be offered in the
25 service area, to the extent the schedule differs from one included in the
26 notice of franchise or in a report previously submitted under this
27 section, and an explanation of the reason for the new schedule.

28 **"§ 66-354. General filing and report requirements.**

29 (a) General. – A document filed with the Secretary under this Article must be signed
30 by an officer or general partner of the person submitting the document. Within five days
31 after a person files a document with the Secretary under this Article, the person must
32 send a copy of the document to any county or city included in the service area described
33 in the document and to the registered agent of any cable service provider that is
34 providing cable service under an existing agreement in the service area described in the
35 document.

36 The provisions of Article 2 of Chapter 55D of the General Statutes apply to the
37 submission of a document under this Article. A document filed under this Article is a
38 public record as defined in G.S. 132-1. The Secretary must post a document filed under
39 this Article on its Internet Web site or indicate on its Internet Web site that the
40 document has been filed and is available for inspection.

41 A successor in interest to a person who has filed a notice of franchise is not required
42 to file another notice of franchise. When a change in ownership occurs, the owner must
43 file a notice of change in ownership with the Secretary within 14 days after the change
44 becomes effective.

1 (b) Forfeiture. – A person who offers cable service over a cable system without
2 filing a notice of franchise or a notice of service as required by this Article is subject to
3 forfeiture of the revenue received during the period of noncompliance from subscribers
4 to the cable service. This forfeiture does not affect the liability of the cable service
5 provider for sales tax due under G.S. 105-164.4 on cable service. A cable service
6 provider whose area includes the area in which a person is providing cable service
7 without complying with the notice of franchise and notice of service requirements may
8 bring a civil action for forfeiture. The amount required to be forfeited in the action must
9 be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

10 **"§ 66-355. Effect on existing local franchise agreement.**

11 (a) Existing Agreement. – This Article does not affect an existing agreement
12 except as follows:

13 (1) Effective January 1, 2007, gross revenue used to calculate the payment
14 of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does
15 not include gross receipts from cable service subject to sales tax under
16 G.S. 105-164.4. This exclusion does not otherwise affect the
17 calculation of gross revenue and the payment to counties and cities of
18 franchise tax revenue under existing agreements that have not been
19 terminated under subsection (b) of this section.

20 (2) A cable service provider under an existing agreement may terminate
21 the agreement in accordance with subsection (b) of this section in any
22 of the following circumstances:

23 a. A notice of service filed under G.S. 66-352 indicates that one or
24 more households in the franchise area of the existing agreement
25 are passed by both the cable service provider under the existing
26 agreement and the holder of a State-issued franchise.

27 b. As of January 1, 2007, a county or city has an existing
28 agreement with more than one cable service provider and at
29 least twenty-five percent (25%) of the households in the
30 franchise areas of the existing agreements are passed by more
31 than one cable service provider.

32 c. A person provides wireline competition in the franchise area of
33 the existing agreement by offering video programming, as
34 defined in G.S. 105-164.3, over wireline facilities by a method
35 that does not require a franchise under this Article. A notice of
36 termination filed on the basis of wireline competition must
37 include evidence of the competition in providing video
38 programming service, such as an advertisement announcing the
39 availability of the service, the acceptance of an order for the
40 service, and information on the provider's Web site about the
41 availability of the service. A county or city is allowed 60 days
42 to review the evidence. The effective date of the termination is
43 tolled during this review period. At the end of this period, the
44 termination proceeds unless the county or city brings a civil

1 action to stay the termination based on the cable service
2 provider's failure to establish the existence of wireline
3 competition in its franchise area.

4 (b) Termination. – To terminate an existing agreement, a cable service provider
5 must file a notice of termination with the affected county or city and file a notice of
6 franchise with the Secretary. A termination of an existing agreement becomes effective
7 at the end of the month in which the notice of termination is filed with the affected
8 county or city. A termination of an existing agreement ends the obligations under the
9 agreement and under any local cable regulatory ordinance that specifically authorizes
10 the agreement as of the effective date of the termination but does not affect the rights or
11 liabilities of the county or city, a taxpayer, or another person arising under the existing
12 agreement or local ordinance before the effective date of the termination.

13 **"§ 66-356. Service standards and requirements.**

14 (a) Discrimination Prohibited. – A person who provides cable service over a
15 cable system may not deny access to the service to any group of potential residential
16 subscribers within the filed service area because of the race or income of the residents.
17 A violation of this subsection is considered an unfair or deceptive act or practice under
18 G.S. 75-1.1.

19 In determining whether a cable service provider has violated this subsection with
20 respect to a group of potential residential subscribers in a service area, the following
21 factors must be considered:

- 22 (1) The length of time since the provider filed the notice of service for the
23 area. If less than a year has elapsed since the notice of service was
24 filed, it is conclusively presumed that a violation has not occurred.
- 25 (2) The cost of providing service to the affected group due to distance
26 from facilities, density, or other factors.
- 27 (3) Technological impediments to providing service to the affected group.
- 28 (4) Inability to obtain access to property required to provide service to the
29 affected group.
- 30 (5) Competitive pressure to respond to service offered by another cable
31 service provider.

32 (b) FCC Standards. – A person who provides cable service over a cable system
33 must comply with the customer service requirements in 47 C.F.R. Part 76 and
34 emergency alert requirements established by the Federal Communications Commission.

35 (c) Complaints. – The Consumer Protection Division of the Attorney General's
36 Office is designated as the State agency to receive and respond to customer complaints
37 concerning cable services. Persistent or repeated violations of the federal customer
38 service requirements or the terms and conditions of the cable service provider's
39 agreement with customers are considered unfair or deceptive acts or practices under
40 G.S. 75-1.1.

41 To facilitate the resolution of customer complaints, the cable service provider must
42 include the following statement on the customer's bill: "If you have a complaint about
43 your cable service, you should first contact customer service at the following telephone
44 number: (insert the cable service provider's customer service telephone number). If the

1 cable service provider does not satisfactorily resolve your complaint, contact the
2 Consumer Protection Division of the Attorney General's Office of the State of North
3 Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001, at www.ncdoj.com, or
4 at 1-877-5-NO-SCAM.

5 (d) No Build-Out. – No build-out requirements apply to a person who provides
6 cable service under a State-issued franchise.

7 **"§ 66-357. Availability and use of PEG channels.**

8 (a) Application. – This section applies to a person who provides cable service
9 under a State-issued franchise. It does not apply to a person who provides cable service
10 under an existing agreement.

11 (b) Local Request. – A county or city must make a written request to a cable
12 service provider for PEG channel capacity. The request must include a statement
13 describing the county's or city's plan to operate and program each channel requested.
14 The cable service provider must provide the requested PEG channel capacity within 120
15 days after it receives the written request.

16 (c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed
17 a minimum of three initial PEG channels plus any channels in excess of this minimum
18 that are activated, as of July 1, 2006, under the terms of an existing franchise agreement
19 whose franchise area includes the city. A city with a population of less than 50,000 is
20 allowed a minimum of two initial PEG channels plus any channels in excess of this
21 minimum that are activated, as of July 1, 2006, under the terms of an existing franchise
22 agreement whose franchise area includes the city. For a city included in the franchise
23 area of an existing agreement, the agreement determines the service tier placement and
24 transmission quality of the initial PEG channels. For a city that is not included in the
25 franchise area of an existing agreement, the initial PEG channels must be on a basic
26 service tier, and the transmission quality of the channels must be equivalent to those of
27 the closest city covered by an existing agreement.

28 A county is allowed a minimum of two initial PEG channels plus any channels in
29 excess of this minimum that are activated, as of July 1, 2006, under the terms of an
30 existing franchise agreement whose franchise area includes the county. For a county
31 included in the franchise area of an existing agreement, the agreement determines the
32 service tier placement and transmission quality of the initial PEG channels. For a county
33 that is not included in the franchise area of an existing agreement, the initial PEG
34 channels must be on a basic service tier and the transmission quality of the channels
35 must be equivalent to those of any city with PEG channels in the county.

36 The cable service provider must maintain the same channel designation for a PEG
37 channel unless the service area of the State-issued franchise includes PEG channels that
38 are operated by different counties or cities and those PEG channels have the same
39 channel designation. Each county and city whose PEG channels are served by the same
40 cable system headend must cooperate with each other and with the cable system
41 provider in sharing the capacity needed to provide the PEG channels.

42 (d) Additional PEG Channels. – A county or city that does not have seven PEG
43 channels, including the initial PEG channels, is eligible for an additional PEG channel if

1 it meets the programming requirements in this subsection. A county or city that has
2 seven PEG channels is not eligible for an additional channel.

3 A county or city that meets the programming requirements in this subsection may
4 make a written request under subsection (b) of this section for an additional channel.
5 The additional channel may be provided on any service tier. The transmission quality of
6 the additional channel must be at least equivalent to the transmission quality of the other
7 channels provided.

8 The PEG channels operated by a county or city must meet the following
9 programming requirements for at least 120 continuous days in order for the county or
10 city to obtain an additional channel:

11 (1) All of the PEG channels must have scheduled programming for at least
12 eight hours a day.

13 (2) The programming content of each of the PEG channels must not repeat
14 more than fifteen percent (15%) of the programming content on any of
15 the other PEG channels.

16 (3) No more than fifteen percent (15%) of the programming content on
17 any of the PEG channels may be character-generated programming.

18 (e) Use of Channels. – If a county or city no longer provides any programming
19 for transmission over a PEG channel it has activated, the channel may be reprogrammed
20 at the cable service provider's discretion. A cable service provider must give at least 60
21 days notice to a county or city before it reprograms a PEG channel that is not used. The
22 cable service provider must restore a previously lost PEG channel within 120 days of
23 the date a county or city certifies to the provider a schedule that demonstrates the
24 channel will be used.

25 (f) Operation of Channels. – A cable service provider is responsible only for the
26 transmission of a PEG channel. The county or city to which the PEG channel is
27 provided is responsible for the operation and content of the channel. A county or city
28 that provides content to a cable service provider for transmission on a PEG channel is
29 considered to have authorized the provider to transmit the content throughout the
30 provider's service area, regardless of whether part of the service area is outside the
31 boundaries of the county or city.

32 All programming on a PEG channel must be noncommercial. A cable service
33 provider may not brand content on a PEG channel with its logo, name, or other
34 identifying marks. A cable service provider is not required to transmit content on a PEG
35 channel that is branded with the logo, name, or other identifying marks of another cable
36 service provider.

37 **"§ 66-358. Transmission of PEG channels.**

38 (a) Service. – When a cable service provider operating under a State-issued
39 franchise begins providing cable service in an area, the service must include the
40 transmission of PEG channels by one of the following methods:

41 (1) Interconnection with another cable system operated in its service area.
42 A cable service provider operating in the same service area as a
43 provider under a State-issued franchise must interconnect its cable
44 system on reasonable and competitively neutral terms with the other

1 provider's cable system when it receives a written request for
2 interconnection and may not refuse to interconnect on these terms. The
3 terms include compensation for costs incurred in interconnecting.
4 Interconnection may be accomplished by direct cable, microwave link,
5 satellite, or another method of connection.

6 (2) Transmission of the signal from each PEG channel programmer's
7 origination site, if the origination site is in the provider's service area.

8 (b) Signal. – All PEG channel programming provided to a cable service provider
9 for transmission must meet the federal National Television System Committee standards
10 or the Advanced Television Systems Committee Standards. If a PEG channel
11 programmer complies with these standards and the cable service provider cannot
12 transmit the programming without altering the transmission signal, then the cable
13 service provider must do one of the following:

14 (1) Alter the transmission signal to make it compatible with the
15 technology or protocol the cable service provider uses to deliver its
16 cable service.

17 (2) Provide to the county or city the equipment needed to alter the
18 transmission signal to make it compatible with the technology or
19 protocol the cable service provider uses to deliver its cable service.

20 **"§ 66-359. PEG channel grants.**

21 (a) PEG Channel Fund. – The PEG Channel Fund is created as an
22 interest-bearing special revenue fund. It consists of revenue allocated to it under
23 G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority,
24 created under G.S. 143B-437.46, administers the Fund.

25 (b) Grants. – A county or city may apply to the e-NC Authority for a grant from
26 the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to
27 the extent possible select applicants from all parts of the State based upon need. Grants
28 from the Fund are subject to the following limitations:

29 (1) The grant may not exceed twenty-five thousand dollars (\$25,000).

30 (2) The applicant must match the grant on a dollar-for-dollar basis.

31 (3) The grant may be used only for capital expenditures necessary to
32 provide PEG channel programming.

33 (4) An applicant may receive no more than one grant per fiscal year.

34 (c) Reports. – The e-NC Authority must publish an annual report on grants
35 awarded under this section. The report must list each grant recipient, the amount of the
36 grant, and the purpose of the grant.

37 **"§ 66-360. Service to public building.**

38 At the written request of a county or city, a cable service provider operating under a
39 State-issued franchise must provide cable service without charge to a public building
40 located within 125 feet of the provider's cable system. The required service is the basic,
41 or lowest-priced, service the provider offers to customers. The terms and conditions that
42 apply to service provided to a residential retail customer apply to the service provided to
43 the public building. Only one service outlet is required for a building. The cable service
44 provider is not required to provide inside wiring and is not required to provide service

1 that conflicts with restrictions that apply in a program licensing agreement or another
2 contract. A public building is a building used as a public school, a charter school, a
3 county or city library, or a function of the county or city."

4 SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to
5 read:

6 "**§ 105-164.3. Definitions.**

7 The following definitions apply in this Article:

8 ...
9 (50c) Video programming. – Programming provided by, or generally
10 considered comparable to programming provided by, a television
11 broadcast station, regardless of the method of delivery."

12 SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

13 "(6) The combined general rate applies to the gross receipts derived from
14 providing ~~any of the following broadcast services-video programming~~
15 to a subscriber in this State. A cable service provider, a direct-to-home
16 satellite service provider, and any other person engaged in the business
17 of providing any of these services-video programming is considered a
18 retailer under this ~~Article:Article.~~

19 a. ~~Direct to-home satellite service.~~

20 b. ~~Cable service."~~

21 SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the
22 catch line "Bundled services."

23 SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads
24 as rewritten:

25 "**§ 105-164.4D. Bundled services.**

26 ~~Bundled Services.~~—When a taxable ~~telecommunications~~ service is bundled with a
27 service that is not taxable, the tax applies to the gross receipts from the taxable service
28 in the bundle as follows:

29 (1) If the service provider offers all the services in the bundle on an
30 unbundled basis, tax is due on the unbundled price of the taxable
31 service, less the discount resulting from the bundling. The discount for
32 a service as the result of bundling is the proportionate price decrease of
33 the service, determined on the basis of the total unbundled price of all
34 the services in the bundle compared to the bundled price of the
35 services.

36 (2) If the service provider does not offer one or more of the services in the
37 bundle on an unbundled basis, tax is due on the taxable service based
38 on a reasonable allocation of revenue to that service. If the service
39 provider maintains an account for revenue from a taxable service, the
40 service provider's allocation of revenue to that service for the purpose
41 of determining the tax due on the service must reflect its accounting
42 allocation of revenue to that service."

43 SECTION 6. The catch line to G.S. 105-164.12B reads as rewritten:

1 "§ 105-164.12B. Bundled transactions. Tangible personal property bundled with
2 service contract."

3 SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

4 "(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes
5 imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must
6 make the distribution within 75 days after the end of each calendar quarter. The amount
7 the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the
8 following percentages of the net proceeds of the taxes collected during the ~~quarter,~~
9 quarter:

10 (1) Eighteen and three one-hundredths percent (18.03%), minus two
11 million six hundred twenty thousand nine hundred forty-eight dollars
12 (\$2,620,948).(\$2,620,948), must be distributed to cities in accordance
13 with this section. This ~~The~~ deduction is one-fourth of the annual
14 amount by which the distribution to cities of the gross receipts
15 franchise tax on telephone companies, imposed by former G.S. 105-20,
16 was required to be reduced beginning in fiscal year 1995-96 as a result
17 of the "freeze deduction." The Secretary must distribute the specified
18 percentage of the proceeds, less the "freeze deduction" among the
19 cities in accordance with this section.

20 (2) Seven and twenty-three one-hundredths percent (7.23%) must be
21 distributed to counties and cities as provided in G.S. 105-164.44I."

22 SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by
23 adding a new section to read:

24 "§ 105-164.44I. Distribution of part of sales tax on video programming service and
25 telecommunications service to counties and cities.

26 (a) Distribution. – The Secretary must distribute to the counties and cities part of
27 the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and
28 G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the
29 distribution within 75 days after the end of each calendar quarter. The amount the
30 Secretary must distribute is the sum of the revenue listed in this subsection. The
31 Secretary must distribute two million dollars (\$2,000,000) of this amount in accordance
32 with subsection (b) of this section and the remainder in accordance with subsections (c)
33 and (d) of this section. The revenue to be distributed under this section consists of the
34 following:

35 (1) The amount specified in G.S. 105-164.44F(a)(2).

36 (2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net
37 proceeds of the taxes collected during the quarter on video
38 programming, other than on direct-to-home satellite service.

39 (3) Thirty-seven percent (37%) of the net proceeds of the taxes collected
40 during the quarter on direct-to-home satellite service.

41 (b) Supplemental PEG Support. – The Secretary must include the applicable
42 amount of supplemental PEG channel support in each quarterly distribution to a county
43 or city. The amount to include is one-fourth of twenty-five thousand dollars (\$25,000)
44 for each qualifying PEG channel operated by the county or city. The amount of money

1 distributed under this subsection may not exceed two million dollars (\$2,000,000) in a
2 fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year
3 would otherwise exceed this maximum amount, the Secretary must proportionately
4 reduce the applicable amount distributable for each PEG channel. If the amount to be
5 distributed for qualifying PEG channels in a fiscal year is less than two million dollars
6 (\$2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund,
7 established in G.S. 66-359.

8 A county or city must certify to the Secretary by July 15 of each year the number of
9 qualifying PEG channels it operates. A qualifying PEG channel is one that meets the
10 programming requirements under G.S. 66-357(d). A county or city may not receive
11 PEG channel support under this subsection for more than three qualifying PEG
12 channels.

13 The amount included under this subsection in a distribution to a county or city is
14 intended to supplement the PEG channel support available in the amount distributed
15 under this section. The money distributed to a county or city under this subsection must
16 be used by it for the operation and support of PEG channels. For purposes of this
17 subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

18 (c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its
19 proportionate share of the amount to be distributed to all counties and cities under this
20 subsection. The proportionate share of a county or city is the base amount for the county
21 or city compared to the base amount for all other counties and cities. The base amount
22 of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or
23 G.S. 160A-214 before July 1, 2006, is two dollars (\$2.00) times the most recent annual
24 population estimate for that county or city. The base amount of a county or city that
25 imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July
26 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or
27 city certifies to the Secretary that it imposed during the first six months of the
28 2006-2007 fiscal year. A county or city must make this certification by January 15,
29 2007. The certification must specify the amount of revenue that is derived from the
30 cable franchise tax and the amount that is derived from the subscriber fee.

31 (d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must
32 multiply the amount of a county's or city's share under this section for the preceding
33 fiscal year by the percentage change in its population for that fiscal year and add the
34 result to the county's or city's share for the preceding fiscal year to obtain the county's or
35 city's adjusted amount. Each county's or city's proportionate share for that year is its
36 adjusted amount compared to the sum of the adjusted amounts for all counties and
37 cities.

38 (e) Use of Proceeds. – A county or city that imposed subscriber fees during the
39 first six months of the 2006-2007 fiscal year must use a portion of the funds distributed
40 to it under subsections (c) and (d) of this section for the operation and support of PEG
41 channels. The amount of funds that must be used for PEG channel operation and
42 support is two times the amount of subscriber fee revenue the county or city certified to
43 the Secretary that it imposed during the first six months of the 2006-2007 fiscal year.
44 The remainder of the distribution may be used for any public purpose.

1 (f) Late Information. – A county or city that does not submit information that the
2 Secretary needs to make a distribution by the date the information is due is excluded
3 from the distribution. If the county or city later submits the required information, the
4 Secretary must include the county or city in the distribution for the quarter that begins
5 after the date the information is received.

6 (g) Population Determination. – In making population determinations under this
7 section, the Secretary must use the most recent annual population estimates certified to
8 the Secretary by the State Budget Officer. For purposes of the distributions made under
9 this section, the population of a county is the population of its unincorporated areas plus
10 the population of an ineligible city in the county, as determined under subsection (g) of
11 this section.

12 (h) City Changes. – The following changes apply when a city alters its corporate
13 structure or incorporates:

14 (1) If a city dissolves and is no longer incorporated, the proportional
15 shares of the remaining counties and cities must be recalculated to
16 adjust for the dissolution of that city.

17 (2) If two or more cities merge or otherwise consolidate, their proportional
18 shares are combined.

19 (3) If a city divides into two or more cities, the proportional share of the
20 city that divides is allocated among the new cities on a per capita basis.

21 (4) If a city incorporates after January 1, 2007, and the incorporation is not
22 addressed by subdivisions (2) or (3) of this subsection, the share of the
23 county in which the new city is located is allocated between the county
24 and the new city on a per capita basis.

25 (i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this
26 section. A city incorporated on or after January 1, 2000, is not eligible for a distribution
27 under this section unless it meets both of the following requirements:

28 (1) It is eligible to receive funds under G.S. 136-41.2.

29 (2) A majority of the mileage of its streets is open to the public.

30 (j) Nature. – The General Assembly finds that the revenue distributed under this
31 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
32 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
33 or withhold the distribution."

34 SECTION 9. G.S. 105-164.21B is repealed.

35 SECTION 10. G.S. 153A-137 is repealed.

36 SECTION 11. G.S. 153A-154 is repealed.

37 SECTION 12. G.S. 160A-211 reads as rewritten:

38 "§ 160A-211. **Privilege license taxes.**

39 (a) **Authority.** – Except as otherwise provided by law, a city shall have power to
40 levy privilege license taxes on all trades, occupations, professions, businesses, and
41 franchises carried on within the city. A city may levy privilege license taxes on the
42 businesses that were formerly taxed by the State under the following sections of Article
43 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities
44 to tax the businesses before the sections were repealed:

1		
2	G.S. 105-36	Amusements – Manufacturing, selling, leasing, or
3		distributing moving picture films.
4	G.S. 105-36.1	Amusements – Outdoor theatres.
5	G.S. 105-37	Amusements – Moving pictures – Admission.
6	G.S. 105-42	Private detectives and investigators.
7	G.S. 105-45	Collecting agencies.
8	G.S. 105-46	Undertakers and retail dealers in coffins.
9	G.S. 105-50	Pawnbrokers.
10	G.S. 105-51.1	Alarm systems.
11	G.S. 105-53	Peddlers, itinerant merchants, and specialty market
12		operators.
13	G.S. 105-54	Contractors and construction companies.
14	G.S. 105-55	Installing elevators and automatic sprinkler systems.
15	G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
16	G.S. 105-62	Restaurants.
17	G.S. 105-65	Music machines.
18	G.S. 105-65.1	Merchandising dispensers and weighing machines.
19	G.S. 105-66.1	Electronic video games.
20	G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
21	G.S. 105-77	Tobacco warehouses.
22	G.S. 105-80	Firearms dealers and dealers in other weapons.
23	G.S. 105-85	Laundries.
24	G.S. 105-86	Outdoor advertising.
25	G.S. 105-89	Automobiles, wholesale supply dealers, and service
26		stations.
27	G.S. 105-89.1	Motorcycle dealers.
28	G.S. 105-90	Emigrant and employment agents.
29	G.S. 105-91	Plumbers, heating contractors, and electricians.
30	G.S. 105-97	Manufacturers of ice cream.
31	G.S. 105-98	Branch or chain stores.
32	G.S. 105-99	Wholesale distributors of motor fuels.
33	G.S. 105-102.1	Certain cooperative associations.
34	G.S. 105-102.5	General business license.

35
 36 (b) Barbershop and Salon Restriction. – A privilege license tax levied by a city
 37 on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for
 38 each barber, manicurist, cosmetologist, beautician, or other operator employed in the
 39 barbershop or beauty salon.

40 (c) ~~Piped Gas Restriction. Prohibition.~~ – A city may not levy a privilege license
 41 tax on a person who is engaged in the business of supplying piped natural gas and is
 42 subject to tax under Article 5E of Chapter 105 of the General Statutes. impose a license,
 43 franchise, or privilege tax on a person engaged in any of the businesses listed in this

1 subsection. These businesses are subject to a State tax for which the city receives a
2 share of the tax revenue.

3 (1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of
4 the General Statutes.

5 (2) Providing telecommunications service taxed under
6 G.S. 105-164.4(a)(4c).

7 (3) Providing video programming taxed under G.S. 105-164.4(a)(6).

8 (d) ~~Telecommunications Restriction. A city may not impose a license,~~
9 ~~franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c)."~~

10 SECTION 13. G.S. 160A-214 is repealed.

11 SECTION 14. G.S. 160A-296(a) reads as rewritten:

12 "(a) A city shall have general authority and control over all public streets,
13 sidewalks, alleys, bridges, and other ways of public passage within its corporate limits
14 except to the extent that authority and control over certain streets and bridges is vested
15 in the Board of Transportation. General authority and control includes but is not limited
16 to: to all of the following:

17 (1) The duty to keep the public streets, sidewalks, alleys, and bridges in
18 proper ~~repair;~~repair.

19 (2) The duty to keep the public streets, sidewalks, alleys, and bridges open
20 for travel and free from unnecessary ~~obstructions;~~obstructions.

21 (3) The power to open new streets and alleys, and to widen, extend, pave,
22 clean, and otherwise improve existing streets, sidewalks, alleys, and
23 bridges, and to acquire the necessary land therefor by dedication and
24 acceptance, purchase, or eminent ~~domain;~~domain.

25 (4) The power to close any street or alley either permanently or
26 ~~temporarily;~~temporarily.

27 (5) The power to regulate the use of the public streets, sidewalks, alleys,
28 and ~~bridges;~~bridges.

29 (6) The power to regulate, license, and prohibit digging in the streets,
30 sidewalks, or alleys, or placing therein or thereon any pipes, poles,
31 wires, fixtures, or appliances of any kind either on, above, or below the
32 ~~surface;~~surface. In exercising this power, a city may not impose a fee
33 or charge for use of the public right-of-way unless the fee or charge
34 applies uniformly to all nonmunicipal users of the public right-of-way.

35 (7) The power to provide for lighting the streets, alleys, and bridges of the
36 ~~city;~~and city.

37 (8) The power to grant easements in street rights-of-way as permitted by
38 G.S. 160A-273."

39 SECTION 15. G.S. 160A-319(a) reads as rewritten:

40 "(a) A city shall have authority to grant upon reasonable terms franchises for ~~the~~
41 ~~operation within the city of a telephone system and any of the enterprises listed in~~
42 ~~G.S. 160A-311 and for the operation of telephone systems. G.S. 160A-311, except a~~
43 ~~cable television system. A franchise granted by a city authorizes the operation of the~~
44 franchised activity within the city. No franchise shall be granted for a period of more

1 than 60 years, except that a franchise for solid waste collection or disposal systems and
2 facilities shall not be granted for a period of more than 30 years and cable television
3 franchises shall not be granted for a period of more than 20 years. Except as otherwise
4 provided by law, when a city operates an enterprise, or upon granting a franchise, a city
5 may by ordinance make it unlawful to operate an enterprise without a franchise."

6 **SECTION 16.** To make the distribution required under G.S. 105-164.44I(c),
7 as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the
8 Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it
9 operates.

10 **SECTION 17.** A primary purpose of this act is to promote consumer choice
11 in video service providers. A premise of this goal is that increased competition will lead
12 to improved service. Under competition, a customer who is dissatisfied with service by
13 one cable service provider will have the option of choosing a different service provider.

14 G.S. 66-356, as enacted by this act, designates the Consumer Protection
15 Division of the Attorney General's Office as the agency to receive and respond to
16 unresolved customer complaints about cable service provided by the holder of a
17 State-issued franchise. The transition from local franchise agreements to State-issued
18 franchises will occur gradually.

19 Due to the expected improvement in customer service and the gradual change
20 to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the
21 staffing needs of the Consumer Protection Division is not clear. The Office of the
22 Attorney General is therefore requested to monitor the number and type of cable service
23 complaints it receives from customers in areas served under a local franchise agreement
24 and from areas served under a State-issued franchise to determine whether the
25 Consumer Protection Division needs additional staff to fulfill the duty imposed by new
26 G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of
27 the North Carolina General Assembly by April 1, 2007.

28 **SECTION 18.** The Secretary of State has no authority to determine whether
29 a person who is providing video programming is providing cable service over a cable
30 system. An award of a State-issued franchise under Article 42 of Chapter 66 of the
31 General Statutes, as enacted by this act, does not affect a determination of whether
32 video programming provided by the holder of the franchise is considered cable service
33 provided over a cable system under federal law or under a state law that applies
34 substantially the same definitions of "cable service" and "cable system" as federal law.
35 A person who provides video programming may obtain a State-issued franchise under
36 Article 42 of Chapter 66 of the General Statutes, as enacted by this act, regardless of
37 whether the video programming the person provides is considered cable service
38 provided under a cable system under that Article or under federal law.

39 **SECTION 19.** If any provision of this act or its application is held invalid,
40 the invalidity does not affect other provisions or applications of this act that can be
41 given effect without the invalid provisions or application, and to this end the provisions
42 of this act are severable.

43 **SECTION 20.** The Revenue Laws Study Committee must review the effect
44 Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any

1 changes to the law are needed and must report its findings to the 2009 Session of the
2 North Carolina General Assembly:

- 3 (1) Competition in video programming services.
- 4 (2) The number of cable service subscribers, the price of cable service by
5 service tier, and the technology used to deliver the service.
- 6 (3) The deployment of broadband in the State.

7 **SECTION 21.** This act becomes effective January 1, 2007. Sections 7 and 8
8 of this act apply to the distribution made within 75 days after March 31, 2007, for the
9 quarter starting January 1, 2007.

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 13, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME

FIRM OR AGENCY AND ADDRESS

~~Estherine K Davis~~

~~Electric Cities of NC~~

~~Daley Represent Agency~~

SAS

Lindimber

Off of Sec. of State

James Andrews

NC State AFL-CIO

Jim Blackburn

N.C. Association of
County Commissioners

Mark Prek

Brooks Pierce

Jack Strawley

Time Warner Cable

Tom Adams

Time Warner Cable

Jessie Bevilacqua Conner

Coastal

Chaz Johnston

NC Coalition of Community Media Centers

Janni Fitzgerald

NCFPC

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 13, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Al Ripley	NC Justice Ctr
Bill Wilson	AARP-NC
JONCE POPE	civitas institute
Lauren Haigler	Sen. Besnight's office
Com Cur	BPMHL
JUSTIN WORTMAN	BPMHL
Wally Bowen	N.C. Coalition of Community ^{Media} Centers
John McNeill	MFS
Jeff Wolk	NRRA, RA
Jeff Wolk	Daily Bulletin
Lisa Beimler	SECURE

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 13, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Colodaro	NC Association of County Commissioners
Anthony Allen	NC ASSOCIATION OF COUNTY COMMISSIONERS
Bob Gillam	Public Staff - NCUC
Daniel Long	ncuc
Ryan Wesley	Rep. Glasier
Andy Roman T	NCLM
Cathy Wiggins	Gov Office
Wb Puley	NCATZ
Dana DeCicilia	Consumer
Dorothy Dandridge	TWC
Dana Simpson	Smith Anderson

Senate Commerce Committee
Tuesday, June 20, 2006, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 847	Amend Warranty/Service Agreement Co. Laws.	Senator Malone
HB 1291	Eliminate Continuing Ed. Req's./Locksmiths.	Representative Allred

Other Business

Adjournment

SENATE COMMERCE COMMITTEE

Tuesday, June 20, 2006 at 11:00 AM

Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 20, 2006, in Room 1027 of the Legislative Building. Fourteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages and thanked them for their assistance: Aaron Squires from Chapel Hill, sponsored by Senator Robert Atwater; Katarina Hergeth from Apex, sponsored by Senator Ellie Kinnaird; and James Cuffney from Raleigh, sponsored by Senator Neal Hunt.

Senator Soles introduced Representative Cary Allred to present House Bill 1291, Eliminate Continuing Ed. Req's./Locksmiths, for consideration. Senator Tom Apodaca moved for adoption of a proposed committee substitute. The motion carried. Representative Allred asked for Mr. James Hilliard, locksmith of Burlington to speak in favor of the bill. Ms. Laura Busse, of Busse's Lock Service, spoke in opposition to the bill (see materials attached). Because the committee substitute added consideration of Certified Public Accountants, and no one was at the meeting to speak to those provisions, Senator Soles stated he would hold the bill until a later date.

Senator Soles recognized Mr. Larry Bewley, representing the National Motor Vehicle Protection Association (NMVPA), to present Senate Bill 847, Amend Warranty/Service Agreement Co. Laws, for consideration. Senator James Forrester moved the adoption of a proposed committee substitute. The motion carried. Mr. Victor Smith, Executive Director and General Counsel of the NMVPA, spoke in favor of the bill. Mr. Wayne Goodwin, Assistant Commissioner of the Department of Insurance, spoke to the bill, stating that the proposed committee substitute represents what the Department should have in place should the bill pass, and therefore, the Department supports the bill. Senator Apodaca moved an unfavorable report of the bill, but favorable as to the committee substitute bill with a recommended referral to the Finance Committee. The motion carried.

The meeting adjourned at 12:00 noon.

Senator R. C. Soles, Jr., Presiding

Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Wednesday, June 21, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

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

S.B.	847	Amend Warranty/Service Agreement Co. Laws.
		Draft Number: PCS75548
		Sequential Referral: None
		Recommended Referral: Finance
		Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1291

Short Title: Eliminate Continuing Ed. Req's./Locksmiths.

(Public)

Sponsors: Representatives Allred (By Request); and Sauls.

Referred to: Ways and Means.

April 19, 2005

A BILL TO BE ENTITLED
AN ACT TO ELIMINATE CONTINUING EDUCATION REQUIREMENTS FOR
LOCKSMITHS UNDER THE NORTH CAROLINA LOCKSMITH LICENSING
ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74F-6 reads as rewritten:

"§ 74F-6. Powers of the Board.

The Board shall have the power and duty to:

- (1) Administer and enforce the provisions of this Chapter.
- (2) Adopt rules as may be necessary to carry out the provisions of this Chapter.
- (3) Examine and determine the qualifications and fitness of applicants for licensure and renewal of licensure.
- (4) Issue, renew, deny, suspend, or revoke licenses or apprenticeship designations and conduct any disciplinary actions authorized by this Chapter.
- (5) Set fees as provided in G.S. 74F-9.
- ~~(6) Establish and approve continuing education requirements for persons licensed under this Chapter.~~
- (7) Receive and investigate complaints from members of the public.
- (8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining licensees exist.
- (9) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
- (10) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.
- (11) Maintain a list of the names and addresses of all persons licensed by the Board.

- 1 (12) Employ and fix the compensation of personnel that the Board
- 2 determines is necessary to carry out the provisions of this Chapter and
- 3 incur other expenses necessary to perform the duties of the Board.
- 4 (13) Adopt and publish a code of ethics.
- 5 (14) Adopt a seal containing the name of the Board for use on all licenses
- 6 and official reports issued by the Board.
- 7 (15) Employ an attorney to assist or represent the Board in enforcing this
- 8 Chapter.
- 9 (16) Request that the Department of Justice conduct criminal history record
- 10 checks of applicants for licensure and apprenticeships pursuant to
- 11 G.S. 114-19.15."
- 12 **SECTION 2.** No person licensed pursuant to the North Carolina Locksmith
- 13 Licensing Act shall be required to complete continuing education to maintain a license
- 14 under the Act.
- 15 **SECTION 3.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1291
PROPOSED SENATE COMMITTEE SUBSTITUTE H1291-CSRU-85 [v.2]

6/16/2006 5:22:48 PM

Short Title: Elim. Locksmith Cont.Ed. Req's/Amend CPA Law.

(Public)

Sponsors:

Referred to:

April 19, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE CONTINUING EDUCATION REQUIREMENTS FOR
3 LOCKSMITHS UNDER THE NORTH CAROLINA LOCKSMITH LICENSING
4 ACT AND TO INCREASE THE PENALTY FOR VIOLATING CERTAIN LAWS
5 REGULATING CERTIFIED PUBLIC ACCOUNTANTS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 74F-6 reads as rewritten:

8 "§ 74F-6. Powers of the Board.

9 The Board shall have the power and duty to:

- 10 (1) Administer and enforce the provisions of this Chapter.
11 (2) Adopt rules as may be necessary to carry out the provisions of this
12 Chapter.
13 (3) Examine and determine the qualifications and fitness of applicants for
14 licensure and renewal of licensure.
15 (4) Issue, renew, deny, suspend, or revoke licenses or apprenticeship
16 designations and conduct any disciplinary actions authorized by this
17 Chapter.
18 (5) Set fees as provided in G.S. 74F-9.
19 ~~(6) Establish and approve continuing education requirements for persons~~
20 ~~licensed under this Chapter.~~
21 (7) Receive and investigate complaints from members of the public.
22 (8) Conduct investigations for the purpose of determining whether
23 violations of this Chapter or grounds for disciplining licensees exist.
24 (9) Conduct administrative hearings in accordance with Article 3A of
25 Chapter 150B of the General Statutes.
26 (10) Maintain a record of all proceedings conducted by the Board and make
27 available to licensees and other concerned parties an annual report of
28 all Board action.

- 1 (11) Maintain a list of the names and addresses of all persons licensed by
- 2 the Board.
- 3 (12) Employ and fix the compensation of personnel that the Board
- 4 determines is necessary to carry out the provisions of this Chapter and
- 5 incur other expenses necessary to perform the duties of the Board.
- 6 (13) Adopt and publish a code of ethics.
- 7 (14) Adopt a seal containing the name of the Board for use on all licenses
- 8 and official reports issued by the Board.
- 9 (15) Employ an attorney to assist or represent the Board in enforcing this
- 10 Chapter.
- 11 (16) Request that the Department of Justice conduct criminal history record
- 12 checks of applicants for licensure and apprenticeships pursuant to
- 13 G.S. 114-19.15."

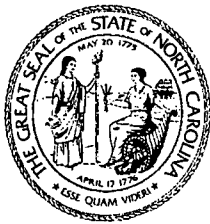
14 **SECTION 2.** No person licensed pursuant to the North Carolina Locksmith
15 Licensing Act shall be required to complete continuing education to maintain a license
16 under the Act.

17 **SECTION 3.** G.S. 93-13 reads as rewritten:

18 "**§ 93-13. Violation of ~~Chapter~~; penalty.**Chapter.

19 ~~Any violation of the provisions of this Chapter shall be deemed a Class 3~~
20 ~~misdemeanor, and upon conviction thereof the guilty party shall only be fined not less~~
21 ~~than one hundred dollars (\$100.00) and not exceeding one thousand dollars (\$1,000) for~~
22 ~~each offense. Any person or entity violating this Chapter shall be guilty of a Class 1~~
23 ~~misdemeanor. Each day a violation occurs shall constitute a distinct and separate~~
24 ~~offense."~~

25 **SECTION 4.** Section 3 of this act becomes effective December 1, 2006 and
26 applies to violations occurring on or after that date. The remainder of this act is
27 effective when it becomes law.



BILL ANALYSIS

HOUSE BILL 1291: Elim. Locksmith Cont. Ed. Req's./Amend CPA Laws

Committee:	Senate Commerce	Date:	June 20, 2006
Introduced by:	Rep. Allred	Summary by:	O. Walker Reagan
Version:	PCS to First Edition H1291-CSRU-85		Committee Co-Counsel

SUMMARY: *The proposed Senate Committee Substitute for House Bill 1291 would eliminate the continuing education requirement for locksmiths, and would increase the criminal penalty for the unauthorized practice as a certified public accountant from a Class 3 misdemeanor to a Class 1 misdemeanor.*

CURRENT LAW: For locksmiths, G.S. 74F-6 gives the North Carolina Locksmith Licensing Board the authority to establish and approve continuing education requirements for locksmiths.

For certified public accountants, under Chapter 93 of the General Statutes, which governs the licensing and practice of accounting as a certified public accountant, using the title "certified public accountant" without being licensed as a CPA is a Class 3 misdemeanor with a minimum fine of \$100 and a maximum fine of \$1,000.

BILL ANALYSIS: Sections 1 and 2 of the bill would repeal the authority of the North Carolina Locksmith Licensing Board to establish and approve continuing education requirements for locksmiths and would affirmatively state that completing continuing education is not required to maintain a locksmith license.

Section 3 of the bill would amend G.S. 93-13 to change the criminal punishment for violation the certified public accountant statutes, including the use of the title of certified public accountant when not a CPA, from a Class 3 misdemeanor with punishment of only fines between \$100 and \$1000 to a Class 1 misdemeanor. Each day a violation occurs is considered a separate violation.

EFFECTIVE DATE: Section 3 of the bill becomes effective December 1, 2006 and applies to offenses committed on or after that date. The remainder of the bill is effective when it becomes law.

BACKGROUND: With regards to Section 3, under Structured Sentencing, unless otherwise specified, punishment for a Class 1 misdemeanor, depending on prior conviction history, ranges from a minimum of 1 to 45 days of community punishment up to a maximum of 1 to 120 days of community, intermediate or active prison time, and unlimited fines in the discretion of the court.

With regards to Section 3, increasing the punishment for violation of the CPA laws from a Class 3 misdemeanor to a Class 1 misdemeanor is consistent with other similar licensing board violations including the State Bar, the Medical Board and the Board of Pharmacy. The provision making each day's violation a separate violation is not consistent with these other professional licensing board statutes.

H1291e1-SMRU-CSRU-85



North Carolina Locksmith's Association, Inc.
120 Timber Hollow drive
Linden, NC. 28356
Ph. 910-980-0891
www.ncla.us

TO: Senate Commerce Committee Members

Re: House Bill 1291

Honorable Senators,

You will have a house bill #1291 submitted to your committee. Please take extra consideration when reviewing this bill. The North Carolina Locksmith Association is dedicated to promoting the Locksmith trade by providing education programs for their members as well as non-members. I have been a member for 29 years and have served on the administrative board since 1990 in several different positions.

The NCLA has opened up the classes to non-members for a fee so they can get education that will help them. Also one of our members has started going around the state and promotes classes too. Locksmiths get educational classes every three months at Charlotte or Raleigh with the North Carolina Locksmith's Association. The Associated Locksmiths of America has classes once a year. So there is no excuse someone can't get the eight (8) hours a year of continuing education to fulfill the requirements.

Please vote to defeat HB 1291. All other licensed services such as plumbers, electricians and alarm installers have some form of continuing education.

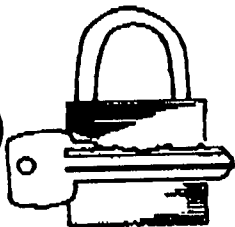
Over 20 years ago the North Carolina Locksmith Association (NCLA) attempted to get a Locksmithing license implemented. There were some locksmiths who had second thoughts. When they saw it would help the Locksmithing profession to have standards to make sure all locksmiths would be at the same level, they understood how it would help them and the trade. If HB 1291 passes, education will decrease for the small or part-time locksmiths. They will learn at the expense of the consumer. Some of the part-time locksmiths do not want to invest the time and think they do not need to learn anything else. This will just hurt the consumer. These are the locksmiths who do not want to have continuing education. They need to have opportunity to learn since most of the trade is moving toward electronics in car and home locks. At the present time nearly 80% of new cars since 2000 use some form of transponders. The field changes every day, so you need education to keep up to date.

I would like to be there, but I learn of the reading only a day or two before and can't get off work. I have given my life to this trade and like teaching others what I have learned. So it pains me when someone doesn't take this profession seriously since we deal with the consumer's security.

Reid Skinner, locksmith
President NCLA

J.B.Ellis Locksmith Inc.
1400-4 Burke Road
Shelby, NC 28152
704-472-1081

WAYNE LOCK AND KEY



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Repaired & Rekeyed
Deadbolts Installed

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Commercial • Residential • Automotive
Post Office Box 10483
Goldsboro, NC 27532

(919) 778-4279
FAX: (919) 759-9140
cwayne@earthlink.net
WAYNE GOW
Owner

To: Senate Commerce Committee Members

June 19, 2006

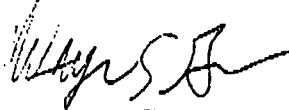
Re: House Bill 1291

Honorable Senators:

The North Carolina Locksmith Association is a non-profit organization dedicated to promoting Locksmith Education in North Carolina. I may be bias as I am the Education Chairman of the NCLA, however, I do feel that as a business professional, you cannot promote the industry to the public without continuing education of the industry. I have been a member since 1999 and have donated my time as Education Chairman since August of 2002. This House Bill 1291 would undo much of the work that has been done since the Locksmith Licensing Act was passed to clean up our profession and help ensure that consumers in North Carolina get quality service when they call on a Locksmith. With this having been said, I hope that you will join me in defeating HB 1291. The current rules require only 8 hours per year of continuing education. Honorable Senators, I do not believe that this too much to ask of a Professional to give one day per year to remain current with changes of Security Products in our field, for someone who claims to be an expert in the field of Security. The Locksmithing field is changing very rapidly, with electronics infusing every aspect of the trade from safe locks to car keys. Locksmiths work on everything from homes and cars to schools, hospitals, airports, government buildings, commercial buildings and businesses. Locksmiths who are not updated can and do harm consumers. This in turn harms the reputation of the Locksmith Profession. This why so many locksmiths joined together to request that the Profession become Licensed. I believe that Continuing Education requirement is a key component of the licensing program and does not pose an undue burden on Professional Locksmiths. In fact, most professional Locksmiths will typically spend more than the minimum required time on professional enrichment.

At one time I thought that I could learn what was new by going to a project and digging in. It did not take long to learn that I was being left behind those who were getting Education on the new product line. Honorable Senators, I urge you to defeat Hours Bill 1291. Thank you for your consideration and time in regards to this issue.

Sincerely,



Wayne E. Gow

Owner

Wayne Lock and Key

Education Chairman

North Carolina Locksmith Association



LOCK SERVICE

2003 WAKE FOREST ROAD
RALEIGH, NC 27608-2733

PHONE: 919-828-9605
FAX: 919-829-3638

June 20, 2006

RE: DEFEAT HB 1291

- Many people think of locksmiths as merely people who open cars. In fact, the industry is far more complex than that. Locks are everywhere, and locksmiths hold the keys to homes, businesses, schools, hospitals, airports and government facilities.
- The locksmith industry comprises three primary specialty areas: safe & vault service, architectural locksmithing and automotive locksmithing.
- All three of these areas are now infused with electronic technology. Most newer car keys are electronic; even the car door contains delicate wiring that can be damaged during opening. Access control systems (keypad locks, badge readers, etc.) are widespread even in homes and safe locks are increasingly electronic.
- All three areas of locksmithing are rife with innovation. New car models are a given. But in all fields a new way to defeat a lock and a new patented way to resist these means of defeat are the name of the game in the security industry.
- When consumers call on a locksmith, they are often in a vulnerable position and certainly not in a position to judge the qualifications of the locksmith. When they find that the "locksmith" was unqualified, the damage is already done. Professional locksmiths have been embarrassed for decades having to re-do the work of unqualified hacks. This is largely why they banded together to request licensing of their profession several years ago!
- Most skilled trades require a license, and as far as I know every licensed profession includes continuing education as part of its renewal requirement. 24 hours per 3 years is a very minimal requirement compared to the requirement in other professions.
- The NC Locksmith Licensing Board has made it as easy as possible for licensed locksmiths to fulfill the continuing education requirement. Virtually anyone can sponsor a class that will count towards the requirement. There are many opportunities throughout the state and throughout the year for licensees to fulfill the requirement. Some are even free!

Please join me in defeating HB 1291. Protect consumers from unqualified "locksmiths."

Laura J. Busse, Certified Registered Locksmith
Vice-Chair, North Carolina Locksmith Licensing Board
Chair, Rules Committee

Complete Commercial, Residential and Automotive Lock Service

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

1

SENATE BILL 847

Short Title: Amend Warranty/Service Agreement Co. Laws. (Public)

Sponsors: Senators Malone; Dannelly, Lucas, Purcell, and Rand.

Referred to: Commerce.

March 23, 2005

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THAT MOTOR VEHICLE AND HOME APPLIANCE
2 SERVICE AGREEMENT COMPANIES MUST FILE ALL SERVICE
3 AGREEMENTS AND CONTRACTUAL LIABILITY POLICIES WITH THE
4 COMMISSIONER, AND IF SUBMITTED ON PAPER, BE IN A SPECIFIED
5 FORMAT; AUTHORIZE THE COMMISSIONER TO PROTECT CONSUMERS
6 OF WARRANTY AND SERVICE AGREEMENTS UNDER JURISDICTION OF
7 THE DEPARTMENT BY CEASE AND DESIST POWERS AND BY THE
8 POWER TO EXAMINE AND SEIZE WARRANTY AND SERVICE
9 AGREEMENT COMPANY VIOLATOR'S RECORDS; AND REORGANIZE
10 AND ADD CLARIFYING DEFINITIONS REGARDING MECHANICAL
11 SERVICE BREAKDOWN AGREEMENTS.
12

13 The General Assembly of North Carolina enacts:

14 SECTION 1. G.S. 58-1-35(m) reads as rewritten:

15 "(m) If not submitted electronically, all All service agreements and contractual
16 liability policies shall be filed with the Commissioner of Insurance. All contracts,
17 literature, advertising materials, letters, and other documents submitted to the
18 Department to comply with the filing requirements of this Chapter or an administrative
19 rule adopted pursuant to this Chapter shall shall, if submitted on paper, be submitted on
20 paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be
21 stapled or bound."

22 SECTION 2. G.S. 58-1-36 is amended by adding two new subsections to
23 read:

24 "(f) In addition to the penalties and other enforcement provisions provided herein,
25 if any person violates this section or any rule implementing this section, the
26 Commissioner may seek an injunction in a court of competent jurisdiction and may
27 apply for temporary and permanent orders that the Commissioner determines are
28 necessary to restrain the person from committing the violation.

1 The Commissioner may issue, in accordance with G.S. 58-63-32, a cease and desist
2 order upon a person that violates any provision of this section, any rule or order adopted
3 by the Commissioner, or any written agreement entered into with the Commissioner.
4 The cease and desist order may be subject to judicial review under G.S. 58-63-35.

5 When the Commissioner finds that an activity in violation of this section presents an
6 immediate danger to the public that requires an immediate final order, the
7 Commissioner may issue an emergency cease and desist order reciting with particularity
8 the facts underlying the findings. The emergency cease and desist order is effective
9 immediately upon service of a copy of the order on the respondent and remains effective
10 for 90 days. If the Commissioner begins nonemergency cease and desist proceedings,
11 the emergency cease and desist order remains effective, absent an order by a court of
12 competent jurisdiction in accordance with G.S. 58-63-35.

13 The Commissioner is not required to post a bond for injunctive relief under this
14 subsection.

15 (g) If any person violates this section or any rule implementing this section, the
16 Commissioner may examine and seize the records of the violating person."

17 **SECTION 3.** G.S. 58-1-42 reads as rewritten:

18 **"§ 58-1-42. Mechanical breakdown service ~~agreements~~; ~~agreements~~; applicability.**

19 (a) Except as provided in subsection (c) of this section, all mechanical
20 breakdown service agreement companies soliciting business in this State shall comply
21 with G.S. 58-1-35 and G.S. 58-1-36.

22 (b) As used in this section, ~~"mechanical breakdown service agreement~~
23 ~~companies" include any person that issues mechanical breakdown service agreements~~
24 ~~and is not a licensed insurer, and "mechanical breakdown service agreements" are~~
25 ~~applicable to mechanized equipment, including automobiles, riding mowers, scooters,~~
26 ~~generators, farm implements, logging equipment, road graders, bulldozers, and power~~
27 ~~equipment not licensed for road use, whether mobile or not. section:~~

28 (1) "Mechanical breakdown service agreement companies" include any
29 person that issues mechanical breakdown service agreements and is
30 not a licensed insurer.

31 (2) "Mechanical breakdown service agreements" are applicable to
32 mechanical equipment, including automobiles, riding mowers,
33 scooters, generators, farm implements, logging equipment, road
34 graders, bulldozers, and power equipment not licensed for road use,
35 whether mobile or not.

36 (3) "Parts" include all mechanical parts that are associated with the object
37 of this agreement.

38 (4) "Service" means work, labor, and other personal services.

39 (c) This section does not apply to performance guarantees, warranties,
40 mechanical breakdown service agreements, or motor vehicle service agreements made
41 by:

42 (1) A manufacturer.

43 (2) A distributor.

44 (3) A subsidiary of a manufacturer or distributor."

1 **SECTION 4.** This act becomes effective October 1, 2005, and applies to
2 warranties and service agreements issued, renewed, or purchased on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 847
PROPOSED COMMITTEE SUBSTITUTE S847-CSRU-88 [v.3]

6/19/2006 6:06:46 PM

Short Title: Enact Vehicle Protection Product Act.

(Public)

Sponsors:

Referred to:

March 23, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE VEHICLE PROTECTION PRODUCT ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Chapter 58 of the General Statutes is amended by adding a
5 new Article to read:

6 "Article 92.

7 "Vehicle Protection Product Act.

8 "§ 58-92-1. Short title.

9 This Article shall be known and may be cited as the "Vehicle Protection Product
10 Act".

11 "§ 58-92-5. Definitions.

12 As used in this Article, the following terms mean:

- 13 (1) Administrator. – A third party other than the warrantor who is
14 designated by the warrantor to be responsible for the administration of
15 vehicle protection product warranties.
- 16 (2) Incidental costs. – Expenses specified in the warranty incurred by the
17 warranty holder related to the failure of the vehicle protection product
18 to perform as provided in the warranty. Incidental costs may include
19 insurance policy deductibles, rental vehicle charges, the difference
20 between the actual value of the stolen vehicle at the time of theft and
21 the cost of a replacement vehicle, sales taxes, registration fees,
22 transaction fees, and mechanical inspection fees.
- 23 (3) Motor vehicle service agreement. – As the term is defined in
24 G.S. 58-1-25.
- 25 (4) Vehicle protection product. – A vehicle protection device, system, or
26 service that is (i) installed on or applied to a vehicle, (ii) is designed to
27 prevent loss or damage to a vehicle from a specific cause, and (iii)
28 includes a written warranty. For purposes of this subdivision, the term

1 vehicle protection product shall include alarm systems, body part
2 marking products, steering locks, window etch products, pedal and
3 ignition locks, fuel and ignition kill switches, and electronic, radio, and
4 satellite tracking devices.

5 (5) Vehicle protection product warranty or warranty. – A written
6 agreement by a warrantor that provides if the vehicle protection
7 product fails to prevent loss or damage to a vehicle from a specific
8 cause, that the warranty holder shall be paid specified incidental costs
9 by the warrantor as a result of the failure of the vehicle protection
10 product to perform pursuant to the terms of the warranty. Incidental
11 costs may be reimbursed under the provisions of the warranty in either
12 a fixed amount specified in the warranty or sales agreement or by the
13 use of a formula itemizing specific incidental costs incurred by the
14 warranty holder.

15 (6) Vehicle protection product warrantor or warrantor. – A person who is
16 contractually obligated to the warranty holder under the terms of the
17 vehicle protection product warranty agreement. Warrantor does not
18 include an authorized insurer providing a warranty reimbursement
19 insurance policy.

20 (7) Warranty holder. – A person who purchases a vehicle protection
21 product or who is a permitted transferee.

22 (8) Warranty reimbursement insurance policy. – A policy of insurance that
23 is issued to the vehicle protection product warrantor to provide
24 reimbursement to the warrantor or to pay on behalf of the warrantor all
25 covered contractual obligations incurred by the warrantor under the
26 terms and conditions of the insured vehicle protection product
27 warranties issued by the warrantor.

28 **§ 58-92-10. Scope and exemptions.**

29 (a) No vehicle protection product may be sold or offered for sale in this State
30 unless the seller, warrantor, and administrator, if any, comply with the provisions of this
31 Article.

32 (b) Except as provided in this Article, vehicle protection product warrantors and
33 related vehicle protection product sellers and warranty administrators complying with
34 this Article are not required to comply with and are not subject to any other provision of
35 this Chapter.

36 (c) Motor vehicle service agreement providers who do not sell vehicle protection
37 products are not subject to the requirements of this Article.

38 (d) Warranties, indemnity agreements, and guarantees that are not provided as a
39 part of a vehicle protection product are not subject to the provisions of this Article.

40 **§ 58-92-15. Registration and filing requirements of warrantors.**

41 (a) A person shall not operate as a warrantor or represent to the public that the
42 person is a warrantor unless the person is registered with the Department on a form
43 prescribed by the Commissioner.

1 **(b)** Warrantor registration records shall be filed annually and shall be updated
2 within 30 days of any change. The registration records shall contain the following
3 information:

- 4 **(1)** The warrantor's name, any fictitious names under which the warrantor
5 does business in the State, principal office address, and telephone
6 number.
- 7 **(2)** The name and address of the warrantor's agent for service of process in
8 the State if other than the warrantor.
- 9 **(3)** The names of the warrantor's executive officer or officers directly
10 responsible for the warrantor's vehicle protection product business.
- 11 **(4)** The name, address, and telephone number of any administrators
12 designated by the warrantor to be responsible for the administration of
13 vehicle protection product warranties in this State.
- 14 **(5)** A copy of the warranty reimbursement insurance policy or policies or
15 other financial information required by G.S. 58-92-20.
- 16 **(6)** A copy of each warranty the warrantor proposes to use in this State.
- 17 **(7)** A statement indicating under which provision of G.S. 58-92-20 the
18 warrantor qualifies to do business in this State as a warrantor.

19 **(c)** The Commissioner may charge each registrant a reasonable fee to offset the
20 cost of processing the registration and maintaining the records in an amount not to
21 exceed one thousand five hundred dollars (\$1,500) annually. The fee shall be credited
22 to the Insurance Regulatory Fund under G.S. 58-6-25.

23 **(d)** If a registrant fails to register by the renewal deadline, the Commissioner
24 shall give the registrant written notice of the failure, and the registrant shall have 30
25 days to complete the renewal of the registration before the registrant's registration is
26 suspended in this State.

27 **(e)** An administrator or person who sells or solicits a sale of a vehicle protection
28 product but who is not a warrantor shall not be required to register as a warrantor or be
29 licensed under this Chapter to sell vehicle protection products.

30 **§ 58-92-20. Financial responsibility.**

31 No vehicle protection product shall be sold, or offered for sale in this State unless
32 the warrantor meets one of the following conditions in order to ensure adequate
33 performance under the warranty:

- 34 **(1)** The vehicle protection product warrantor is insured under a warranty
35 reimbursement insurance policy issued by an insurer authorized to do
36 business in this State which provides all of the following:
- 37 a. The insurer shall pay to, or on behalf of, the warrantor one
38 hundred percent (100%) of all sums that the warrantor is legally
39 obligated to pay according to the warrantor's contractual
40 obligations under the warrantor's vehicle protection product
41 warranty.
- 42 b. A true and correct copy of the warranty reimbursement
43 insurance policy has been filed with the Commissioner by the
44 warrantor.

- 1 c. The policy complies with G.S. 58-92-25.
- 2 (2) The vehicle protection product warrantor, or its parent company,
3 maintains a net worth of fifty million dollars (\$50,000,000), and the
4 warrantor provides the Commissioner with a copy of the warrantor's or
5 the warrantor's parent company's most recent Form 10-K or Form 20-F
6 filed with the Securities and Exchange Commission within the last
7 calendar year or, if the warrantor does not file with the Securities and
8 Exchange Commission, a copy of the warrantor's or the warrantor's
9 parent company's audited financial statements that shows a net worth
10 of the warrantor or its parent company of at least fifty million dollars
11 (\$50,000,000). If the warrantor's parent company's Form 10-K, Form
12 20-F, or audited financial statements are filed to meet the warrantor's
13 financial stability requirement, then the parent company shall agree to
14 guarantee the obligations of the warrantor relating to warranties issued
15 by the warrantor in this State.
- 16 (3) The Commissioner may require a warrantor to make a deposit for the
17 protection of warranty holders, which deposit shall be subject to
18 Article 5 of this Chapter.

19 No other financial security requirements or financial standards for warrantors shall
20 be required.

21 **"§ 58-92-25. Warranty reimbursement policy requirements.**

22 No warranty reimbursement insurance policy shall be issued, sold, or offered for sale
23 in this State, unless the policy meets all of the following conditions:

- 24 (1) The policy states that the issuer of the policy will reimburse or pay on
25 behalf of the vehicle protection product warrantor all covered sums
26 which the warrantor is legally obligated to pay or will provide all
27 service that the warrantor is legally obligated to perform according to
28 the warrantor's contractual obligations under the provisions of the
29 insured warranties issued by the warrantor.
- 30 (2) The policy states that in the event payment due under the terms of the
31 warranty is not provided by the warrantor within 60 days after proof of
32 loss has been filed according to the terms of the warranty by the
33 warranty holder, the warranty holder may file directly with the
34 warranty reimbursement insurance company for reimbursement.
- 35 (3) The policy provides that a warranty reimbursement insurance company
36 that insures a warranty shall be deemed to have received payment of
37 the premium if the warranty holder paid for the vehicle protection
38 product and the insurer's liability under the policy shall not be reduced
39 or relieved by a failure of the warrantor, for any reason, to report the
40 issuance of a warranty to the insurer.
- 41 (4) The policy has the following provisions regarding cancellation of the
42 policy:
- 43 a. The issuer of a reimbursement insurance policy shall not cancel
44 the policy until a notice of cancellation in writing has been

1 mailed or delivered to the Commissioner and each insured
2 warrantor.

3 **b.** The cancellation of a reimbursement insurance policy shall not
4 reduce the issuer's responsibility for vehicle protection products
5 sold prior to the date of cancellation.

6 **c.** In the event an insurer cancels a policy that a warrantor has
7 filed with the Commissioner, the warrantor shall do either of the
8 following:

9 1. File a copy of a new policy with the Commissioner,
10 before the termination of the prior policy, providing no
11 lapse in coverage following the termination of the prior
12 policy.

13 2. Discontinue acting as a warrantor as of the termination
14 date of the policy until a new policy becomes effective
15 and is accepted by the Commissioner.

16 (5) The policy and the premium rates for the policy have been filed with
17 and approved by the Commissioner.

18 **"§ 58-92-30. Disclosure to warranty holder.**

19 Every vehicle protection product warranty shall be written in clear, understandable
20 language, shall be printed or typed in easy-to-read type, size, and style, and shall not be
21 sold or offered for sale in this State unless the warranty complies with all of the
22 following requirements:

23 (1) The warranty conspicuously states that the obligations of the warrantor
24 to the warranty holder are guaranteed under a warranty reimbursement
25 insurance policy if the warrantor elects to meet its financial
26 responsibility obligations under G.S. 58-92-20(1), or states that the
27 obligations of the warrantor under this warranty are backed by the full
28 faith and credit of the warrantor if the warrantor elects to meet its
29 financial responsibility obligations under G.S. 58-92-20(2).

30 (2) The warranty conspicuously states that in the event a warranty holder
31 must make a claim against a party other than the warranty
32 reimbursement insurance policy issuer, the warranty holder is entitled
33 to make a direct claim against the insurer upon the failure of the
34 warrantor to pay any claim or meet any obligation under the terms of
35 the warranty within 60 days after proof of loss has been filed with the
36 warrantor, if the warrantor elects to meet its financial responsibility
37 obligations under G.S. 58-92-20(1).

38 (3) The warranty states the name and address of the issuer of the warranty
39 reimbursement insurance policy, and this information need not be
40 preprinted on the warranty form but may be added to or stamped on
41 the warranty, if the warrantor elects to meet its financial responsibility
42 obligations under G.S. 58-92-20(1).

43 (4) The warranty identifies the warrantor, the seller, and the warranty
44 holder.

- 1 (5) The warranty sets forth the total purchase price and the terms under
2 which it is to be paid, however, the purchase price is not required to be
3 preprinted on the vehicle protection product warranty and may be
4 negotiated with the consumer at the time of sale.
- 5 (6) The warranty sets forth the procedure for making a claim, including a
6 telephone number.
- 7 (7) The warranty specifies the payments or performance to be provided
8 under the warranty including payments for incidental costs, the manner
9 of calculation or determination of payments or performance, and any
10 limitations, exceptions, or exclusions.
- 11 (8) The warranty sets forth all of the obligations and duties of the warranty
12 holder including the duty to protect against any further damage to the
13 vehicle, the obligation to notify the warrantor in advance of any repair,
14 or other similar requirements, if any.
- 15 (9) The warranty sets forth any terms, restrictions, or conditions governing
16 transferability of the warranty, if any, and cancellation.
- 17 (10) The warranty contains a disclosure that reads substantially as follows:
18 "This agreement is a product warranty and is not insurance.
- 19 (11) The warranty has been filed with and approved by the Commissioner.

20 **§ 58-92-35. Prohibited acts.**

21 (a) Unless licensed as an insurance company, a vehicle protection product
22 warrantor shall not use in its name, contracts, or literature any of the words "insurance,"
23 "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty,
24 or surety business or deceptively similar to the name or description of any insurance or
25 surety corporation, or any other vehicle protection product warrantor. A warrantor may
26 use the term "guaranty" or similar word in the warrantor's name.

27 (b) A vehicle protection product seller or warrantor shall not require as a
28 condition of financing that a retail purchaser of a motor vehicle purchase a vehicle
29 protection product.

30 (c) Vehicle protection product warrantors and their administrators shall be
31 subject to Article 63 of this Chapter.

32 **§ 58-92-40. Record keeping.**

33 (a) All vehicle protection product warrantors shall keep accurate accounts,
34 books, and records concerning transactions regulated under this Article.

35 (b) A vehicle protection product warrantor's accounts, books, and records shall
36 include all of the following:

37 (1) Copies of all vehicle protection product warranties.

38 (2) The name and address of each warranty holder.

39 (3) The dates, amounts, and descriptions of all receipts, claims, and
40 expenditures.

41 (c) A vehicle protection product warrantor shall retain all required accounts,
42 books, and records pertaining to each warranty holder for at least two years after the
43 specified period of coverage has expired. A warrantor discontinuing business in this

1 State shall maintain its records until it furnishes the Commissioner satisfactory proof
2 that it has discharged all obligations to warranty holders in this State.

3 (d) Vehicle protection product warrantors shall make all accounts, books, and
4 records concerning transactions regulated under this act available to the Commissioner
5 for examination.

6 (e) Vehicle protection product warrantors and their administrators shall be
7 subject to the same provisions of Article 2 of this Chapter that apply to insurance
8 companies.

9 **"§ 58-92-45 Rule-making power.**

10 The Commissioner may adopt rules consistent with the provisions of this Article that
11 are necessary to implement this Article. The rules shall include disclosures for the
12 benefit of the warranty holder, record keeping, and procedures for public complaints.
13 The rules shall also include the conditions under which surplus lines insurers may be
14 rejected for the purpose of underwriting vehicle protection product warranty
15 agreements."

16 **SECTION 2.** G.S. 58-6-25(d) reads as rewritten:

17 "(d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State
18 treasury, under the control of the Office of State Budget and Management. The proceeds
19 of the charge levied in this section and all fees collected under Articles 69 through 71
20 and Article 92 of this Chapter and under Articles 9 and 9C of Chapter 143 of the
21 General Statutes shall be credited to the Fund. The Fund shall be placed in an
22 interest-bearing account and any interest or other income derived from the Fund shall be
23 credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation
24 by the General Assembly and in accordance with the line item budget enacted by the
25 General Assembly. The Fund is subject to the provisions of the Executive Budget Act,
26 except that no unexpended surplus of the Fund shall revert to the General Fund. All
27 money credited to the Fund shall be used to reimburse the General Fund for the
28 following:

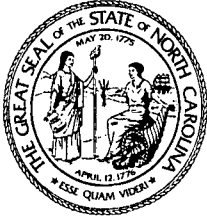
29 ...
30 (10) Money appropriated to the Department to pay its expenses incurred in
31 regulating vehicle protection product warrantors and administrators
32 under Article 92 of this Chapter."

33 **SECTION 3.(a)** There is appropriated from the General Fund to the
34 Department of Insurance for fiscal year 2006-2007 the sum of two hundred thousand
35 dollars (\$200,000) for the regulation by the Department of vehicle protection product
36 warrantors and administrators under Article 92 of Chapter 58 of the General Statutes.

37 **SECTION 3.(b)** There is appropriated from the Insurance Regulatory Fund
38 created under G.S. 58-6-25 to the General Fund for fiscal year 2006-2007 the sum of
39 two hundred thousand dollars (\$200,000) for the regulation by the Department of
40 vehicle protection product warrantors and administrators under Article 92 of Chapter 58
41 of the General Statutes.

42 **SECTION 4.** Section 1 of this act becomes effective January 1, 2007, and
43 applies to contracts and agreements entered into on or after that date and to vehicle

1 protection products sold or offered for sale on or after that date. The remainder of this
2 act becomes effective July 1, 2006.



SENATE BILL 847: Enact Vehicle Protection Product Act

BILL ANALYSIS

Committee:	Senate Commerce	Date:	June 20, 2006
Introduced by:	Sen. Malone	Summary by:	O. Walker Reagan Committee Co-Counsel
Version:	PCS to First Edition S847-CSRU-88		

SUMMARY: *The Proposed Committee Substitute for Senate Bill 847 would enact the Vehicle Protection Product Act, to require a person who sells a vehicle protection product with a warranty to be registered with the Department of Insurance and to meet certain regulatory requirements in order to insure protection to the consuming public who purchase warranted vehicle alarm systems, body part marking products, steering locks, etch products, pedal and ignition locks, fuel and ignition kill switches, electronic, radio, and satellite tracking devices, and other vehicle protection devices.*

CURRENT LAW: Current State law does not regulate the sale of vehicle protection product warranties.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 847 would require a person who sells vehicle protection products with a warranty to comply with the regulatory requirements set forth in the bill before being able to do business in the State.

G.S. 58-92-5 sets out definitions used in the Article. Included is the definition of "vehicle protection product" as a vehicle protection device, system or service installed or applied to a vehicle, designed to prevent loss or damage to the vehicle that includes a warranty.

G.S. 58-92-10 specifies that motor vehicle service agreements, i.e. warranties on vehicles, are not covered by this bill.

G.S. 58-92-15 requires a person selling vehicle protection products with a warranty to register before doing business in the State.

G.S. 58-92-20 requires the warrantor to either have a warranty reimbursement policy insuring the warrantor's obligations, or a net worth of \$50 million.

G.S. 58-92-25 sets out the requirements for a warranty reimbursement policy.

G.S. 58-92-30 sets out the required disclosures to the warranty holder (purchaser), including the terms of the warranty and the procedure for filing claims under the warranty.

G.S. 58-92-35 prohibits non-insurance companies from using insurance terms to describe their warranties.

G.S. 58-92-40 sets out the record keeping requirements for a warrantor.

G.S. 58-92-45 gives the Commissioner of Insurance rulemaking authority to implement this bill.

Section 2 of the bill directs that registration fees are to be paid to the Insurance Regulatory Fund to be used to pay the costs of regulating warrantors.

Section 3 transfers \$200,000 from the Insurance Regulatory Fund to the General Fund and appropriates from the General Fund to the Department of Insurance \$200,000 to implement this bill.

EFFECTIVE DATE: The substantive provisions of the bill become effective January 1, 2007.

S0847e1-SMRU-CSRU-88

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 847
PROPOSED COMMITTEE SUBSTITUTE S847-PCS75548-RU-88

Short Title: Enact Vehicle Protection Product Act.

(Public)

Sponsors:

Referred to:

March 23, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE VEHICLE PROTECTION PRODUCT ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Chapter 58 of the General Statutes is amended by adding a
5 new Article to read:

6 "Article 92.

7 "Vehicle Protection Product Act.

8 "§ 58-92-1. Short title.

9 This Article shall be known and may be cited as the "Vehicle Protection Product
10 Act".

11 "§ 58-92-5. Definitions.

12 As used in this Article, the following terms mean:

- 13 (1) Administrator. – A third party other than the warrantor who is
14 designated by the warrantor to be responsible for the administration of
15 vehicle protection product warranties.
- 16 (2) Incidental costs. – Expenses specified in the warranty incurred by the
17 warranty holder related to the failure of the vehicle protection product
18 to perform as provided in the warranty. Incidental costs may include
19 insurance policy deductibles, rental vehicle charges, the difference
20 between the actual value of the stolen vehicle at the time of theft and
21 the cost of a replacement vehicle, sales taxes, registration fees,
22 transaction fees, and mechanical inspection fees.
- 23 (3) Motor vehicle service agreement. – As the term is defined in
24 G.S. 58-1-25.
- 25 (4) Vehicle protection product. – A vehicle protection device, system, or
26 service that is (i) installed on or applied to a vehicle, (ii) is designed to
27 prevent loss or damage to a vehicle from a specific cause, and (iii)
28 includes a written warranty. For purposes of this subdivision, the term

1 "vehicle protection product" shall include alarm systems, body part
2 marking products, steering locks, window etch products, pedal and
3 ignition locks, fuel and ignition kill switches, and electronic, radio, and
4 satellite tracking devices.

5 (5) Vehicle protection product warranty or warranty. – A written
6 agreement by a warrantor that provides if the vehicle protection
7 product fails to prevent loss or damage to a vehicle from a specific
8 cause, that the warranty holder shall be paid specified incidental costs
9 by the warrantor as a result of the failure of the vehicle protection
10 product to perform pursuant to the terms of the warranty. Incidental
11 costs may be reimbursed under the provisions of the warranty in either
12 a fixed amount specified in the warranty or sales agreement or by the
13 use of a formula itemizing specific incidental costs incurred by the
14 warranty holder.

15 (6) Vehicle protection product warrantor or warrantor. – A person who is
16 contractually obligated to the warranty holder under the terms of the
17 vehicle protection product warranty agreement. Warrantor does not
18 include an authorized insurer providing a warranty reimbursement
19 insurance policy.

20 (7) Warranty holder. – A person who purchases a vehicle protection
21 product or who is a permitted transferee.

22 (8) Warranty reimbursement insurance policy. – A policy of insurance that
23 is issued to the vehicle protection product warrantor to provide
24 reimbursement to the warrantor or to pay on behalf of the warrantor all
25 covered contractual obligations incurred by the warrantor under the
26 terms and conditions of the insured vehicle protection product
27 warranties issued by the warrantor.

28 **"§ 58-92-10. Scope and exemptions.**

29 (a) No vehicle protection product may be sold or offered for sale in this State
30 unless the seller, warrantor, and administrator, if any, comply with the provisions of this
31 Article.

32 (b) Except as provided in this Article, vehicle protection product warrantors and
33 related vehicle protection product sellers and warranty administrators complying with
34 this Article are not required to comply with and are not subject to any other provision of
35 this Chapter.

36 (c) Motor vehicle service agreement providers who do not sell vehicle protection
37 products are not subject to the requirements of this Article.

38 (d) Warranties, indemnity agreements, and guarantees that are not provided as a
39 part of a vehicle protection product are not subject to the provisions of this Article.

40 **"§ 58-92-15. Registration and filing requirements of warrantors.**

41 (a) A person shall not operate as a warrantor or represent to the public that the
42 person is a warrantor unless the person is registered with the Department on a form
43 prescribed by the Commissioner.

1 **(b)** Warrantor registration records shall be filed annually and shall be updated
2 within 30 days of any change. The registration records shall contain the following
3 information:

- 4 **(1)** The warrantor's name, any fictitious names under which the warrantor
5 does business in the State, principal office address, and telephone
6 number.
- 7 **(2)** The name and address of the warrantor's agent for service of process in
8 the State if other than the warrantor.
- 9 **(3)** The names of the warrantor's executive officer or officers directly
10 responsible for the warrantor's vehicle protection product business.
- 11 **(4)** The name, address, and telephone number of any administrators
12 designated by the warrantor to be responsible for the administration of
13 vehicle protection product warranties in this State.
- 14 **(5)** A copy of the warranty reimbursement insurance policy or policies or
15 other financial information required by G.S. 58-92-20.
- 16 **(6)** A copy of each warranty the warrantor proposes to use in this State.
- 17 **(7)** A statement indicating under which provision of G.S. 58-92-20 the
18 warrantor qualifies to do business in this State as a warrantor.

19 **(c)** The Commissioner may charge each registrant a reasonable fee to offset the
20 cost of processing the registration and maintaining the records in an amount not to
21 exceed one thousand five hundred dollars (\$1,500) annually. The fee shall be credited to
22 the Insurance Regulatory Fund under G.S. 58-6-25.

23 **(d)** If a registrant fails to register by the renewal deadline, the Commissioner
24 shall give the registrant written notice of the failure, and the registrant shall have 30
25 days to complete the renewal of the registration before the registrant's registration is
26 suspended in this State.

27 **(e)** An administrator or person who sells or solicits a sale of a vehicle protection
28 product but who is not a warrantor shall not be required to register as a warrantor or be
29 licensed under this Chapter to sell vehicle protection products.

30 **§ 58-92-20. Financial responsibility.**

31 No vehicle protection product shall be sold or offered for sale in this State unless the
32 warrantor meets one of the following conditions in order to ensure adequate
33 performance under the warranty:

- 34 **(1)** The vehicle protection product warrantor is insured under a warranty
35 reimbursement insurance policy issued by an insurer authorized to do
36 business in this State which provides all of the following:
- 37 a. The insurer shall pay to, or on behalf of, the warrantor one
38 hundred percent (100%) of all sums that the warrantor is legally
39 obligated to pay according to the warrantor's contractual
40 obligations under the warrantor's vehicle protection product
41 warranty.
- 42 b. A true and correct copy of the warranty reimbursement
43 insurance policy has been filed with the Commissioner by the
44 warrantor.

1 c. The policy complies with G.S. 58-92-25.

2 (2) The vehicle protection product warrantor, or its parent company,
3 maintains a net worth of fifty million dollars (\$50,000,000), and the
4 warrantor provides the Commissioner with a copy of the warrantor's or
5 the warrantor's parent company's most recent Form 10-K or Form 20-F
6 filed with the Securities and Exchange Commission within the last
7 calendar year or, if the warrantor does not file with the Securities and
8 Exchange Commission, a copy of the warrantor's or the warrantor's
9 parent company's audited financial statements that shows a net worth
10 of the warrantor or its parent company of at least fifty million dollars
11 (\$50,000,000). If the warrantor's parent company's Form 10-K, Form
12 20-F, or audited financial statements are filed to meet the warrantor's
13 financial stability requirement, then the parent company shall agree to
14 guarantee the obligations of the warrantor relating to warranties issued
15 by the warrantor in this State.

16 (3) The Commissioner may require a warrantor to make a deposit for the
17 protection of warranty holders, which deposit shall be subject to
18 Article 5 of this Chapter.

19 No other financial security requirements or financial standards for warrantors shall
20 be required.

21 **"§ 58-92-25. Warranty reimbursement policy requirements.**

22 No warranty reimbursement insurance policy shall be issued, sold, or offered for sale
23 in this State, unless the policy meets all of the following conditions:

24 (1) The policy states that the issuer of the policy will reimburse or pay on
25 behalf of the vehicle protection product warrantor all covered sums
26 which the warrantor is legally obligated to pay or will provide all
27 service that the warrantor is legally obligated to perform according to
28 the warrantor's contractual obligations under the provisions of the
29 insured warranties issued by the warrantor.

30 (2) The policy states that in the event payment due under the terms of the
31 warranty is not provided by the warrantor within 60 days after proof of
32 loss has been filed according to the terms of the warranty by the
33 warranty holder, the warranty holder may file directly with the
34 warranty reimbursement insurance company for reimbursement.

35 (3) The policy provides that a warranty reimbursement insurance company
36 that insures a warranty shall be deemed to have received payment of
37 the premium if the warranty holder paid for the vehicle protection
38 product and the insurer's liability under the policy shall not be reduced
39 or relieved by a failure of the warrantor, for any reason, to report the
40 issuance of a warranty to the insurer.

41 (4) The policy has the following provisions regarding cancellation of the
42 policy:

43 a. The issuer of a reimbursement insurance policy shall not cancel
44 the policy until a notice of cancellation in writing has been

1 mailed or delivered to the Commissioner and each insured
2 warrantor.

3 b. The cancellation of a reimbursement insurance policy shall not
4 reduce the issuer's responsibility for vehicle protection products
5 sold prior to the date of cancellation.

6 c. In the event an insurer cancels a policy that a warrantor has
7 filed with the Commissioner, the warrantor shall do either of the
8 following:

9 1. File a copy of a new policy with the Commissioner,
10 before the termination of the prior policy, providing no
11 lapse in coverage following the termination of the prior
12 policy.

13 2. Discontinue acting as a warrantor as of the termination
14 date of the policy until a new policy becomes effective
15 and is accepted by the Commissioner.

16 (5) The policy and the premium rates for the policy have been filed with
17 and approved by the Commissioner.

18 **"§ 58-92-30. Disclosure to warranty holder.**

19 Every vehicle protection product warranty shall be written in clear, understandable
20 language, shall be printed or typed in easy-to-read type, size, and style, and shall not be
21 sold or offered for sale in this State unless the warranty complies with all of the
22 following requirements:

23 (1) The warranty conspicuously states that the obligations of the warrantor
24 to the warranty holder are guaranteed under a warranty reimbursement
25 insurance policy if the warrantor elects to meet its financial
26 responsibility obligations under G.S. 58-92-20(1), or states that the
27 obligations of the warrantor under this warranty are backed by the full
28 faith and credit of the warrantor if the warrantor elects to meet its
29 financial responsibility obligations under G.S. 58-92-20(2).

30 (2) The warranty conspicuously states that in the event a warranty holder
31 must make a claim against a party other than the warranty
32 reimbursement insurance policy issuer, the warranty holder is entitled
33 to make a direct claim against the insurer upon the failure of the
34 warrantor to pay any claim or meet any obligation under the terms of
35 the warranty within 60 days after proof of loss has been filed with the
36 warrantor, if the warrantor elects to meet its financial responsibility
37 obligations under G.S. 58-92-20(1).

38 (3) The warranty states the name and address of the issuer of the warranty
39 reimbursement insurance policy, and this information need not be
40 preprinted on the warranty form but may be added to or stamped on
41 the warranty, if the warrantor elects to meet its financial responsibility
42 obligations under G.S. 58-92-20(1).

43 (4) The warranty identifies the warrantor, the seller, and the warranty
44 holder.

- 1 (5) The warranty sets forth the total purchase price and the terms under
2 which it is to be paid; however, the purchase price is not required to be
3 preprinted on the vehicle protection product warranty and may be
4 negotiated with the consumer at the time of sale.
- 5 (6) The warranty sets forth the procedure for making a claim, including a
6 telephone number.
- 7 (7) The warranty specifies the payments or performance to be provided
8 under the warranty including payments for incidental costs, the manner
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10 limitations, exceptions, or exclusions.
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13 vehicle, the obligation to notify the warrantor in advance of any repair,
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16 transferability of the warranty, if any, and cancellation.
- 17 (10) The warranty contains a disclosure that reads substantially as follows:
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24 or surety business or deceptively similar to the name or description of any insurance or
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26 use the term "guaranty" or similar word in the warrantor's name.

27 (b) A vehicle protection product seller or warrantor shall not require as a
28 condition of financing that a retail purchaser of a motor vehicle purchase a vehicle
29 protection product.

30 (c) Vehicle protection product warrantors and their administrators shall be
31 subject to Article 63 of this Chapter.

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33 (a) All vehicle protection product warrantors shall keep accurate accounts,
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39 (3) The dates, amounts, and descriptions of all receipts, claims, and
40 expenditures.

41 (c) A vehicle protection product warrantor shall retain all required accounts,
42 books, and records pertaining to each warranty holder for at least two years after the
43 specified period of coverage has expired. A warrantor discontinuing business in this

1 State shall maintain its records until it furnishes the Commissioner satisfactory proof
2 that it has discharged all obligations to warranty holders in this State.

3 (d) Vehicle protection product warrantors shall make all accounts, books, and
4 records concerning transactions regulated under this act available to the Commissioner
5 for examination.

6 (e) Vehicle protection product warrantors and their administrators shall be
7 subject to the same provisions of Article 2 of this Chapter that apply to insurance
8 companies.

9 **"§ 58-92-45 Rule-making power.**

10 The Commissioner may adopt rules consistent with the provisions of this Article that
11 are necessary to implement this Article. The rules shall include disclosures for the
12 benefit of the warranty holder, record keeping, and procedures for public complaints.
13 The rules shall also include the conditions under which surplus lines insurers may be
14 rejected for the purpose of underwriting vehicle protection product warranty
15 agreements."

16 **SECTION 2.** G.S. 58-6-25(d) reads as rewritten:

17 "(d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State
18 treasury, under the control of the Office of State Budget and Management. The proceeds
19 of the charge levied in this section and all fees collected under Articles 69 through 71
20 and Article 92 of this Chapter and under Articles 9 and 9C of Chapter 143 of the
21 General Statutes shall be credited to the Fund. The Fund shall be placed in an
22 interest-bearing account and any interest or other income derived from the Fund shall be
23 credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation
24 by the General Assembly and in accordance with the line item budget enacted by the
25 General Assembly. The Fund is subject to the provisions of the Executive Budget Act,
26 except that no unexpended surplus of the Fund shall revert to the General Fund. All
27 money credited to the Fund shall be used to reimburse the General Fund for the
28 following:

29 ...

30 (10) Money appropriated to the Department to pay its expenses incurred in
31 regulating vehicle protection product warrantors and administrators
32 under Article 92 of this Chapter."

33 **SECTION 3.(a)** There is appropriated from the General Fund to the
34 Department of Insurance for fiscal year 2006-2007 the sum of two hundred thousand
35 dollars (\$200,000) for the regulation by the Department of vehicle protection product
36 warrantors and administrators under Article 92 of Chapter 58 of the General Statutes.

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38 created under G.S. 58-6-25 to the General Fund for fiscal year 2006-2007 the sum of
39 two hundred thousand dollars (\$200,000) for the regulation by the Department of
40 vehicle protection product warrantors and administrators under Article 92 of Chapter 58
41 of the General Statutes.

42 **SECTION 4.** Section 1 of this act becomes effective January 1, 2007, and
43 applies to contracts and agreements entered into on or after that date and to vehicle

1 protection products sold or offered for sale on or after that date. The remainder of this
2 act becomes effective July 1, 2006.

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 20, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Byfkin	ALLET ASSOC, INC.
Laura Busse	Busse's Lock Service
Wagner Goodson	DOE
Debra Hellier	Jimmy's Locksmith
James Hellier	Jimmy's Locksmith
Tom Long	NCOOT
SUSANNE STREIB	NORVA
Elizabeth Dutton	NORVA
Lee Hodge	KCLH
Frank Folger	HMW
John McKe	Gouomig

Senate Commerce Committee
Tuesday, June 27, 2006, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1388 Exclude Internet Sales/Auction Activities.

Representative Cole
Representative Gibson, III

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 27, 2006 at 11:00 AM
Room 1027, Legislative Building

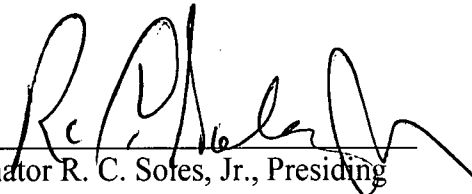
MINUTES

The Senate Commerce Committee met at 11:00 AM on June 27, 2006, in Room 1027 of the Legislative Building. Twelve members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages and thanked them for their assistance: Jessie Ammons from Wake Forest, sponsored by Senator Neal Hunt; Blake Clemmons from New Bern, sponsored by Senator Pete Bland; Jackson Vickery from Chapel Hill, sponsored by Senator Ellie Kinnaird; Andy Fisher from Wake Forest, sponsored by Senator Hunt; and C. B. Royster from Wendell, sponsored by Senator Charlie Dannelly.

Senator Soles recognized Senator Richard Stevens to present information about a proposed committee substitute for House Bill 1388, Exclude Internet Sales/Auction Activities. Senator Tom Apodaca moved adoption of the committee substitute. The motion carried. Mr. Bill Scoggin, representing Ocwen Financial Corporation, spoke in favor of the bill. Mr. Wayne Goodwin, Assistant Commissioner of the Department of Insurance, spoke in favor of the bill as it authorized the Department to do what it needs to do in regard to protecting consumers. Senator Apodaca moved an unfavorable report of the bill, but favorable as to the committee substitute bill with a recommended referral to the Finance Committee. The motion carried.

The meeting adjourned at 11:15 a.m.



Senator R. C. Soles, Jr., Presiding



Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Wednesday, June 28, 2006

Senator SOLES, JR.,
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) 1388	Exclude Internet Sales/Auction Activities.
	Draft Number: PCS50749
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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HOUSE BILL 1388

Committee Substitute Favorable 6/1/05

Short Title: Exclude Internet Sales/Auction Activities.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE INTERNET-BASED SALES FROM ACTIVITIES
REGULATED BY THE LAWS PERTAINING TO AUCTIONS AND
AUCTIONEERS.

The General Assembly of North Carolina enacts:

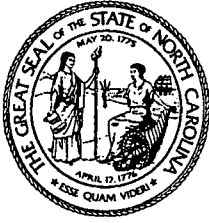
SECTION 1. G.S. 85B-2(a) is amended by adding the following new
subdivision to read:

"§ 85B-2. Activities governed by Chapter.

(a) This Chapter shall apply to all auctions held in this State except the
following:

...
(12) Sales of goods where there is only one initial offer for sale, the offers
to purchase are submitted automatically by electronic means, and
neither the seller, consignor, nor auctioneer have the discretion to
select from offers."

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



HOUSE BILL 1388: Debt Collection Licensing Changes.

BILL ANALYSIS

Committee:	Senate Commerce	Date:	June 26, 2006
Introduced by:	Reps. Gibson, Cole	Summary by:	Karen Cochrane-Brown Staff Attorney
Version:	PCS to Second Edition H1388-CSRO-59[v.3]		

SUMMARY: *The Proposed Committee Substitute for House Bill 1388 would authorize the Commissioner of Insurance to issue permits to debt collection businesses that are incorporated outside of the United States under certain circumstances.*

CURRENT LAW:

Under current law, debt collection agencies are required to obtain a permit from the Commissioner of Insurance before operating within the State. Operating a collection agency business without a permit is a Class I felony.

Before obtaining a permit, a collection agency must file a bond with the Commissioner in the amount of \$10,000 for the initial permit, and no less than \$10,000 nor more than \$75,000 for any renewal permit, based on the total amount of collections paid to the collection agency.

Although the current law allows the Commissioner to issue a permit to a foreign corporation, which is a corporation incorporated or organized in another state, the law does not authorize the Commissioner to issue a permit to a non-US corporation.

BILL ANALYSIS:

This bill authorizes the Commissioner to issue a collection agency permit to an alien, or non-US, corporation if the corporation is owned or majority controlled by a parent entity that is incorporated or organized in the United States, and the alien corporation can only service accounts held by an affiliate or subsidiary of the parent entity. The bill also requires that:

- The Department of Insurance be given notice if the alien corporation is sold.
- The alien corporation must file a bond of double the amount of a US corporation.
- The alien corporation must make records available to the Commissioner in North Carolina.
- The parent entity must agree to cure any violation committed by the alien corporation.
- Service of process on the parent entity is sufficient service of process on the alien corporation.
- The alien corporation must maintain a trust account with a bank located in the US or in a bank approved by the Commissioner.

EFFECTIVE DATE: This act becomes effective October 1, 2006.

H1388e2-SMRO-CSRO-59v3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1388

Committee Substitute Favorable 6/1/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1388-CSRO-59 [v.3]

6/26/2006 3:39:54 PM

Short Title: Debt Collection Licensing Changes.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ISSUE PERMITS TO ALIEN DEBT COLLECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-70-5 reads as rewritten:

"§ 58-70-5. Application to Commissioner for permit.

Any person, firm, corporation or association desiring to secure a permit as provided by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at which such person, firm, corporation or association desires to carry on the collection agency business as hereinafter defined. Such applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of the following:

(a) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if different;

(b) If the applicant is a corporation,

(1) A certified copy of the board of director's resolution authorizing the submission of the application;

(2) An authenticated copy of the Articles of Incorporation and all amendments thereto;

(3) An authenticated copy of the bylaws or other governing instruments;

(4) If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of State;

(b1) In addition to the information required by subsection (b) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For

1 purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien
2 corporation be sold to an entity unrelated to the parent entity, notice shall be provided to
3 the Department of the pending sale thirty days in advance of the sale. Provision of Form
4 8-K, properly filed with the Securities and Exchange Commission, shall be deemed
5 compliance with the notice requirement of this subsection. In the event of a sale, the
6 new parent entity shall provide evidence to the Department within thirty days of the sale
7 of its and the alien corporation's compliance with the requirements of this section. In the
8 event that the new parent entity does not provide the evidence within thirty days after
9 the sale, the alien corporation's permit shall be automatically suspended until the
10 Department is provided the evidence of compliance which is satisfactory to the
11 Commissioner;"

12 (c) If the applicant is a partnership, an authenticated copy of the then current
13 partnership agreement;

14 (d) If the trade name is used, certificates showing that the trade name has been
15 filed as required by G.S. 66-68;

16 (e) A surety bond as required by ~~G.S. 58-70-20~~; G.S. 58-70-20. In the case of an
17 alien corporation, the surety bond requirements shall be double the amount set by G.S.
18 58-70-20;

19 (f) A completed statement by each stockholder owning ten percent (10%) or
20 more of the applicant's outstanding voting stock and each partner, director, and officer
21 actively engaged in the collection agency business, containing: the name of the
22 collection agency, the name and address of the individual completing the form, the
23 positions held by the individual, each conviction of any criminal offense and any
24 criminal charges pending other than minor traffic violations of the individual, and the
25 name and address of three people not related to the individual who can attest to the
26 individual's reputation for honesty and fair dealings;

27 (g) A statement sworn to by an appropriate corporate officer, partner, or
28 individual proprietor giving a description of the collection method to be employed in
29 North Carolina;

30 (h) A statement certifying that there are no unsatisfied judgments against the
31 applicant;

32 (i) A list of all telephone numbers assigned to, or to be used by the applicant in
33 the operation of the collection agency;

34 (j) The appropriate permit fee as required by G.S. 58-70-35;

35 (k) A balance sheet as of the last day of the month prior to the date of submission
36 of the application, certified true and correct by a corporate officer, partner, or proprietor,
37 setting forth the current assets, fixed assets, current liabilities and positive net worth of
38 the applicant;

39 (l) The address of the location at which the applicant will make those records of
40 its collection agency business described in G.S. 58-70-25 available for inspection by the
41 Commissioner of Insurance.

42 (m) A statement certifying that no officer, individual proprietor or partner of the
43 applicant has been convicted of a felony involving moral turpitude, or any violation of
44 any State or federal debt collection law.

1 (n) If the collection agency's office or records, as described in G.S. 58-70-25, are
2 located outside of North Carolina, a statement sworn to by an appropriate corporate
3 officer, partner, or individual proprietor consenting to and authorizing the
4 reimbursement, to the Commissioner by the collection agency, of expenses incurred by
5 the Commissioner in conducting routine examinations, audits, and in investigating
6 written complaints against the collection agency or its employees. All reimbursements
7 shall be paid to the Commissioner no more than 30 days after the date of billing. In the
8 case of an alien corporation, the sworn statement must provide that the corporation will
9 make available to the Commissioner for his inspection, in North Carolina, those records
10 described in G.S. 58-70-25, at the expense of the corporation;

11 (o) If the applicant is a foreign corporation, a statement authorizing the
12 Commissioner to be its agent for service of process, which shall be administered
13 pursuant to the provisions of G.S. 58-16-30.

14 (p) In the case of an alien corporation, when the corporation is in violation of this
15 Article, the parent entity must agree to cure the violation by the alien corporation.

16 (q) For purposes of this Article, the following definitions apply:

17 (1) "Alien corporation" means a company incorporated or organized under
18 the laws of any jurisdiction outside of the United States.

19 (2) "Foreign corporation" means a company incorporated or organized
20 under the laws of the United States or of any jurisdiction within the
21 United States other than this State."

22 **SECTION 2.** G.S. 58-70-40 is amended by adding a new subsection to read:

23 "(d) In the case of an alien corporation that has been issued a permit under this
24 Article, in an action brought by the Commissioner, service of process upon the parent
25 entity is sufficient service of process on the alien corporation."

26 **SECTION 3.** G.S. 58-70-65(c) reads as rewritten:

27 (c) Each permit holder located outside this State shall deposit in a separate trust
28 account, designated for its North Carolina creditors, funds to pay all monies due or
29 owing all collection creditors or forwarders located within this State. In the case of alien
30 corporations that are permit holders, the trust account must be established with a bank
31 located in the United States or in any bank approved by the Commissioner."

32 **SECTION 4.** This act becomes effective October 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1388
Committee Substitute Favorable 6/1/05
PROPOSED SENATE COMMITTEE SUBSTITUTE H1388-PCS50749-RO-59

Short Title: Debt Collection Licensing Changes.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

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PERMITS TO ALIEN DEBT COLLECTORS.

The General Assembly of North Carolina enacts:

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(a) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if different;

(b) If the applicant is a corporation,

(1) A certified copy of the board of director's resolution authorizing the submission of the application;

(2) An authenticated copy of the Articles of Incorporation and all amendments thereto;

(3) An authenticated copy of the bylaws or other governing instruments;

(4) If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of State;

(b1) In addition to the information required by subsection (b) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For

1 purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien
2 corporation be sold to an entity unrelated to the parent entity, notice shall be provided to
3 the Department of the pending sale 30 days in advance of the sale. Provision of Form
4 8-K, properly filed with the Securities and Exchange Commission, shall be deemed
5 compliance with the notice requirement of this subsection. In the event of a sale, the
6 new parent entity shall provide evidence to the Department within 30 days of the sale of
7 its and the alien corporation's compliance with the requirements of this section. In the
8 event that the new parent entity does not provide the evidence within 30 days after the
9 sale, the alien corporation's permit shall be automatically suspended until the
10 Department is provided the evidence of compliance which is satisfactory to the
11 Commissioner:

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13 partnership agreement;

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15 filed as required by G.S. 66-68;

16 (e) A surety bond as required by ~~G.S. 58-70-20~~; G.S. 58-70-20. In the case of an
17 alien corporation, the surety bond requirements shall be double the amount set by
18 G.S. 58-70-20;

19 (f) A completed statement by each stockholder owning ten percent (10%) or
20 more of the applicant's outstanding voting stock and each partner, director, and officer
21 actively engaged in the collection agency business, containing: the name of the
22 collection agency, the name and address of the individual completing the form, the
23 positions held by the individual, each conviction of any criminal offense and any
24 criminal charges pending other than minor traffic violations of the individual, and the
25 name and address of three people not related to the individual who can attest to the
26 individual's reputation for honesty and fair dealings;

27 (g) A statement sworn to by an appropriate corporate officer, partner, or
28 individual proprietor giving a description of the collection method to be employed in
29 North Carolina;

30 (h) A statement certifying that there are no unsatisfied judgments against the
31 applicant;

32 (i) A list of all telephone numbers assigned to, or to be used by the applicant in
33 the operation of the collection agency;

34 (j) The appropriate permit fee as required by G.S. 58-70-35;

35 (k) A balance sheet as of the last day of the month prior to the date of submission
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37 setting forth the current assets, fixed assets, current liabilities and positive net worth of
38 the applicant;

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3 officer, partner, or individual proprietor consenting to and authorizing the
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6 written complaints against the collection agency or its employees. All reimbursements
7 shall be paid to the Commissioner no more than 30 days after the date of billing. In the
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9 make available to the Commissioner for his inspection, in North Carolina, those records
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28 account, designated for its North Carolina creditors, funds to pay all monies due or
29 owing all collection creditors or forwarders located within this State. In the case of alien
30 corporations that are permit holders, the trust account must be established with a bank
31 located in the United States or in any bank approved by the Commissioner."

32 **SECTION 4.** This act becomes effective October 1, 2006.

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 27, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Mark Towler	Donald Beaman Tutor
Paige O'Hale	Gov's office
PATRICK BUFFKIN	ALLEY ASSOC
Elizabeth Dalton	NCRMA
Kathleen Edwards	UNC-CH Daily Bulletin
Adam Keith	Sen Doug Berger - Intern
JOUKE POTZ	CIVITAS INSTITUTE
Brian Raladge	North Carolina Family Policy Council
Stephanie Evans	NC Family Policy Council
John RA	NCFPC
PAUL	N.A.L.E

**Senate Commerce Committee
Thursday, June 29, 2006, 9:00 AM
1027 LB**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1834	DOT Perf.-Based Maintenance Contract Bonds.	Representative Cole
HB 1835	DOT Contract Provision Changes.	Representative Cole
HB 2883	Service Members and Veterans/ID Theft.	Representative Goforth

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, June 29, 2006 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 AM on June 29, 2006, in Room 1027 of the Legislative Building. Thirteen members of the committee were present. Senator R.C. Soles, Jr., presided.


Senator Soles introduced the pages and thanked them for their assistance: Preston Knowles from Reidsville, sponsored by Senator Phil Berger; Shannon Brooks and Jasmine Brooks from Knightdale, sponsored by Senator Vernon Malone; Nicholas Johnson and Matthew Stewart from Greensboro, sponsored by Senator Kay Hagan; and Blake Clemmons from New Bern, sponsored by Senator Pete Bland.

Senator Soles recognized Senator Clark Jenkins to explain House Bill 1834, DOT Perf.-Based Maintenance Contract Bonds. Senator Richard Stevens moved a favorable report of the bill. The motion carried.

Senator Soles next recognized Senator Clark Jenkins to explain House Bill 1835, DOT Contract Provision Changes. Senator Tom Apodaca moved a favorable report of the bill. The motion carried.

Senator Soles next recognized Representative Bruce Goforth to explain House Bill 2883, Service Members and Veterans/ID Theft. Mr. Andy Ellen, representing the three Credit Bureaus spoke in favor of the bill with the exception of one provision. The Credit Bureaus want to be relieved of providing free credit freezes when the Veterans Administration puts the program of credit monitoring in place. Mr. Greg McLeod, representing the Attorney General's Office, spoke in favor of the bill as is, and said the Attorney General would like to see the provisions of the bill extended to July 1, 2007. He said the credit freeze protects consumers from identification theft while the monitoring makes a person aware after there has been an unauthorized use of a person's identity to get credit. Mr. Charlie Smith, Director of Veterans Affairs for the State of North Carolina, spoke in favor of the bill as it is. Mr. Walker Reagan, Counsel to the Committee, explained the difference between the current law and the proposed change. Mr. Josh Stein, Consumer Protection Division of the Attorney General's Office, spoke in favor of maintaining credit freezes as opposed to credit monitoring. Mr. Rob Thompson, representing the NC Public Interest Research Group, spoke in favor of the bill as is. Senator Berger said he wanted to prepare an amendment to the bill to address some of the concerns of the committee. Senator Soles pulled the bill from consideration to allow work to be done on it prior to its being voted on.

The meeting adjourned at 9:40 a.m.



Senator R. C. Soles, Jr., Presiding



Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Thursday, June 29, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.	1834	DOT Perf.-Based Maintenance Contract Bonds.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	1835	DOT Contract Provision Changes.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1834*

Short Title: DOT Perf.-Based Maintenance Contract Bonds.

(Public)

Sponsors: Representative Cole.

Referred to: Transportation.

May 10, 2006

A BILL TO BE ENTITLED

1 AN ACT TO CHANGE THE BONDING REQUIREMENTS FOR UP TO TWO
2 DEPARTMENT OF TRANSPORTATION PERFORMANCE-BASED
3 CONTRACTS FOR ROUTINE MAINTENANCE AND OPERATIONS, AS
4 RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION
5 OVERSIGHT COMMITTEE.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Section 28.10 of S.L. 2005-276 reads as rewritten:

9 "**SECTION 28.10.(a)** The Department of Transportation may implement up to two
10 performance-based contracts for routine maintenance and operations, exclusive of
11 resurfacing. Selection of firms to perform this work shall be made using a best-value
12 procurement process.

13 Prior to any advertisement for a proposed project, the Department shall report to the
14 Joint Legislative Transportation Oversight Committee on the contractor selection
15 criteria to be used.

16 "**SECTION 28.10.(b)** For contracts authorized under this section, notwithstanding
17 G.S. 44A-26(a)(1) and (a)(2), the Department of Transportation may require the bonds
18 issued pursuant to Article 3 of Chapter 44A of the General Statutes for public
19 construction to be provided on a periodic basis and in the amount to cover that specific
20 period rather than for the entire project duration."

21 **SECTION 2.** This act becomes effective July 1, 2006.



HOUSE BILL 1834: DOT Perf.-Based Maintenance Contract Bonds

BILL ANALYSIS

Committee: Senate Commerce	Date: June 29, 2006
Introduced by: Rep. Cole	Summary by: Wendy Graf Ray
Version: First Edition	Committee Counsel

SUMMARY: *House Bill 1834 changes the bonding requirements for up to two DOT performance-based contracts authorized by the 2005 Appropriations Act.*

[As introduced, this bill is identical to S1384, introduced by Sen. Jenkins, which is currently in Senate Commerce.]

CURRENT LAW: Section 28.10 of S.L. 2005-276 (2005 Appropriations Act) authorized the Department of Transportation to implement up to two performance-based contracts for routine maintenance and operations.

Article 3 of Chapter 44A of the General Statutes requires performance and payment bonds in the amount of 100% of the construction contract amount from contractors entering into construction contracts with the State when the total amount of construction contracts awarded for a project exceeds \$300,000 and the contract with the contractor exceeds \$50,000.

BILL ANALYSIS: House Bill 1834 would change the bonding requirements for the two performance-based contracts for maintenance that were authorized by the 2005 Appropriations Act. For those contracts, the Department would be authorized to require bonds to be provided on a periodic basis and only in the amount to cover that specific period, rather than the entire project duration.

EFFECTIVE DATE: The bill would become effective July 1, 2006.

BACKGROUND: House Bill 1834 is a recommendation of the Joint Legislative Transportation Oversight Committee.

H1834e1-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1835*

Short Title: DOT Contract Provision Changes.

(Public)

Sponsors: Representative Cole.

Referred to: Transportation.

May 10, 2006

A BILL TO BE ENTITLED

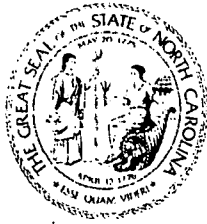
AN ACT TO AUTHORIZE THE BOARD OF TRANSPORTATION TO APPROVE STANDARD DEPARTMENT OF TRANSPORTATION CONTRACT PROVISIONS ON DIFFERING SITE CONDITIONS, SUSPENSIONS OF WORK, AND CHANGES IN CHARACTER OF WORK, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.1(a) reads as rewritten:

"(a) All contracts over one million two hundred thousand dollars (\$1,200,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and ~~23 C.F.R. § 635.131(a)~~ 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions ~~provided in~~ for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted Transportation and approved by the Board of Transportation in accordance with the Administrative Procedure Act. Transportation."

SECTION 2. This act becomes effective July 1, 2006.



HOUSE BILL 1835: DOT Contract Provision Changes

BILL ANALYSIS

Committee:	Senate Commerce	Date:	June 29, 2006
Introduced by:	Rep. Cole	Summary by:	Wendy Graf Ray Committee Counsel
Version:	First Edition		

SUMMARY: *House Bill 1835 would change the source of the alternative contract provisions used by DOT to provisions developed by NC DOT and approved by the Board of Transportation.*

[As introduced, this bill is identical to S1383, as introduced by Sen. Jenkins, which is currently in Senate Judiciary I.]

CURRENT LAW: Under current federal law (23 C.F.R. § 635.109), DOT is authorized to use alternative contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work, if the alternative contract provisions are required by State law. Current State law specifies that DOT use alternate contracting provisions found in the North Carolina Department of Transportation Standard Specifications for Roads and Structures dated January 1, 1984, unless the alternative contracting provisions are changed by rule.

BILL ANALYSIS: House Bill 1835 would amend current law governing use of alternate contract provisions in DOT contracts. Section 1 of the bill would modify the State law requirement to use alternate contract provisions in two ways:

- by correcting a federal Code reference, and
- by changing the source of the alternative contract provisions to provisions developed by NC DOT and approved by the Board of Transportation.

EFFECTIVE DATE: The bill would become effective July 1, 2006.

BACKGROUND: House Bill 1835 is a recommendation of the Joint Legislative Transportation Oversight Committee.

Giles Perry, counsel to the House Transportation Committee, substantially contributed to this summary.

H1835e1-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

2

HOUSE BILL 2883
Committee Substitute Favorable 6/21/06

Short Title: Servicemembers and Veterans/ID Theft.

(Public)

Sponsors:

Referred to:

June 19, 2006

A BILL TO BE ENTITLED

AN ACT TO PROTECT MILITARY SERVICEMEMBERS AND VETERANS FROM
IDENTITY THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-63(o) reads as rewritten:

"(o) This section does not prevent a consumer reporting agency from charging a fee of no more than ten dollars (\$10.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a consumer credit report, except that a consumer reporting agency may not charge any fee to

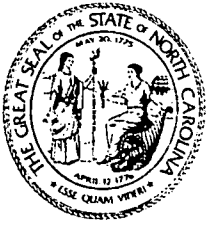
(1) ~~a~~ A victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another ~~person-person, or~~

(2) A veteran as defined in G.S. 126-81, a member of the Armed Forces of the United States, as defined in G.S. 165-20, including a member of the North Carolina National Guard, who has received notification from the United States Department of Veterans Affairs indicating that their information is, or may, be included in the information involved in the Department's data breach, first announced on May 22, 2006; provided, however, that the application for a freeze includes the notification and also proof of status as described in this subdivision, or

(3) Persons who are the authorized agents, or receive benefits from the State or federal government based on a relationship to a person who is, or was, qualified under subdivision (2) of this subsection."

SECTION 2. Until and including July 1, 2007, there shall be no fee charged by a consumer reporting agency for the removal of a security freeze by persons who, prior to the expiration date set forth in Section 3 of this act, placed a freeze under G.S. 75-63(o)(2) and G.S. 75-63(o)(3), as set forth in Section 1 of this act.

1 **SECTION 3.** This act is effective when it becomes law. Section 1 of this act
2 shall expire on January 1, 2007, or upon public announcement by the United States
3 Department of Veteran Affairs that it will pay for a security freeze for consumer credit
4 reports for persons eligible under G.S. 75-63(o)(2) and G.S. 75-63(o)(3), whichever
5 event occurs first.



HOUSE BILL 2883: Servicemembers and Veterans/ID Theft

BILL ANALYSIS

Committee:	Senate Commerce	Date:	June 29, 2006
Introduced by:	Rep. Goforth	Summary by:	O. Walker Reagan
Version:	Second Edition		Committee Co-Counsel
	H2883-ARU-95		

SUMMARY: *The Senate Proposed Committee Substitute for House Bill 2883 prohibits a consumer reporting agency from charging a fee to a veteran for a freeze of a consumer credit report, removal of a freeze, or temporary lifting of a freeze for a period of time.*

CURRENT LAW: G.S. 75-63(o) allows a consumer reporting agency to charge a fee of no more than \$10.00 to a consumer with regard to access to a consumer credit report for each of the following:

- Credit report freeze,
- Removal of a credit report freeze.
- A temporary lifting of a credit report freeze for a period of time.

Currently no fee may be charged when a victim of identity theft submits a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

38 U.S.C. §101(2) defines the term "veteran" as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

BILL ANALYSIS: The Proposed Senate Committee Substitute for House Bill 2883 amends G.S. 75-63(o) to allow veterans an exception to the charge for a freeze, removal of a freeze, or temporary lifting of a freeze for a period of time, regarding access to a consumer credit report, when the veteran was subject to a data breach by the US Department of Veteran Affairs, first announce on May 22, 2006. The bill would also allow the spouses and other persons who receive State or federal benefits based on their association with the veteran to also have the applicable credit freeze fees waived if the veteran did or could have qualified.

For purposes of this bill a "veteran" is defined to include a former or current member of the US armed forces or a NC National Guard member.

This bill would become effective when it becomes law and expires on January 1, 2007, except that persons who have had their credit reports frozen under this act on or before January 1, 2007, may also have the freeze removed without charge up to and including July 1, 2007.

BACKGROUND:

The following is information released by the federal government regarding the data that was stolen:

- Working with the Department of Defense, the Veterans Administration has determined that the data stolen on 26.5 million individuals included information on active-duty military personnel. Initially, it was thought that approximately 50,000 active duty, National Guard, and Reserve personnel might have been involved.
- The data loss potentially affects all veterans who have ever filed a claim for VA disability compensation, pension, or education benefits, or who have (or had) a VA insurance policy – no matter when the claim was filed or when they were discharged. These veterans would be included even if their claim was denied or they are not currently receiving benefits.

Theresa Matula, Committee Staff to the House Military, Veterans and Indian Affairs Committee, substantially contributed to this summary.

H2883c2-SMRU-ARU-95

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 29, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Pam Meyer	NCACC
Lydia Varn	NCACC
Charlie Smith	NC Veterans Affairs
Greg McLeod	NC ABO
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
Zohary	Aling Assoc
P. Buffen	" "
KATHY HAWKINS	PROGRESS ENERGY
LESLIE ALLEN	PROGRESS ENERGY
GINGER DUNCAN	PROGRESS ENERGY
Rob Thompson	NCFIRE

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 29, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Victor Berbour	NCDOT
Lisa Martin	NL Home Builders
Kathleen Edwards	UNC-CH Daily Bulletin
Lee Holz	KCLIF
Steve Warden	FB
AMY SIMES	DENR
Johanna Reese	DOT
STEVE VARNEDOE	NCDOT
BERRY JENKINS	CAROLINA ABC
Chris Brown	CAPH
Paul Stal	NCBA
Josh Stein	AG's office

VISITOR REGISTRATION SHEET

Senate Commerce Committee

June 29, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
<i>John [Signature]</i>	<i>Pro & Assoc</i>
<i>Frank Gray</i>	NCPA
<i>Samuel Sand</i>	WCSA
<i>M. Pearson</i>	<i>Capitol Group</i>
<i>Wash Kelly</i>	gov office
<i>Cathy Wiggins</i>	Gov's office
<i>John Peter</i>	NCEDA
<i>Julie Burkay Comm</i>	<i>Capitol</i>
<i>Mari [Signature]</i>	NCSA
<i>Ether [Signature]</i>	<i>Electric Files</i>
<i>Anonymous [Signature]</i>	none
<i>Sandra Long K. Wight</i>	<i>Maria Mercedes Materials BLSN</i>

**Senate Commerce Committee
Friday, July 7, 2006, 9:00 AM
1027 LB**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1291	Eliminate Continuing Ed. Req's./Locksmiths.	Representative Allred
HB 1399	Various Transportation/M.V. Law Changes.	Representative Jones Representative Crawford, Jr. Representative Allen Representative Wray
HB 1987	Health Plans/Changes to Basic and Std.	Representative Underhill Representative Holliman
HB 2174	Raise Minimum Wage.	Representative Adams Representative Jones Representative Harrell, III
HB 2883	Service Members and Veterans/ID Theft.	Representative Goforth

Other Business

Adjournment

SENATE COMMERCE COMMITTEE

Friday, July 7, 2006 at 9:00 a.m.

Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 a.m. on July 7, 2006, in Room 1027 of the Legislative Building. Twenty-one members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages and thanked them for their assistance: Kaitlin Frey, Chancey Rouse, Samantha Rouse, Ashley Rouse and Katherine Brown from Raleigh, sponsored by Senator Neal Hunt; and Laura LeBlanc also from Raleigh, sponsored by Senator Janet Cowell.

Senator Soles recognized Senator Eddie Goodall to present a new proposed committee substitute for House Bill 1291, Eliminate Continuing Ed. Req's./Locksmiths. Senator Richard Stevens moved adoption of the committee substitute to replace the substitute that had been adopted at a previous meeting. The motion carried. Mr. Robert Brooks, representing the North Carolina Board of Certified Public Accountant Examiners, spoke in favor of the provisions of the bill. Senator Goodall moved for an unfavorable report of the original bill, but favorable as to the committee substitute adopted today. The motion carried.


Senator Soles next recognized Representative Nelson Cole to explain House Bill 1399, Various Transportation/M.V. Law Changes. Senator Tony Rand moved a favorable report of the bill. The motion carried.

Senator Soles next recognized Senator John Snow to present House Bill 2883, Service Members and Veterans/ID Theft. Senator Tom Apodaca moved the adoption of a proposed committee substitute. The motion carried. Mr. Walker Reagan, Counsel to the Committee, explained the differences between the original bill and the proposed committee substitute. Senator Apodaca moved an unfavorable report of the original bill, but favorable as to the committee substitute. The motion carried.

Senator Soles recognized Representative Alice Underhill to present House Bill 1987, Health Plans/Changes to Basic and Std. Ms. Barbara Morales Burke, Chief Deputy Commissioner of the Department of Insurance, explained the bill. Senator Rand sent forth an amendment and moved its adoption. The motion carried. Senator Rand then moved that the bill as amended be given a favorable report and be rolled into a committee substitute. The motion carried.

Senator Soles recognized Representative Alma Adams to present House Bill 2174, Raise Minimum Wage. Senator Rand moved adoption of a proposed committee substitute. Mr. Tim Hovis, Counsel to the Committee, explained the provisions of the substitute bill. Mr. Jim Taylor, Administrator of the Wage and Hour Bureau, Department of Labor, explained current law. Reverend William Barber, who was asked by Senator John Kerr to comment on the substitute bill, spoke in favor of the bill as originally presented to the committee. Senator Martin Nesbitt, who had voted with the majority in adopting the committee substitute, moved to reconsider the vote by which the committee substitute was adopted. The motion failed. Senator Rand moved an unfavorable report of the bill, but favorable as to the committee substitute. The motion carried. Representative Adams requested an opportunity to speak following the vote and voiced her disappointment that the original bill would not be reported from the committee.

The meeting adjourned at 9:45 a.m.



Senator R. C. Soles, Jr., Presiding



Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Friday, July 07, 2006

Senator SOLES, JR.,
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) 1987	Health Plans/Changes to Basic and Std.	
	Draft Number:	PCS70796
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Friday, July 07, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

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

H.B.	1291	Eliminate Continuing Ed. Req's./Locksmiths.	
		Draft Number:	PCS80675
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE
AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)	2883	Service Members and Veterans/ID Theft.	
		Draft Number:	PCS10641
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

CORRECTED REPORT

Friday, July 07, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) 1399	Various Transportation/M.V. Law Changes.		
	Sequential Referral:		None
	Recommended Referral:		None
H.B. 2174	Raise Minimum Wage.		
	Sequential Referral:		None
	Recommended Referral:		None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1291

Short Title: Eliminate Continuing Ed. Req's./Locksmiths.

(Public)

Sponsors: Representatives Allred (By Request); and Sauls.

Referred to: Ways and Means.

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE CONTINUING EDUCATION REQUIREMENTS FOR
LOCKSMITHS UNDER THE NORTH CAROLINA LOCKSMITH LICENSING
ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74F-6 reads as rewritten:

"§ 74F-6. Powers of the Board.

The Board shall have the power and duty to:

- (1) Administer and enforce the provisions of this Chapter.
- (2) Adopt rules as may be necessary to carry out the provisions of this Chapter.
- (3) Examine and determine the qualifications and fitness of applicants for licensure and renewal of licensure.
- (4) Issue, renew, deny, suspend, or revoke licenses or apprenticeship designations and conduct any disciplinary actions authorized by this Chapter.
- (5) Set fees as provided in G.S. 74F-9.
- ~~(6) Establish and approve continuing education requirements for persons licensed under this Chapter.~~
- (7) Receive and investigate complaints from members of the public.
- (8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining licensees exist.
- (9) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
- (10) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.
- (11) Maintain a list of the names and addresses of all persons licensed by the Board.

- 1 (12) Employ and fix the compensation of personnel that the Board
- 2 determines is necessary to carry out the provisions of this Chapter and
- 3 incur other expenses necessary to perform the duties of the Board.
- 4 (13) Adopt and publish a code of ethics.
- 5 (14) Adopt a seal containing the name of the Board for use on all licenses
- 6 and official reports issued by the Board.
- 7 (15) Employ an attorney to assist or represent the Board in enforcing this
- 8 Chapter.
- 9 (16) Request that the Department of Justice conduct criminal history record
- 10 checks of applicants for licensure and apprenticeships pursuant to
- 11 G.S. 114-19.15."

12 **SECTION 2.** No person licensed pursuant to the North Carolina Locksmith
13 Licensing Act shall be required to complete continuing education to maintain a license
14 under the Act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1291
PROPOSED SENATE COMMITTEE SUBSTITUTE H1291-CSRU-85 [v.2]

6/16/2006 5:22:48 PM

Short Title: Elim. Locksmith Cont.Ed. Req's/Amend CPA Law. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE CONTINUING EDUCATION REQUIREMENTS FOR
LOCKSMITHS UNDER THE NORTH CAROLINA LOCKSMITH LICENSING
ACT AND TO INCREASE THE PENALTY FOR VIOLATING CERTAIN LAWS
REGULATING CERTIFIED PUBLIC ACCOUNTANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74F-6 reads as rewritten:

"§ 74F-6. Powers of the Board.

The Board shall have the power and duty to:

- (1) Administer and enforce the provisions of this Chapter.
- (2) Adopt rules as may be necessary to carry out the provisions of this Chapter.
- (3) Examine and determine the qualifications and fitness of applicants for licensure and renewal of licensure.
- (4) Issue, renew, deny, suspend, or revoke licenses or apprenticeship designations and conduct any disciplinary actions authorized by this Chapter.
- (5) Set fees as provided in G.S. 74F-9.
- ~~(6) Establish and approve continuing education requirements for persons licensed under this Chapter.~~
- (7) Receive and investigate complaints from members of the public.
- (8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining licensees exist.
- (9) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
- (10) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.

- 1 (11) Maintain a list of the names and addresses of all persons licensed by
2 the Board.
- 3 (12) Employ and fix the compensation of personnel that the Board
4 determines is necessary to carry out the provisions of this Chapter and
5 incur other expenses necessary to perform the duties of the Board.
- 6 (13) Adopt and publish a code of ethics.
- 7 (14) Adopt a seal containing the name of the Board for use on all licenses
8 and official reports issued by the Board.
- 9 (15) Employ an attorney to assist or represent the Board in enforcing this
10 Chapter.
- 11 (16) Request that the Department of Justice conduct criminal history record
12 checks of applicants for licensure and apprenticeships pursuant to
13 G.S. 114-19.15."

14 **SECTION 2.** No person licensed pursuant to the North Carolina Locksmith
15 Licensing Act shall be required to complete continuing education to maintain a license
16 under the Act.

17 **SECTION 3.** G.S. 93-13 reads as rewritten:

18 "**§ 93-13. Violation of ~~Chapter~~; penalty. Chapter.**

19 ~~Any violation of the provisions of this Chapter shall be deemed a Class 3~~
20 ~~misdemeanor, and upon conviction thereof the guilty party shall only be fined not less~~
21 ~~than one hundred dollars (\$100.00) and not exceeding one thousand dollars (\$1,000) for~~
22 ~~each offense. Any person or entity violating this Chapter shall be guilty of a Class 1~~
23 ~~misdemeanor. Each day a violation occurs shall constitute a distinct and separate~~
24 ~~offense."~~

25 **SECTION 4.** Section 3 of this act becomes effective December 1, 2006 and
26 applies to violations occurring on or after that date. The remainder of this act is
27 effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1291
PROPOSED SENATE COMMITTEE SUBSTITUTE H1291-CSRU-101 [v.1]

7/6/2006 3:33:10 PM

Short Title: Amend CPA Criminal Punishment.

(Public)

Sponsors:

Referred to:

April 19, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PENALTY FOR VIOLATING CERTAIN LAWS
3 REGULATING CERTIFIED PUBLIC ACCOUNTANTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 93-13 reads as rewritten:

6 "**§ 93-13. Violation of ~~Chapter~~; ~~penalty~~.Chapter.**

7 ~~Any violation of the provisions of this Chapter shall be deemed a Class 3~~
8 ~~misdemeanor, and upon conviction thereof the guilty party shall only be fined not less~~
9 ~~than one hundred dollars (\$100.00) and not exceeding one thousand dollars (\$1,000) for~~
10 ~~each offense. Any person or entity violating this Chapter shall be guilty of a Class 1~~
11 ~~misdemeanor. Each day a violation occurs shall constitute a distinct and separate~~
12 ~~offense."~~

13 SECTION 2. This act becomes effective December 1, 2006, and applies to
14 violations occurring on or after that date.

15



HOUSE BILL 1291: Amend CPA Criminal Punishment

BILL ANALYSIS

Committee:	Senate Commerce	Date:	July 7, 2006
Introduced by:	Rep. Allred	Summary by:	O. Walker Reagan Committee Co-Counsel
Version:	PCS to First Edition H1291-CSRU-85		

SUMMARY: *The Proposed Senate Committee Substitute for House Bill 1291 would increase the criminal penalty for the unauthorized practice as a certified public accountant from a Class 3 misdemeanor to a Class 1 misdemeanor.*

CURRENT LAW:

For certified public accountants, under Chapter 93 of the General Statutes, which governs the licensing and practice of accounting as a certified public accountant, using the title "certified public accountant" without being licensed as a CPA is a Class 3 misdemeanor with a minimum fine of \$100 and a maximum fine of \$1,000.

BILL ANALYSIS: The bill would amend G.S. 93-13 to change the criminal punishment for violation the certified public accountant statutes, including the use of the title of certified public accountant when not a CPA, from a Class 3 misdemeanor with punishment of only fines between \$100 and \$1000 to a Class 1 misdemeanor. Each day a violation occurs is considered a separate violation.

EFFECTIVE DATE: The bill becomes effective December 1, 2006 and applies to offenses committed on or after that date.

BACKGROUND: Under Structured Sentencing, unless otherwise specified, punishment for a Class 1 misdemeanor, depending on prior conviction history, ranges from a minimum of 1 to 45 days of community punishment up to a maximum of 1 to 120 days of community, intermediate or active prison time, and unlimited fines in the discretion of the court.

Increasing the punishment for violation of the CPA laws from a Class 3 misdemeanor to a Class 1 misdemeanor is consistent with other similar licensing board violations including the State Bar, the Medical Board and the Board of Pharmacy. The provision making each day's violation a separate violation is not consistent with these other professional licensing board statutes.

H1291e1-SMRU-CSRU-85

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1291
PROPOSED SENATE COMMITTEE SUBSTITUTE H1291-PCS80675-RU-101

Short Title: Amend CPA Criminal Punishment.

(Public)

Sponsors:

Referred to:

April 19, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PENALTY FOR VIOLATING CERTAIN LAWS
3 REGULATING CERTIFIED PUBLIC ACCOUNTANTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 93-13 reads as rewritten:

6 "§ 93-13. Violation of Chapter; penalty. Chapter.

7 ~~Any violation of the provisions of this Chapter shall be deemed a Class 3~~
8 ~~misdemeanor, and upon conviction thereof the guilty party shall only be fined not less~~
9 ~~than one hundred dollars (\$100.00) and not exceeding one thousand dollars (\$1,000) for~~
10 ~~each offense. Any person or entity violating this Chapter shall be guilty of a Class 1~~
11 ~~misdemeanor. Each day a violation occurs shall constitute a distinct and separate~~
12 ~~offense."~~

13 SECTION 2. This act becomes effective December 1, 2006, and applies to
14 violations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

2

HOUSE BILL 1399

Committee Substitute Favorable 6/28/06

Short Title: Various Transportation/M.V. Law Changes.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE MOTOR VEHICLE LAWS CONCERNING WEIGHING OF WOOD RESIDUALS AND EXEMPTION FROM REGISTRATION FOR CERTAIN AGRICULTURAL VEHICLES, AND TO AUTHORIZE AGREEMENTS BETWEEN THE DEPARTMENT OF TRANSPORTATION AND LOCAL GOVERNMENTS TO EXPEDITE TRANSPORTATION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c)(15) reads as rewritten:

"(c) Exceptions. - The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

- a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark, ~~bark from any site~~; or is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle.
- b. Does not operate on an interstate highway, a posted light-traffic road, or a posted bridge.
- c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.
- d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds.

..."

SECTION 2. G.S. 20-51(6) reads as rewritten:

"(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in

1 transporting unginnet cotton, peanuts, soybeans, corn, hay, tobacco,
2 silage, cucumbers, ~~potatoes,~~ potatoes, all vegetables, fruits, greenhouse
3 and nursery plants and flowers, Christmas trees, fertilizers or
4 chemicals purchased or owned by the farmer or tenant for personal use
5 in implementing husbandry, irrigation pipes, loaders, or equipment
6 owned by the farmer or tenant from place to place on the same farm,
7 from one farm to another, from farm to gin, from farm to dryer, or
8 from farm to market, and when not operated on a for-hire basis. The
9 term "transporting" as used herein shall include the actual hauling of
10 said products and all unloaded travel in connection therewith."

11 **SECTION 3.** Chapter 136 of the General Statutes is amended by adding a
12 new section to read:

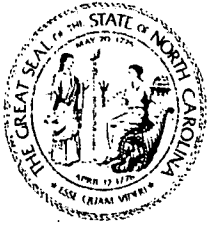
13 **"§ 136-66.8 Agreements with units of local government to expedite projects.**

14 (a) Agreements Authorized. – The Department of Transportation may enter into
15 agreements with units of local government for the purpose of expediting transportation
16 projects currently programmed in the Transportation Improvement Plan.

17 (b) Form of Agreements. – The agreements affected by this section shall be
18 between the Department of Transportation and units of local government. The
19 agreements may authorize units of local government to construct projects scheduled in
20 the Transportation Improvement Plan more than two years from the date of the
21 agreement. The units of local government shall fund one hundred percent (100%) of the
22 project at current prices. In a future year, when the project is funded from State and
23 federal sources, the units of local government shall be reimbursed an appropriate share
24 of the funds, at the future programmed project funding amount, as identified and
25 scheduled in the Transportation Improvement Plan.

26 (c) Report. – The Department of Transportation shall report to the Joint
27 Legislative Transportation Oversight Committee by December 1, 2006, on any
28 agreements executed with units of local government pursuant to this section."

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



HOUSE BILL 1399: Various Transportation/M.V. Law Changes

BILL ANALYSIS

Committee:	Senate Commerce	Date:	July 7, 2006
Introduced by:	Reps. L. Allen, Jones, Crawford, Wray	Summary by:	Wendy Graf Ray Committee Counsel
Version:	Second Edition		

SUMMARY: *House Bill 1399 would make changes to motor vehicle laws concerning an exception from weight limits for vehicles hauling wood residuals and an exemption from registration for trailers transporting agricultural products, and would authorize the Department of Transportation to enter into agreements with local governments to expedite certain transportation projects.*

BILL ANALYSIS: House Bill 1399 would make the following three changes to the transportation and motor vehicle laws:

Section 1. This section would specify that the weight exception for wood residuals applies to material originating from sites with or without scales. G.S. 20-118(b) and (c) provide weight limits for vehicles operating on State highways and penalties for exceeding those weight limits. G.S. 20-118(c)(15) exempts vehicles from those requirements if they meet certain conditions, one of which is that the vehicle is hauling wood residuals. This section would amend the exception to make clear that it covers wood residuals that come from a site that does or does not have a certified scale for weighing the vehicle.

Section 2. This section would exempt trailers transporting specified agricultural products from registration requirements. G.S. 20-51(6) currently exempts from registration requirements trailers or semitrailers attached to properly licensed motor vehicles when used by farmers to transport certain listed agricultural products. This section would amend the exemption to cover all vegetables, fruits, greenhouse and nursery plants and flowers, and Christmas trees.

Section 3. This section would authorize the Department of Transportation to enter into agreements with units of local government to expedite transportation projects. A project is eligible if it is scheduled in the Transportation Improvement Plan more than two years out from the date of the agreement. The local government would fund the project at current prices and would be reimbursed in a future year when the project is funded from State and federal sources. The Department would be required to report to the Joint Legislative Transportation Oversight Committee by December 1, 2006 on any executed agreements.

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

H1399e2-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

2

HOUSE BILL 2883

Committee Substitute Favorable 6/21/06

Short Title: Servicemembers and Veterans/ID Theft.

(Public)

Sponsors:

Referred to:

June 19, 2006

A BILL TO BE ENTITLED

AN ACT TO PROTECT MILITARY SERVICEMEMBERS AND VETERANS FROM
IDENTITY THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-63(o) reads as rewritten:

"(o) This section does not prevent a consumer reporting agency from charging a fee of no more than ten dollars (\$10.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a consumer credit report, except that a consumer reporting agency may not charge any fee to

- (1) ~~a~~ A victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another ~~person-person, or~~
- (2) A veteran as defined in G.S. 126-81, a member of the Armed Forces of the United States, as defined in G.S. 165-20, including a member of the North Carolina National Guard, who has received notification from the United States Department of Veterans Affairs indicating that their information is, or may, be included in the information involved in the Department's data breach, first announced on May 22, 2006; provided, however, that the application for a freeze includes the notification and also proof of status as described in this subdivision, or
- (3) Persons who are the authorized agents, or receive benefits from the State or federal government based on a relationship to a person who is, or was, qualified under subdivision (2) of this subsection."

SECTION 2. Until and including July 1, 2007, there shall be no fee charged by a consumer reporting agency for the removal of a security freeze by persons who, prior to the expiration date set forth in Section 3 of this act, placed a freeze under G.S. 75-63(o)(2) and G.S. 75-63(o)(3), as set forth in Section 1 of this act.

1 **SECTION 3.** This act is effective when it becomes law. Section 1 of this act
2 shall expire on January 1, 2007, or upon public announcement by the United States
3 Department of Veteran Affairs that it will pay for a security freeze for consumer credit
4 reports for persons eligible under G.S. 75-63(o)(2) and G.S. 75-63(o)(3), whichever
5 event occurs first.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 2883

Committee Substitute Favorable 6/21/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H2883-CSRU-95 [v.3]

6/30/2006 12:04:54 PM

Short Title: Servicemembers and Veterans/ID Theft.

(Public)

Sponsors:

Referred to:

June 19, 2006

A BILL TO BE ENTITLED

AN ACT TO PROTECT MILITARY SERVICEMEMBERS AND VETERANS FROM
IDENTITY THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-63(o) reads as rewritten:

"(o) This section does not prevent a consumer reporting agency from charging a fee of no more than ten dollars (\$10.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a consumer credit report, except that a consumer reporting agency may not charge any fee to any of the following:

- (1) A victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.
- (2) A veteran who has received notification from the United States Department of Veterans Affairs indicating that the veteran's information is, or may be, included in the information involved in the Department of Veterans Affairs' data breach, first announced on May 22, 2006; provided that the application for a freeze includes the notification and proof of status as a veteran as defined in this subdivision. As used in this subsection, the term "veteran" means a veteran, as defined in G.S. 126-81, a member of the armed forces of the United States, as defined in G.S. 165-20, or a member of the North Carolina National Guard.
- (3) Persons who are the authorized agents of, or receive benefits from the State or federal government based on a relationship to, a veteran who would or could qualify under subdivision (2) of this subsection."

1 **SECTION 2.** From the effective date of this act through July 1, 2007, there
2 shall be no fee charged by a consumer reporting agency for the removal of a security
3 freeze by persons who, prior to the expiration date set forth in Section 3 of this act,
4 placed a freeze under G.S. 75-63(o)(2) and G.S. 75-63(o)(3), as set forth in Section 1 of
5 this act.

6 **SECTION 3.** This act is effective when it becomes law. Section 1 of this act
7 shall be effective for a minimum of 90 days from the date this act becomes law, but
8 otherwise shall expire on January 1, 2007, or upon the United States Department of
9 Veteran Affairs implementing a program that will pay for a subscription to a credit
10 monitoring program for persons eligible for a fee waiver under G.S. 75-63(o)(2) and
11 G.S. 75-63(o)(3), whichever event occurs first.



HOUSE BILL 2883: Servicemembers and Veterans/ID Theft

BILL ANALYSIS

Committee:	Senate Commerce	Date:	July 7, 2006
Introduced by:	Rep. Goforth	Summary by:	O. Walker Reagan
Version:	Second Edition H2883-ARU-95		Committee Co-Counsel

SUMMARY: *The Senate Proposed Committee Substitute for House Bill 2883 prohibits a consumer reporting agency from charging a fee to a veteran for a freeze of a consumer credit report, removal of a freeze, or temporary lifting of a freeze for a period of time.*

CURRENT LAW: G.S. 75-63(o) allows a consumer reporting agency to charge a fee of no more than \$10.00 to a consumer with regard to access to a consumer credit report for each of the following:

- Credit report freeze,
- Removal of a credit report freeze.
- A temporary lifting of a credit report freeze for a period of time.

Currently no fee may be charged when a victim of identity theft submits a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person. 38 U.S.C. §101(2) defines the term "veteran" as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

BILL ANALYSIS: The Proposed Senate Committee Substitute for House Bill 2883 amends G.S. 75-63(o) to allow veterans an exception to the charge for a freeze, removal of a freeze, or temporary lifting of a freeze for a period of time, regarding access to a consumer credit report, when the veteran was subject to a data breach by the US Department of Veteran Affairs, first announced on May 22, 2006. The bill would also allow the spouses and other persons who receive State or federal benefits based on their association with the veteran to also have the applicable credit freeze fees waived if the veteran did or could have qualified.

For purposes of this bill a "veteran" is defined to include a former or current member of the US armed forces or a NC National Guard member.

This bill would become effective when it becomes law. Section 1 would remain in effect for a minimum of 90 days, and would expire upon the earlier of the US Department of Veterans Affairs implementing a program to pay for a credit monitoring service for affected persons, or January 1, 2007. Persons who have had their credit reports frozen under this act, may also have the freeze removed without charge up to and including July 1, 2007.

BACKGROUND:

The following is information released by the federal government regarding the data that was stolen:

- Working with the Department of Defense, the Veterans Administration has determined that the data stolen on 26.5 million individuals included information on active-duty military personnel. Initially, it was thought that approximately 50,000 active duty, National Guard, and Reserve personnel might have been involved.
- The data loss potentially affects all veterans who have ever filed a claim for VA disability compensation, pension, or education benefits, or who have (or had) a VA insurance policy – no matter when the claim was filed or when they were discharged. These veterans would be included even if their claim was denied or they are not currently receiving benefits.

Theresa Matula, Committee Staff to the House Military, Veterans and Indian Affairs Committee, substantially contributed to this summary.

H2883e2-SMRU-ARU-95

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 2883
Committee Substitute Favorable 6/21/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H2883-PCS10641-RU-95

Short Title: Servicemembers and Veterans/ID Theft.

(Public)

Sponsors:

Referred to:

June 19, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT MILITARY SERVICEMEMBERS AND VETERANS FROM
3 IDENTITY THEFT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 75-63(o) reads as rewritten:

6 "(o) This section does not prevent a consumer reporting agency from charging a
7 fee of no more than ten dollars (\$10.00) to a consumer for each freeze, removal of the
8 freeze, or temporary lifting of the freeze for a period of time, regarding access to a
9 consumer credit report, except that a consumer reporting agency may not charge any fee
10 to any of the following:

11 (1) A victim of identity theft who has submitted a copy of a valid
12 investigative or incident report or complaint with a law enforcement
13 agency about the unlawful use of the victim's identifying information
14 by another person.

15 (2) A veteran who has received notification from the United States
16 Department of Veterans Affairs indicating that the veteran's
17 information is, or may be, included in the information involved in the
18 Department of Veterans Affairs' data breach, first announced on May
19 22, 2006; provided that the application for a freeze includes the
20 notification and proof of status as a veteran as defined in this
21 subdivision. As used in this subsection, the term "veteran" means a
22 veteran, as defined in G.S. 126-81, a member of the armed forces of
23 the United States, as defined in G.S. 165-20, or a member of the North
24 Carolina National Guard.

25 (3) Persons who are the authorized agents of, or receive benefits from the
26 State or federal government based on a relationship to, a veteran who
27 would or could qualify under subdivision (2) of this subsection."

1 **SECTION 2.** From the effective date of this act through July 1, 2007, there
2 shall be no fee charged by a consumer reporting agency for the removal of a security
3 freeze by persons who, prior to the expiration date set forth in Section 3 of this act,
4 placed a freeze under G.S. 75-63(o)(2) and G.S. 75-63(o)(3), as set forth in Section 1 of
5 this act.

6 **SECTION 3.** This act is effective when it becomes law. Section 1 of this act
7 shall be effective for a minimum of 90 days from the date this act becomes law, but
8 otherwise shall expire on January 1, 2007, or upon the United States Department of
9 Veterans Affairs implementing a program that will pay for a subscription to a credit
10 monitoring program for persons eligible for a fee waiver under G.S. 75-63(o)(2) and
11 G.S. 75-63(o)(3), whichever event occurs first.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

2

HOUSE BILL 1987

Committee Substitute Favorable 6/26/06

Short Title: Health Plans/Changes to Basic and Std. (Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTORY BASIC AND STANDARD HEALTH PLANS FOR SMALL EMPLOYERS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HEALTH CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-125 is amended by adding a new subsection to read:

"(a1) Both the basic health care plan and the standard health care plan provided for in subsection (a) of this section may have optional deductible and co-payment levels as may be determined by the small employer carrier, including high deductible options. A small employer carrier shall file any changes in deductibles or co-payment levels with the Commissioner for the Commissioner's approval prior to implementing the changes in this State. The Commissioner may periodically review and update the benefits provided by these plans to address trends in the small group market. The Commissioner shall consult with small employer carriers and representatives of the insurance agent and small employer communities as part of that periodic review."

SECTION 2. G.S. 58-50-125(d) reads as rewritten:

~~"(d) Within 180 days after the Commissioner's approval under subsection (b) of this section, every small employer carrier shall, as~~

As a condition of transacting business as a small employer carrier in this State, the carrier shall either offer small employers at least one basic and one standard health care plan, or the alternative coverages provided in G.S. 58-50-126. Every small employer that elects to be covered under such a plan and agrees to make the required premium payments and to satisfy the other provisions of the plan shall be issued such a plan by the small employer carrier. The premium payment requirements used in connection with basic and standard health care plans may address the potential credit risk of small employers that elect coverage in accordance with this subsection by means of payment security provisions that are reasonably related to the risk and are uniformly applied.

1 If a small employer carrier offers coverage to a small employer, the small employer
2 carrier shall offer coverage to all eligible employees of a small employer and their
3 dependents. A small employer carrier shall not offer coverage to only certain
4 individuals in a small employer group except in the case of late enrollees as provided in
5 ~~G.S. 58-50-130(a)(4)~~. G.S. 58-50-130(a)(4b). A small employer carrier shall not modify
6 any health benefit plan with respect to a small employer, any eligible employee, or
7 dependent through riders, endorsements, or otherwise, in order to restrict or exclude
8 coverage for certain diseases or medical conditions otherwise covered by the health
9 benefit plan. In the case of an eligible employee or dependent of an eligible employee
10 who, before the effective date of the plan, was excluded from coverage or denied
11 coverage by a small employer carrier in the process of providing a health benefit plan to
12 an eligible small employer, the small employer carrier shall provide an opportunity for
13 the eligible employee or dependent of an eligible employee to enroll in the health
14 benefit plan currently held by the small employer."

15 **SECTION 3.** Article 50 of Chapter 58 of the General Statutes is amended by
16 adding a new section to read:

17 **"§ 58-50-126. Alternative coverage permitted.**

18 (a) In General. – In the case of health insurance coverage offered in this State, a
19 small employer carrier may elect to limit the coverage offered under G.S. 58-50-125(d)
20 if the carrier offers at least two different policy forms of health insurance coverage and
21 both policy forms meet all of the following:

22 (1) The policy forms are designed for, made available or actively
23 marketed to, and actually enroll self-employed individuals and other
24 small employer groups.

25 (2) The policy forms meet the requirements of either subsections (b) or (c)
26 of this section, as elected by the small employer carrier.

27 (b) Choice of Most Popular Policy Forms. – The requirements of this section are
28 met for health insurance coverage policy forms offered by a small employer carrier if
29 the carrier offers the policy forms for small group health insurance coverage with the
30 two highest premium volume numbers of all the policy forms offered by the carrier in
31 this State or in applicable marketing or service areas in the period involved.

32 (c) Choice of Two Policy Forms with Representative Coverage. – The
33 requirements of this section are met for health insurance coverage policy forms offered
34 by a small employer carrier in the small group market if the small employer carrier
35 offers both policy forms described in this subsection and each policy form includes
36 benefits substantially similar to other small group health insurance coverage offered by
37 the small employer carrier in this State.

38 (1) Lower-level coverage policy form. – A policy form is deemed a
39 lower-level coverage policy form if the actuarial value of the benefits
40 under the coverage is at least eighty-five percent (85%), but not greater
41 than one hundred percent (100%) of a weighted average, as described
42 in subdivision (3) of this subsection.

43 (2) Higher-level coverage policy form. – A policy form is deemed a
44 higher-level coverage policy form if all of the following apply:

1 a. The actuarial value of the benefits under the coverage is at least
2 fifteen percent (15%) greater than the actuarial value of the
3 coverage described in subdivision (1) of this subsection offered
4 by the small employer carrier.

5 b. The actuarial value of the benefits under the coverage is at least
6 one hundred percent (100%), but not greater than one hundred
7 twenty percent (120%) of a weighted average, as described in
8 subdivision (3) of this subsection.

9 (3) Weighted average. – For the purposes of this subsection, a weighted
10 average is the average actuarial value of the benefits provided by all
11 the health insurance coverage issued, as elected by the small employer
12 carrier, either by that small employer carrier or all small employer
13 carriers in this State in the small group market during the previous
14 year, not including coverage issued under this section, weighted by
15 enrollment for the different coverage.

16 (d) Election. – The small employer carrier elections of the policies to be offered
17 under this section shall apply uniformly to all small employers in this State for that
18 small employer carrier. The election shall be effective for a period of not less than two
19 years.

20 (e) Assumptions. – For the purposes of subsection (c) of this section, the
21 actuarial value of benefits provided under small group insurance coverage shall be
22 calculated based on a standardized population and a set of standardized utilization and
23 cost factors.

24 (f) Discontinuation of Basic or Standard Plans. – If a small employer carrier
25 chooses to offer the plans under this section and discontinues coverage under the basic
26 or standard health benefit plans provided for in G.S. 58-50-125, the carrier shall make
27 available to the insured employer whose coverage is to be discontinued both of the plans
28 offered under this section. New coverage made available under this section shall
29 constitute replacement coverage and shall be rated in accordance with
30 G.S. 58-50-130(b)(3).

31 (g) Different Policy Forms. – For purposes of this section only, policy forms that
32 have different cost-sharing arrangements or different riders shall be considered to be
33 different policy forms."

34 **SECTION 4.** G.S. 58-68-40(e)(2) reads as rewritten:

35 "(2) A self-employed individual as defined in G.S. 58-50-110(21a), except
36 as otherwise provided for the basic and standard health care plans or
37 other plans under G.S. 58-50-126 under the North Carolina Small
38 Employer Group Health Coverage Reform Act."

39 **SECTION 5.** G.S. 58-50-110(5a) reads as rewritten:

40 "(5a) 'Case characteristics' means the demographic factors age, gender,
41 family size, and geographic location, location, and industry."

42 **SECTION 6.** G.S. 58-50-110 is amended by adding the following
43 subdivision to read:

1 "(12a) "Industry" means a demographic factor used to reflect the financial
2 risk associated with a specific industry."

3 **SECTION 7.** G.S. 58-50-130(b) reads as rewritten:

4 "(b) For all small employer health benefit plans that are subject to this section, the
5 premium rates for health benefit plans subject to this section are subject to all of the
6 following provisions:

7 (1) Small employer carriers shall use an adjusted-community rating
8 methodology in which the premium for each small employer can vary
9 only on the basis of the eligible employee's or dependent's age as
10 determined ~~in accordance with~~ under subdivision (6) of this
11 subsection, the gender of the eligible employee or dependent, number
12 of family members covered, or geographic area as determined under
13 subdivision (7) of this ~~subsection.~~ subsection, or industry as
14 determined under subdivision (9) of this subsection. Premium rates
15 charged during a rating period to small employers with similar case
16 characteristics for same coverage shall not vary from the adjusted
17 community rate by more than ~~twenty percent (20%)~~ twenty-five
18 percent (25%) for any reason, including differences in administrative
19 costs and claims experience.

20 (2) Rating factors related to age, gender, number of family members
21 covered, ~~or geographic location~~ location, or industry may be developed
22 by each carrier to reflect the carrier's experience. The factors used by
23 carriers are subject to the Commissioner's ~~review;~~ review.

24 (3) A small employer carrier shall not modify the premium rate charged to
25 a small employer or a small employer group member, including
26 changes in rates related to the increasing age of a group member, for
27 12 months from the initial issue date or renewal date, unless the group
28 is composite rated and composition of the group changed by twenty
29 percent (20%) or more or benefits are changed. The percentage
30 increase in the premium rate charged to a small employer for a new
31 rating period shall not exceed the sum of all of the following:

32 a. The percentage change in the adjusted community rate as
33 measured from the first day of the prior rating period to the first
34 day of the new rating ~~period,~~ and period.

35 b. Any adjustment, not to exceed fifteen percent (15%) annually,
36 due to claim experience, health status, or duration of coverage
37 of the employees or dependents of the small ~~employer,~~ and
38 employer.

39 c. Any adjustment because of change in coverage or change in
40 case characteristics of the small employer group.

41 (4), (5) Repealed by Session Laws 1995, c. 238, s. 1.

42 (6) ~~For the purposes of subsection (b) of this section, a small employer~~
43 ~~carrier shall, unless~~ Unless the small employer carrier uses composite
44 rating, the small employer carrier shall use the following age brackets:

- 1 a. Younger than 15 years;
- 2 b. 15 to 19 years;
- 3 c. 20 to 24 years;
- 4 d. 25 to 29 years;
- 5 e. 30 to 34 years;
- 6 f. 35 to 39 years;
- 7 g. 40 to 44 years;
- 8 h. 45 to 49 years;
- 9 i. 50 to 54 years;
- 10 j. 55 to 59 years;
- 11 k. 60 to 64 years;
- 12 l. 65 years.

13 Carriers may combine, but shall not split, complete age brackets for
14 the purposes of determining rates under subsection (b) of this section.
15 this subsection. Small employer carriers shall be permitted to develop
16 separate rates for individuals aged 65 years and older for coverage for
17 which Medicare is the primary payor and coverage for which Medicare
18 is not the primary payor.

- 19 (7) ~~For the purposes of subsection (b) of this section, a~~ A carrier shall not
20 apply different geographic rating factors to the rates of small
21 employers located within the same county; and define geographic area
22 to mean medical care system. Medical care system factors shall reflect
23 the relative differences in expected costs, shall produce rates that are
24 not excessive, inadequate, or unfairly discriminatory in the medical
25 care system areas, and shall be revenue neutral to the small employer
26 carrier.

- 27 (8) The Department may adopt rules to administer this subsection and to
28 assure that rating practices used by small employer carriers are
29 consistent with the purposes of this subsection. Those rules shall
30 include consideration of differences based on all of the following:

- 31 a. Health benefit plans that use different provider network
32 arrangements may be considered separate plans for the purposes
33 of determining the rating in subdivision (1) of this subsection,
34 provided that the different arrangements are expected to result
35 in substantial differences in claims costs; costs.
- 36 b. Except as provided for in sub-subdivision a. of this subdivision,
37 differences in rates charged for different health benefit plans
38 shall be reasonable and reflect objective differences in plan
39 design, but shall not permit differences in premium rates
40 because of the case characteristics of groups assumed to select
41 particular health benefit plans; and plans.
- 42 c. Small employer carriers shall apply allowable rating factors
43 consistently with respect to all small employers.

1 (9) In any case where the small employer carrier uses industry as a case
2 characteristic in establishing premium rates, the rate factor associated
3 with any industry classification divided by the lowest rate factor
4 associated with any other industry classification shall not exceed 1.2."

5 **SECTION 8.** G.S. 58-50-149 reads as rewritten:

6 "**§ 58-50-149. Limit on cessions to the Reinsurance Pool.**

7 In addition to any individual or group previously reinsured in accordance with
8 G.S. 58-50-150(g)(1), the Pool shall only reinsure a health benefit plan issued or
9 delivered for original issue by a reinsuring carrier on or after October 1, 1995, if the
10 health benefit plan provides coverage to a small employer with no more than 25 eligible
11 employees, including self-employed individuals. Notwithstanding any other provision
12 of law, the Pool shall cease to reinsure any individual or group on January 1, 2007.
13 Reinsuring carriers as of that date shall continue to be governed by G.S. 58-50-135(b)
14 and G.S. 58-50-150 until and through the termination of the Pool under
15 G.S. 58-50-157."

16 **SECTION 9.** Article 50 of Chapter 58 of the General Statutes is amended by
17 adding the following new section to read:

18 "**§ 58-50-157. Termination of the North Carolina Small Employer Health**
19 **Reinsurance Pool.**

20 The Pool shall continue in existence subject to the provisions of G.S. 58-50-149 and
21 all other applicable State and federal laws. If the Board and the Commissioner
22 determine that a law results in the termination of the Pool, the Pool shall terminate and
23 conclude its affairs in a manner to be determined by the Board with the approval of the
24 Commissioner. Any funds or assets of any nature held by the Pool following
25 termination and the payment of all claims and expenses of the Pool shall be distributed
26 to the Pool Member small employer carriers existing at that time in accordance with the
27 then-existing assessment formula found in the Pool's Plan of Operation. The Pool may
28 also assess members in accordance with the then-existing assessment formula should
29 there be claims and expenses of the Pool for which current assessments or funds do not
30 provide adequate resources to cover."

31 **SECTION 10.** G.S. 58-50-120, 58-50-125(b), (e), and (g), 58-50-135(a),
32 58-50-140, and 58-50-145 are repealed.

33 **SECTION 11.** G.S. 58-50-125(f) reads as rewritten:

34 "(f) Every ~~To the extent it is required under this section and G.S. 58-68-40, every~~
35 small employer carrier shall fairly market the basic and standard health care plan all of
36 its small group health benefit plans it offers on a guaranteed issue basis to all small
37 employers in the geographic areas in which the carrier makes coverage available or
38 provides benefits."

39 **SECTION 12.** G.S. 58-50-135(b) reads as rewritten:

40 "(b) A small employer carrier that elects to stop ~~stops~~ participating as a reinsuring
41 carrier and to become a risk-assuming carrier shall not reinsure or continue to reinsure
42 any small employer health benefit plans under G.S. 58-50-145 and G.S. 58-50-150 as
43 soon as the carrier becomes a risk-assuming carrier; however, a reinsuring carrier
44 electing to become a risk-assuming carrier shall pay a prorated assessment based upon

1 business issued as a reinsuring carrier for any part of the year that ~~the business was~~
2 ~~reinsured. A small employer carrier that elects to stop participating as a risk assuming~~
3 ~~carrier and to become a reinsuring carrier may reinsure small employer health benefit~~
4 ~~plans under the provisions of G.S. 58-50-145 and G.S. 58-50-150. an assessment is~~
5 ~~made under G.S. 58-50-150."~~

6 **SECTION 13.** G.S. 58-50-150(a) reads as rewritten:

7 "(a) There is created a nonprofit entity to be known as the North Carolina Small
8 Employer Health Reinsurance Pool. All carriers issuing or providing health benefit
9 plans in this State ~~on and after~~ from January 1, 1992, 1992, until the termination of the
10 Pool under G.S. 158-50-157, except any small employer carrier electing to be a
11 risk-assuming carrier, are members of the Pool."

12 **SECTION 14.** G.S. 58-3-191(b)(1) reads as rewritten:

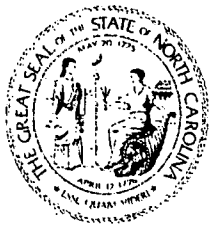
13 "(b) Disclosure requirements. – Each health benefit plan shall provide the
14 following applicable information to plan participants and bona fide prospective
15 participants upon request:

16 (1) The evidence of coverage (G.S. 58-67-50), subscriber contract
17 (G.S. 58-65-60, 58-65-140), health insurance policy (G.S. 58-51-80,
18 58-50-125, 58-50-126, 58-50-55), or the contract and benefit summary
19 of any other type of health benefit plan;"

20 **SECTION 15.** G.S. 58-50-125(h) reads as rewritten:

21 "(h) The provisions of ~~subsections (b), (d), and (g) and subdivision (e)(2)~~
22 subsection (d) of this section apply to every health benefit plan delivered, issued for
23 delivery, renewed, or continued in this State or covering persons residing in this State
24 on or after the date the plan becomes operational, as determined by the Commissioner.
25 For purposes of this subsection, the date a health benefit plan is continued is the
26 anniversary date of the issuance of the health benefit plan."

27 **SECTION 16.** This act is effective when it becomes law.



HOUSE BILL 1987:

Health Plans/Changes to Basic and Std

BILL ANALYSIS

Committee:	Senate Commerce	Date:	July 6, 2006
Introduced by:	Reps. Holliman, Underhill	Summary by:	Kory Goldsmith, Tim Hövis, Staff Attorneys
Version:	Second Edition		

SUMMARY: HB 1987 makes changes to the Basic and Standard health plans for small group insurance carriers. This bill came as a request of the Department of Insurance and as recommended by the House Select Committee on Health Care.

BILL ANALYSIS:

Section 1 adds a new subsection to G.S. 58-50-125 to allow carriers to include in both the Basic and Standard health plans for small group insurance carriers optional deductible and copayment levels including a high-deductible option. It would also permit the Commissioner to periodically review and update the plan design for the Basic and Standard Plans according to market trends and after consulting with insurers, insurance agents and small employers.

Section 2 amends G.S. 58-50-125(d) to give small group carriers the option of offering two alternative health plans to all small employers on a guaranteed issue basis instead of offering the Basic and Standard Plans. The Basic and Standard Plans (and these alternative plans that the small group carriers would be permitted to offer instead) are the only plans that must be made available to every self-employed individual who wishes to purchase health insurance. Carriers may use underwriting criteria to selectively offer other products to this segment of the small group market.

Section 3 creates G.S. 58-50-126 to set out the standards that the small group carriers must meet when they offer the new alternatives plans instead of the Basic and Standard Plans. The alternative plans must be products that are generally marketed to small groups and are either the two most popular of the small group plans that the carrier sells (as measured by premium volume) or two "representative plans" of the carrier's small group business, with one of the two having 85% to 100% actuarial equivalence to the carrier's weighted average small group business and the other having 100% to 120% actuarial equivalence to the carrier's weighted average small group business thus offering a higher-end and lower-end plan.

Section 4 amends G.S. 58-68-40(e)(2), which mentions the guaranteed-issue nature of the Basic and Standard Plans, to include a reference to the alternative guaranteed-issue plans provided for in Section 3 of the bill.

Section 5 amends G.S. 58-50-110 (5a) to add "industry" to the list of group rating factors known as "case characteristics", to conform to the changes made later in the bill.

Section 6 adds a new subdivision (12)(a) to G.S. 58-50-110 which defines "industry" as a demographic factor.

Section 7 makes numerous substantive and technical changes to G.S. 58-50-130(b). Among the substantive changes are an amendment to (b)(1) to expand the rating bands (which limit the amount by which premium rates for a particular small group may vary from the average rate, based on the group's known or expected claims experience) from +/-20 percent to +/- 25 percent. It also adds employer industry as a factor that carriers may use when setting the premium for each group. It amends subdivision (b)(2) to add a reference to the new industry rating factor to conform to the changes made in section 5 of the bill. It adds a new subdivision to G.S. 58-50-130(b) which limits the weight given to the rating

House Bill 1987

Page 2

factor for industry to approximately +/- 10 percent. It also amends subdivision (b)(7) to redefine "geographic area" (a permitted rating factor) to mean "medical care system", and specifies that such factors reflect the relative differences in expected costs due to the different medical care systems that serve different locales. The effect is that geographic factors will now be determined based on the service areas of each medical care system rather than on county lines.

Section 8 amends G.S. 58-50-149 to terminate reinsurance coverage under the North Carolina Small Employer Health Reinsurance Pool for small groups and employees of small groups that small group carriers that have previously ceded to the Pool. This change would become effective January 1, 2007. Carriers have indicated that the pool is no longer needed because they are able to adequately reinsure small group lives in the private reinsurance market.

Section 9 creates a new statute (G.S. 58-50-157) to specify the process for the orderly winding down and future termination of the North Carolina Small Employer Health Reinsurance Pool.

Section 10 repeals G.S. 58-50-120, 58-50-125(b), (e), and (g), 58-50-135(a), 58-50-140, and 58-50-145. These sections and subsections of the Small Employer Group Health Coverage Reform Act are no longer needed either due to other changes made within this bill or because they have become outmoded due to changes in the small group market or changes in federal law that affect the regulation of small group health insurance.

Section 11 amends G.S. 58-50-125(f) to require that small group carriers fairly market all of the small group plans that are required to be sold on a guaranteed issue basis. The change is an update of the law to recognize that the Basic and Standard Plans are no longer the only plans that are required to be offered on a guaranteed-issue basis and have not been ever since North Carolina adopted HIPPA.

Section 12 amends G.S. 58-50-135(b) to reflect the future termination of the North Carolina Small Employer Health Reinsurance Pool.

Section 13 amends G.S. 58-50-150(a) to account for the future termination of the North Carolina Small Employer Health Reinsurance Pool.

Sections 14 and 15 are conforming changes.

EFFECTIVE DATE: The act is effective when it becomes law.

H1987c2-SMRC

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1987

DATE 7-7-06

S. B. No. _____

Amendment No. #1

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.)

Rand

Sen.)

1 moves to amend the bill on page 6, line 5 16-30

2 () WHICH CHANGES THE TITLE

3 by deleting Section 9 of the bill +

4
5 renumbering the remaining sections accordingly;

6
7 and on page 6, lines 14 + 15
8 by deleting "Pool under G.S. 58-50-157";
9 and substituting "Pool."

10
11 and on page 6, line 40,
12 by deleting "Pool under G.S. 158-50-157,"
13 and substituting "Pool,"

14
15
16
17
18
19

SIGNED Tracy Rand

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1987

Committee Substitute Favorable 6/26/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1987-PCS70796-RG-41

Short Title: Health Plans/Changes to Basic and Std.

(Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTORY BASIC AND STANDARD HEALTH PLANS FOR SMALL EMPLOYERS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HEALTH CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-125 is amended by adding a new subsection to read:

"(a1) Both the basic health care plan and the standard health care plan provided for in subsection (a) of this section may have optional deductible and co-payment levels as may be determined by the small employer carrier, including high deductible options. A small employer carrier shall file any changes in deductibles or co-payment levels with the Commissioner for the Commissioner's approval prior to implementing the changes in this State. The Commissioner may periodically review and update the benefits provided by these plans to address trends in the small group market. The Commissioner shall consult with small employer carriers and representatives of the insurance agent and small employer communities as part of that periodic review."

SECTION 2. G.S. 58-50-125(d) reads as rewritten:

~~"(d) Within 180 days after the Commissioner's approval under subsection (b) of this section, every small employer carrier shall, as~~

As a condition of transacting business as a small employer carrier in this State, the carrier shall either offer small employers at least one basic and one standard health care plan or the alternative coverages provided in G.S. 58-50-126. Every small employer that elects to be covered under such a plan and agrees to make the required premium payments and to satisfy the other provisions of the plan shall be issued such a plan by the small employer carrier. The premium payment requirements used in connection with basic and standard health care plans may address the potential credit risk of small employers that elect coverage in accordance with this subsection by means

1 of payment security provisions that are reasonably related to the risk and are uniformly
2 applied.

3 If a small employer carrier offers coverage to a small employer, the small employer
4 carrier shall offer coverage to all eligible employees of a small employer and their
5 dependents. A small employer carrier shall not offer coverage to only certain
6 individuals in a small employer group except in the case of late enrollees as provided in
7 ~~G.S. 58-50-130(a)(4)~~. G.S. 58-50-130(a)(4b). A small employer carrier shall not modify
8 any health benefit plan with respect to a small employer, any eligible employee, or
9 dependent through riders, endorsements, or otherwise, in order to restrict or exclude
10 coverage for certain diseases or medical conditions otherwise covered by the health
11 benefit plan. In the case of an eligible employee or dependent of an eligible employee
12 who, before the effective date of the plan, was excluded from coverage or denied
13 coverage by a small employer carrier in the process of providing a health benefit plan to
14 an eligible small employer, the small employer carrier shall provide an opportunity for
15 the eligible employee or dependent of an eligible employee to enroll in the health
16 benefit plan currently held by the small employer."

17 **SECTION 3.** Article 50 of Chapter 58 of the General Statutes is amended by
18 adding a new section to read:

19 **"§ 58-50-126. Alternative coverage permitted.**

20 (a) In General. – In the case of health insurance coverage offered in this State, a
21 small employer carrier may elect to limit the coverage offered under G.S. 58-50-125(d)
22 if the carrier offers at least two different policy forms of health insurance coverage and
23 both policy forms meet all of the following:

24 (1) The policy forms are designed for, made available or actively
25 marketed to, and actually enroll self-employed individuals and other
26 small employer groups.

27 (2) The policy forms meet the requirements of either subsections (b) or (c)
28 of this section, as elected by the small employer carrier.

29 (b) Choice of Most Popular Policy Forms. – The requirements of this section are
30 met for health insurance coverage policy forms offered by a small employer carrier if
31 the carrier offers the policy forms for small group health insurance coverage with the
32 two highest premium volume numbers of all the policy forms offered by the carrier in
33 this State or in applicable marketing or service areas in the period involved.

34 (c) Choice of Two Policy Forms with Representative Coverage. – The
35 requirements of this section are met for health insurance coverage policy forms offered
36 by a small employer carrier in the small group market if the small employer carrier
37 offers both policy forms described in this subsection and each policy form includes
38 benefits substantially similar to other small group health insurance coverage offered by
39 the small employer carrier in this State.

40 (1) Lower-level coverage policy form. – A policy form is deemed a
41 lower-level coverage policy form if the actuarial value of the benefits
42 under the coverage is at least eighty-five percent (85%), but not greater
43 than one hundred percent (100%) of a weighted average, as described
44 in subdivision (3) of this subsection.

1 (2) Higher-level coverage policy form. – A policy form is deemed a
2 higher-level coverage policy form if all of the following apply:

3 a. The actuarial value of the benefits under the coverage is at least
4 fifteen percent (15%) greater than the actuarial value of the
5 coverage described in subdivision (1) of this subsection offered
6 by the small employer carrier.

7 b. The actuarial value of the benefits under the coverage is at least
8 one hundred percent (100%), but not greater than one hundred
9 twenty percent (120%) of a weighted average, as described in
10 subdivision (3) of this subsection.

11 (3) Weighted average. – For the purposes of this subsection, a weighted
12 average is the average actuarial value of the benefits provided by all
13 the health insurance coverage issued, as elected by the small employer
14 carrier, either by that small employer carrier or all small employer
15 carriers in this State in the small group market during the previous
16 year, not including coverage issued under this section, weighted by
17 enrollment for the different coverage.

18 (d) Election. – The small employer carrier elections of the policies to be offered
19 under this section shall apply uniformly to all small employers in this State for that
20 small employer carrier. The election shall be effective for a period of not less than two
21 years.

22 (e) Assumptions. – For the purposes of subsection (c) of this section, the
23 actuarial value of benefits provided under small group insurance coverage shall be
24 calculated based on a standardized population and a set of standardized utilization and
25 cost factors.

26 (f) Discontinuation of Basic or Standard Plans. – If a small employer carrier
27 chooses to offer the plans under this section and discontinues coverage under the basic
28 or standard health benefit plans provided for in G.S. 58-50-125, the carrier shall make
29 available to the insured employer whose coverage is to be discontinued both of the plans
30 offered under this section. New coverage made available under this section shall
31 constitute replacement coverage and shall be rated in accordance with
32 G.S. 58-50-130(b)(3).

33 (g) Different Policy Forms. – For purposes of this section only, policy forms that
34 have different cost-sharing arrangements or different riders shall be considered to be
35 different policy forms."

36 **SECTION 4.** G.S. 58-68-40(e)(2) reads as rewritten:

37 "(2) A self-employed individual as defined in G.S. 58-50-110(21a), except
38 as otherwise provided for the basic and standard health care plans or
39 other plans under G.S. 58-50-126 under the North Carolina Small
40 Employer Group Health Coverage Reform Act."

41 **SECTION 5.** G.S. 58-50-110(5a) reads as rewritten:

42 "(5a) 'Case characteristics' means the demographic factors age, gender,
43 family size, and geographic location; location, and industry."

1 SECTION 6. G.S. 58-50-110 is amended by adding the following
2 subdivision to read:

3 "(12a) "Industry" means a demographic factor used to reflect the financial
4 risk associated with a specific industry."

5 SECTION 7. G.S. 58-50-130(b) reads as rewritten:

6 "(b) For all small employer health benefit plans that are subject to this section, the
7 premium rates ~~for health benefit plans subject to this section~~ are subject to all of the
8 following provisions:

9 (1) Small employer carriers shall use an adjusted-community rating
10 methodology in which the premium for each small employer can vary
11 only on the basis of the eligible employee's or dependent's age as
12 determined ~~in accordance with~~ under subdivision (6) of this
13 subsection, the gender of the eligible employee or dependent, number
14 of family members covered, or geographic area as determined under
15 subdivision (7) of this ~~subsection.~~ subsection, or industry as
16 determined under subdivision (9) of this subsection. Premium rates
17 charged during a rating period to small employers with similar case
18 characteristics for same coverage shall not vary from the adjusted
19 community rate by more than ~~twenty percent (20%)~~ twenty-five
20 percent (25%) for any reason, including differences in administrative
21 costs and claims experience.

22 (2) Rating factors related to age, gender, number of family members
23 covered, ~~or geographic location~~ location, or industry may be developed
24 by each carrier to reflect the carrier's experience. The factors used by
25 carriers are subject to the Commissioner's ~~review~~ review.

26 (3) A small employer carrier shall not modify the premium rate charged to
27 a small employer or a small employer group member, including
28 changes in rates related to the increasing age of a group member, for
29 12 months from the initial issue date or renewal date, unless the group
30 is composite rated and composition of the group changed by twenty
31 percent (20%) or more or benefits are changed. The percentage
32 increase in the premium rate charged to a small employer for a new
33 rating period shall not exceed the sum of all of the following:

34 a. The percentage change in the adjusted community rate as
35 measured from the first day of the prior rating period to the first
36 day of the new rating ~~period~~ and period.

37 b. Any adjustment, not to exceed fifteen percent (15%) annually,
38 due to claim experience, health status, or duration of coverage
39 of the employees or dependents of the small ~~employer~~ and
40 employer.

41 c. Any adjustment because of change in coverage or change in
42 case characteristics of the small employer group.

43 (4), (5) Repealed by Session Laws 1995, c. 238, s. 1.

- 1 (6) ~~For the purposes of subsection (b) of this section, a small employer~~
2 ~~carrier shall, unless~~ Unless the small employer carrier uses composite
3 rating, the small employer carrier shall use the following age brackets:
4 a. Younger than 15 years;
5 b. 15 to 19 years;
6 c. 20 to 24 years;
7 d. 25 to 29 years;
8 e. 30 to 34 years;
9 f. 35 to 39 years;
10 g. 40 to 44 years;
11 h. 45 to 49 years;
12 i. 50 to 54 years;
13 j. 55 to 59 years;
14 k. 60 to 64 years;
15 l. 65 years.

16 Carriers may combine, but shall not split, complete age brackets for
17 the purposes of determining rates under ~~subsection (b) of this section.~~
18 this subsection. Small employer carriers shall be permitted to develop
19 separate rates for individuals aged 65 years and older for coverage for
20 which Medicare is the primary payor and coverage for which Medicare
21 is not the primary payor.

- 22 (7) ~~For the purposes of subsection (b) of this section, a~~ A carrier shall not
23 ~~apply different geographic rating factors to the rates of small~~
24 ~~employers located within the same county; and~~ define geographic area
25 to mean medical care system. Medical care system factors shall reflect
26 the relative differences in expected costs, shall produce rates that are
27 not excessive, inadequate, or unfairly discriminatory in the medical
28 care system areas, and shall be revenue neutral to the small employer
29 carrier.

- 30 (8) The Department may adopt rules to administer this subsection and to
31 assure that rating practices used by small employer carriers are
32 consistent with the purposes of this subsection. Those rules shall
33 include consideration of differences based on all of the following:
34 a. Health benefit plans that use different provider network
35 arrangements may be considered separate plans for the purposes
36 of determining the rating in subdivision (1) of this subsection,
37 provided that the different arrangements are expected to result
38 in substantial differences in claims ~~costs;~~ costs.
39 b. Except as provided for in sub-subdivision a. of this subdivision,
40 differences in rates charged for different health benefit plans
41 shall be reasonable and reflect objective differences in plan
42 design, but shall not permit differences in premium rates
43 because of the case characteristics of groups assumed to select
44 particular health benefit ~~plans;~~ and plans.

1 c. Small employer carriers shall apply allowable rating factors
2 consistently with respect to all small employers.

3 (9) In any case where the small employer carrier uses industry as a case
4 characteristic in establishing premium rates, the rate factor associated
5 with any industry classification divided by the lowest rate factor
6 associated with any other industry classification shall not exceed 1.2."

7 **SECTION 8.** G.S. 58-50-149 reads as rewritten:

8 "**§ 58-50-149. Limit on cessions to the Reinsurance Pool.**

9 In addition to any individual or group previously reinsured in accordance with
10 G.S. 58-50-150(g)(1), the Pool shall only reinsure a health benefit plan issued or
11 delivered for original issue by a reinsuring carrier on or after October 1, 1995, if the
12 health benefit plan provides coverage to a small employer with no more than 25 eligible
13 employees, including self-employed individuals. Notwithstanding any other provision
14 of law, the Pool shall cease to reinsure any individual or group on January 1, 2007.
15 Reinsuring carriers as of that date shall continue to be governed by G.S. 58-50-135(b)
16 and G.S. 58-50-150 until and through the termination of the Pool."

17 **SECTION 9.** G.S. 58-50-120, 58-50-125(b), (e), and (g), 58-50-135(a),
18 58-50-140, and 58-50-145 are repealed.

19 **SECTION 10.** G.S. 58-50-125(f) reads as rewritten:

20 "(f) ~~Every~~ To the extent it is required under this section and G.S. 58-68-40, every
21 small employer carrier shall fairly market the basic and standard health care plan all of
22 its small group health benefit plans it offers on a guaranteed issue basis to all small
23 employers in the geographic areas in which the carrier makes coverage available or
24 provides benefits."

25 **SECTION 11.** G.S. 58-50-135(b) reads as rewritten:

26 "(b) A small employer carrier that ~~elects to stop~~ stops participating as a reinsuring
27 carrier and to become a risk-assuming carrier shall not reinsure or continue to reinsure
28 any small employer health benefit plans under G.S. 58-50-145 and G.S. 58-50-150 as
29 soon as the carrier becomes a risk-assuming carrier; however, a reinsuring carrier
30 electing to become a risk-assuming carrier shall pay a prorated assessment based upon
31 business issued as a reinsuring carrier for any part of the year that the business was
32 reinsured. ~~A small employer carrier that elects to stop participating as a risk-assuming~~
33 ~~carrier and to become a reinsuring carrier may reinsure small employer health benefit~~
34 ~~plans under the provisions of G.S. 58-50-145 and G.S. 58-50-150.~~ an assessment is
35 made under G.S. 58-50-150."

36 **SECTION 12.** G.S. 58-50-150(a) reads as rewritten:

37 "(a) There is created a nonprofit entity to be known as the North Carolina Small
38 Employer Health Reinsurance Pool. All carriers issuing or providing health benefit
39 plans in this State ~~on and after~~ from January 1, 1992, ~~1992,~~ until the termination of the
40 Pool, except any small employer carrier electing to be a risk-assuming carrier, are
41 members of the Pool."

42 **SECTION 13.** G.S. 58-3-191(b)(1) reads as rewritten:

1 "(b) Disclosure requirements. – Each health benefit plan shall provide the
2 following applicable information to plan participants and bona fide prospective
3 participants upon request:

4 (1) The evidence of coverage (G.S. 58-67-50), subscriber contract
5 (G.S. 58-65-60, 58-65-140), health insurance policy (G.S. 58-51-80,
6 58-50-125, 58-50-126, 58-50-55), or the contract and benefit summary
7 of any other type of health benefit plan;"

8 **SECTION 14.** G.S. 58-50-125(h) reads as rewritten:

9 "(h) The provisions of ~~subsections (b), (d), and (g) and subdivision (e)(2)~~
10 subsection (d) of this section apply to every health benefit plan delivered, issued for
11 delivery, renewed, or continued in this State or covering persons residing in this State
12 on or after the date the plan becomes operational, as determined by the Commissioner.
13 For purposes of this subsection, the date a health benefit plan is continued is the
14 anniversary date of the issuance of the health benefit plan."

15 **SECTION 15.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

3

HOUSE BILL 2174

Corrected Copy 5/23/06

Third Edition Engrossed 5/30/06

Short Title: Raise Minimum Wage.

(Public)

Sponsors: Representatives Harrell, Jones, Adams (Primary Sponsors); England, Gibson, Goforth, Owens, Parmon, B. Allen, Faison, Glazier, Harrison, Luebke, McLawhorn, Rapp, Spear, Underhill, Wainwright, Weiss, Wilkins, and Williams.

Referred to: Rules, Calendar, and Operations of the House.

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise provided in this section."

SECTION 2. This act becomes effective January 1, 2007.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 2174
Corrected Copy 5/23/06
Third Edition Engrossed 5/30/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H2174-CSRG-40 [v.1]

7/7/2006 7:58:29 AM

Short Title: Raise Minimum Wage.

(Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA AND TO
INCLUDE WAGE RATE PROVISIONS FOR THOSE EMPLOYEES WHO
HAVE NOT ATTAINED THE AGE OF 20 YEARS.

The General Assembly of North Carolina enacts:

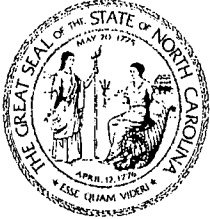
SECTION 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise provided in this section."

SECTION 2. G.S. 95-25.3(g) reads as rewritten:

"(g) In order to prevent curtailment of opportunities for ~~employment, employment of employees who have not attained the age of 20 years~~, an employer may, in lieu of the minimum wage prescribed by this section, pay a ~~training wage to eligible persons in accordance with G.S. 95-25.3A~~ wage rate less than the wage rate in effect under section (a) in accordance with the requirements of section 6(g) of the Fair Labor Standards Act, 29 U.S.C. 206(g), as that wage may change from time to time."

SECTION 3. This act becomes effective January 1, 2007.



HOUSE BILL 2174: Raise Minimum Wage Raise Minimum Wage

BILL ANALYSIS

Committee:	Senate Commerce	Date:	July 7, 2006
Introduced by:	Reps. Harrell, Jones, Adams	Summary by:	Tim Hovis
Version:	PCS		Committee Counsel

SUMMARY: *House Bill 2174 raises the minimum wage in the State from \$5.15 per hour to \$6.15 per hour. Specifically, the bill provides that the minimum wage shall be at least \$6.15 per hour or shall be the minimum wage under the federal Fair Labor Standards Act (FLSA), whichever is higher.*

The bill also includes a provision that, for employees who have not attained the age of 20 years, a wage rate less than the minimum wage may be paid in accordance with 29 U.S.C. 206(g) of the FLSA. This provision of the FLSA allows an employer to pay, during the first 90 consecutive calendar days of employment of employees under 20 years of age, a wage which is not less than \$4.25 an hour.

CURRENT LAW: Under current law the minimum wage is \$5.15 per hour under both the federal law and State law.

A chart showing the State and federal minimum wage since 1938 is attached to this summary.

EFFECTIVE DATE: House Bill 2174 becomes effective January 1, 2007.

H2174PCS-SMRG

North Carolina and United States Minimum Wage Rate History

Date	N.C. MW Rate	U.S. MW Rate
10-24-38	None	\$0.25
10-24-39	None	\$0.30
10-24-45	None	\$0.40
1-25-50	None	\$0.75
3-1-56	None	\$1.00
1-1-60	\$0.75	\$1.00
9-3-61	\$0.75	\$1.15
9-3-63	\$0.75	\$1.25
1-1-64	\$0.85	\$1.25
1-1-66	\$1.00	\$1.25
2-1-67	\$1.00	\$1.40
2-1-68	\$1.00	\$1.60
7-1-69	\$1.25	\$1.60
7-1-71	\$1.45	\$1.60
7-1-72	\$1.60	\$1.60
9-2-73	\$1.80	\$1.60
5-1-74	\$1.80	\$2.00
1-1-75	\$1.80	\$2.10
1-1-76	\$2.00	\$2.30
7-1-77	\$2.30	\$2.30
1-1-78	\$2.50	\$2.65
1-1-79	\$2.50	\$2.90
7-1-79	\$2.75 ¹	\$2.90
1-1-80	\$2.75	\$3.10
7-1-80	\$2.90 ²	\$3.10
1-1-81	\$2.90	\$3.35

Date	N.C. MW Rate	U.S. MW Rate
1-1-82	\$3.10 ³	\$3.35
1-1-83	\$3.35 ⁴	\$3.35
4-1-90	\$3.35	\$3.80
4-1-91	\$3.35	\$4.25
1-1-92	\$3.80 ⁵	\$4.25
1-1-93	\$4.25 ⁶	\$4.25
10-1-96	\$4.25	\$4.75
8-1-97	\$4.75 ⁷	\$4.75
9-1-97	\$5.15 ⁸	\$5.15

¹ Full-time student rate \$ 2.45

² Full-time student rate \$ 2.60

³ Full-time student rate \$ 2.75

⁴ Full-time student rate \$ 3.00

⁵ Full-time student rate \$ 3.40

⁶ Full-time student rate \$ 3.80

⁷ Full-time student rate \$ 4.25

⁸ Full-time student rate \$ 4.60

Full-time US student rate is 85% of regular MW

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 2174
Corrected Copy 5/23/06
Third Edition Engrossed 5/30/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H2174-PCS80674-RG-40

Short Title: Raise Minimum Wage.

(Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA AND TO
INCLUDE WAGE RATE PROVISIONS FOR THOSE EMPLOYEES WHO
HAVE NOT ATTAINED THE AGE OF 20 YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise provided in this section."

SECTION 2. G.S. 95-25.3(g) reads as rewritten:

"(g) In order to prevent curtailment of opportunities for ~~employment, employment of employees who have not attained the age of 20 years,~~ an employer may, in lieu of the minimum wage prescribed by this section, pay a ~~training wage to eligible persons in accordance with G.S. 95-25.3A.~~ wage rate less than the wage rate in effect under section (a) in accordance with the requirements of section 6(g) of the Fair Labor Standards Act, 29 U.S.C. 206(g), as that wage may change from time to time."

SECTION 3. This act becomes effective January 1, 2007.

VISITOR REGISTRATION SHEET

Senate Commerce Committee

July 7, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
CASANDRA WHITE	NC CCPS
Jim Quirk	JD AL, PA
Lisa Martin	NC Home Builders
Steve Woodson	NC Farm Bureau
James Andrews	NC State AFL-CIO
Marybe McMillan	NC State AFL-CIO
Zeh Rhy	Ally Associates
Palmita Buffin	" "
Michael Houser	NCAE
Jim Blackburn	NC Association of County Commissioners

VISITOR REGISTRATION SHEET

Senate Commerce Committee

July 7, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Bob Brooks	state Board of CPA examiners PO Box 12927 Ral NC 27605
Jim Ahler	NC Assn of CPAs
Henry Jones	Atty Raleigh
Mark Fawcett	Donald Beaman Intern
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
John Hoarnani	NCDA
Jennifer Hoiswood	"
Henry Sasser	"
Jim Taylor	"
Art Britt	"

VISITOR REGISTRATION SHEET

Senate Commerce Committee

July 7, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Laura Busse	Busse's Lock Service
Kevin Seymour	Busse's Lock Service
Kathleen Edwards	unc-ch Daily Bulletin
Johanna Reese	DOT
Hankin	Summit Audubon
Alice Parlone	NCEL
John Rust	NCFPC
FRANK W. FOLGER	HELMS MULLISS WICKER
Lee Hodge	KCLH
Stacy Flannery	NCFEFA
Barbara Casab	Psacor
John Bowditch	AstraZeneca

SENATE COMMERCE COMMITTEE
Friday, July 7, 2006 at 1:30 p.m.
Room 1027, Legislative Building


MINUTES

The Senate Commerce Committee met at 1:30 p.m. on July 7, 2006, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles introduced the pages and thanked them for their assistance: Jairus Barnes from Goldsboro, sponsored by Senator John Kerr; Caroline Fraley and Ansley Stroup from Cherryville, sponsored by Senator David Hoyle; and Brandon Rouse from Gastonia; also sponsored by Senator Hoyle.

Senator Soles recognized Senator Tony Rand, who had voted with the majority in giving a favorable report to the proposed committee substitute for House Bill 2174, Raise Minimum Wage. Senator Rand moved to reconsider the vote by which the committee substitute had been given a favorable report. The motion carried. Then Senator Rand, having voted with the majority in adopting the committee substitute, moved that the vote by which the committee substitute had been adopted be reconsidered. The motion carried. Senator Soles recognized Representative Alma Adams to present House Bill 2174, Raise Minimum Wage. Senator Rand then moved a favorable report of the bill, seconded by Senator Larry Shaw. Mr. John Humante, General Counsel, Department of Labor, explained the current federal law to which the bill refers. The motion carried.

The meeting adjourned at 1:55 p.m.



Senator R. C. Soles, Jr., Presiding



Dot Waugaman, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 2174

Corrected Copy 5/23/06

Third Edition Engrossed 5/30/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H2174-CSRG-40 [v.1]

7/7/2006 7:58:29 AM

Short Title: Raise Minimum Wage.

(Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA AND TO
INCLUDE WAGE RATE PROVISIONS FOR THOSE EMPLOYEES WHO
HAVE NOT ATTAINED THE AGE OF 20 YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise provided in this section."

SECTION 2. G.S. 95-25.3(g) reads as rewritten:

"(g) In order to prevent curtailment of opportunities for ~~employment, employment of employees who have not attained the age of 20 years,~~ an employer may, in lieu of the minimum wage prescribed by this section, pay a ~~training wage to eligible persons in accordance with G.S. 95-25.3A,~~ wage rate less than the wage rate in effect under section (a) in accordance with the requirements of section 6(g) of the Fair Labor Standards Act, 29 U.S.C. 206(g), as that wage may change from time to time."

SECTION 3. This act becomes effective January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

3

HOUSE BILL 2174
Corrected Copy 5/23/06
Third Edition Engrossed 5/30/06

Short Title: Raise Minimum Wage. (Public)

Sponsors: Representatives Harrell, Jones, Adams (Primary Sponsors); England, Gibson, Goforth, Owens, Parmon, B. Allen, Faison, Glazier, Harrison, Luebke, McLawhorn, Rapp, Spear, Underhill, Wainwright, Weiss, Wilkins, and Williams.

Referred to: Rules, Calendar, and Operations of the House.

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise provided in this section."

SECTION 2. This act becomes effective January 1, 2007.



Minimum Wage Polling Data

Eighty Percent of North Carolinians Support Raising the Minimum Wage

Two recent polls have found that North Carolinians support raising the minimum wage. Over time an increasing number of North Carolinians think it should be raise by more than \$1.

Elon University Poll

March 7, 2006

- 78.8% of North Carolinians polled thought minimum wage should be increased.
- 70.2% of North Carolinians in favor thought it should be raised by \$1.35 or more (to \$6.50 or more.)

Public Policy Polling

February 16, 2006

- 80% of North Carolinians polled thought minimum wage should be increased.
- 63% of North Carolinians in favor thought minimum wage should be increased by \$1 or more.

Civitas Institute Poll

January 2006

- 63% of North Carolinians, the majority of whom identified themselves as conservative, supported an increase in the minimum wage.

Small Business Owners Unaffected by Minimum Wage

Gallup Poll for Wells Fargo

March 2006

This poll was nationwide of small business owners.

- 86% of small business owners nationwide say the minimum wage has no effect on them.
- 5% of small business owners say it would have a positive effect on them to raise the minimum wage.

North Carolinians for Fair Wages is a campaign of over 100 organizations from Wilmington to Asheville, which support legislative efforts to raise North Carolina's minimum wage by at least \$1.

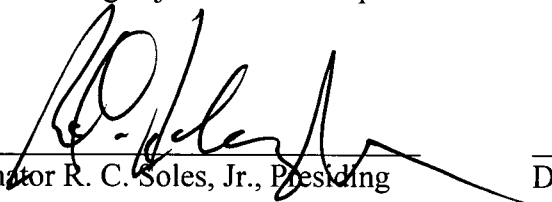
SENATE COMMERCE COMMITTEE
Tuesday, July 11, 2006 at 2:35 p.m.
Senate Chamber, Legislative Building

MINUTES

The Senate Commerce Committee met at 2:35 p.m. on July 11, 2006, in the Senate Chamber of the Legislative Building. Fourteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized Senator Clark Jenkins to present a proposed committee substitute for House Bill 1231, SHP Retiree Plate Modifications. Senator Richard Stevens moved adoption of the proposed committee substitute. The motion carried. Ms. Wendy Graf Ray, Counsel to the Committee, explained the committee substitute. Senator James Forrester moved an unfavorable report of the original bill, but favorable as to the committee substitute. The motion carried.

The meeting adjourned at 2:40 p.m.



Senator R. C. Soles, Jr., Presiding



Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Tuesday, July 11, 2006

Senator SOLES, JR.,
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) 1231	SHP Retiree Plate Modifications.	
	Draft Number:	PCS 10645
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

2

HOUSE BILL 1231
Committee Substitute Favorable 8/23/05

Short Title: SHP Retiree Plate Modifications.

(Public)

Sponsors:

Referred to:

April 14, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PERMIT UNMARRIED SPOUSES OF DECEASED RETIRED
2 HIGHWAY PATROLMEN TO OBTAIN RETIRED HIGHWAY PATROL
3 SPECIAL REGISTRATION PLATES.
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 20-79.4(b)(36a) reads as rewritten:

7 "(b) Types. – The Division shall issue the following types of special registration
8 plates:

9 ...

10 (36a) Retired Highway Patrol. – The plate authorized by this subdivision
11 shall bear the phrase "SHP, Retired." The Division may not issue the
12 plate authorized by this subdivision unless it receives at least 300
13 applications for the plate. The plate is issuable to ~~one~~ any of the
14 following:

15 a. An individual who has retired from the North Carolina
16 Highway Patrol.

17 b. ~~The surviving spouse of a person who had a retired highway~~
18 ~~patrol plate at the time of death so long as the surviving spouse~~
19 ~~continues to renew the plate and does not remarry. The~~
20 ~~surviving spouse of a person who was retired from the North~~
21 ~~Carolina Highway Patrol at the time of death so long as the~~
22 ~~surviving spouse does not remarry.~~"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1231

Committee Substitute Favorable 8/23/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1231-CSR-42 [v.4]

7/11/2006 10:31:48 AM

Short Title: Prohibit Extreme Pricing Practices.

(Public)

Sponsors:

Referred to:

April 14, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS FROM EXTREME PRICING PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-38 reads as rewritten:

§ 75-38. Prohibit excessive pricing during states of ~~disaster~~disaster, states of emergency, or abnormal market disruptions.

(a) Upon a triggering event, it is prohibited and shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent at retail during a state of disaster, in the area for which the state of disaster has been declared, any merchandise goods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or comfort-economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. This prohibition shall apply to all parties in the chain of distribution, including, but not limited to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. This prohibition shall apply in the area where the state of disaster or emergency has been declared or the abnormal market disruption has been found.

In determining whether a price is unreasonably excessive, it shall be considered whether:

- (1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the ~~state of disaster; and~~triggering event.
- (2) The seller ~~offered to sell or rent the merchandise or service at a price that was below the~~price charged by the seller exceeds the seller's average price in the preceding 60 days before the state of disaster-triggering event. If the seller did not sell or rent or offer to sell or rent the ~~merchandise good~~or service in question prior to the time

1 ~~the state of disaster was declared, of the triggering event, the price at~~
2 ~~which the merchandise good or service was generally available in the~~
3 ~~trade area shall be used as a factor in determining if the seller is~~
4 ~~charging an unreasonably excessive price.~~

5 (3) The price charged by the seller is attributable to fluctuations in
6 applicable commodity markets; fluctuations in applicable regional,
7 national, or international market trends; or to reasonable expenses and
8 charges for attendant business risk incurred in procuring or selling the
9 goods or services.

10 (b) In the event the Attorney General investigates a complaint for a violation of
11 this section and determines that the seller has not violated the provisions of this section
12 and if the seller so requests, the Attorney General shall promptly issue a signed
13 statement indicating that the Attorney General has not found a violation of this section.

14 (c) For the purposes of this section, the end of a ~~state of disaster triggering event~~
15 is the earlier of 45 days after the triggering event occurs or the expiration or termination
16 of the triggering event unless the prohibition is specifically extended by the Governor.~~a~~
17 ~~natural or man-made disaster or emergency as declared in accordance with G.S. 166A-6~~
18 ~~or G.S. 166A-8.~~

19 (d) A "triggering event" means the declaration of a state of emergency pursuant
20 to G.S. 166A-8, the proclamation of a state of disaster pursuant to Article 36A of
21 Chapter 14, G.S. 166A-6, or a finding of abnormal market disruption pursuant to G.S.
22 75-38(e).

23 (e) An "abnormal market disruption" means a significant disruption, whether
24 actual or imminent, to the production, distribution, or sale of goods and services in
25 North Carolina, which are consumed or used as a direct result of an emergency or used
26 to preserve, protect, or sustain life, health, safety, or economic well-being of a person or
27 his or her property. A significant disruption may result from a natural disaster, weather,
28 acts of nature, strike, power or energy failures or shortages, civil disorder, war, terrorist
29 attack, national or local emergency, or other extraordinary adverse circumstances. A
30 significant market disruption can be found only if a declaration of a state of emergency,
31 state of disaster, or similar declaration is made by the President of the United States or
32 an issuance of Code Red/Severe Risk of Attack in the Homeland Security Advisory
33 System is made by the Department of Homeland Security, whether or not such
34 declaration or issuance applies to North Carolina.

35 (f) The existence of an abnormal market disruption shall be found and declared
36 by the Governor pursuant to the definition in subsection (e) of this section. The duration
37 of an abnormal market disruption shall be 45 days from the triggering event, but may be
38 renewed by the Governor if the Governor finds and declares the disruption continues to
39 affect the economic well-being of North Carolinians beyond the initial 45-day period."

40 **SECTION 2.** This act becomes effective December 1, 2006.

DETERRING PRICE GOUGING IN NC
AND PROTECTING CONSUMERS

- In 2004, the General Assembly enacted legislation to protect consumers from price gouging in times of disaster (G.S. §75-38).
- After Hurricane Katrina, two weaknesses in our law became apparent:
 - 1. The trigger for our law is too narrow because even with the market disruption we experienced in Katrina our law did not take effect.
 - 2. The law applies only to retailers, not to suppliers, wholesalers, or manufacturers.
- This bill will strengthen our price gouging law by remedying these two deficiencies.
- The law expands the trigger to give the Governor the discretion to make it apply in Katrina-like circumstances. If there is a presidentially declared disaster outside North Carolina that substantially disrupts our marketplace, the Governor may make a finding of an abnormal market disruption and bring our law into effect. At that point, the Attorney General can enforce it.
- Second, the law makes clear that price gouging is illegal, whether it occurs at the retail level or at the wholesale level if the retailer is simply passing on unreasonably excessive prices levied by someone up the chain of distribution.
- Additionally, the bill limits the application of the statute to those counties specifically affected by the disaster and
 - Requires the courts to consider commodity prices as well as regional, national and international market trends when making determinations about what is unreasonably excessive.
- It is wrong to take unfair advantage of consumers in a crisis. This new law will work to deter price gouging and better protect North Carolina consumers.

SENATE COMMERCE COMMITTEE
Tuesday, July 18, 2006 at 1:40 p.m.
Senate Chamber, Legislative Building

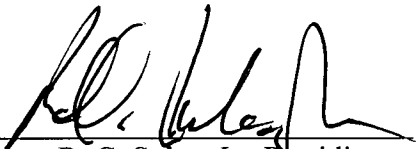
MINUTES

The Senate Commerce Committee met at 1:40 p.m. on July 18, 2006, in the Senate Chamber of the Legislative Building. Fourteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized Mr. Paul Wilms, North Carolina Home Builders Association, to explain a proposed committee substitute for House Bill 2882, Gen. Contractors/Extend License Validity. Senator Tom Apodaca moved adoption of the proposed committee substitute. The motion carried. Senator Apodaca then moved an unfavorable report of the original bill, but favorable as to the committee substitute. The motion carried.

Senator Soles recognized Mr. Tim Hovis, Counsel to the Committee, to explain the provisions of House Bill 2885, ESC/Employers' Protest Filing Period. Senator Martin Nesbitt explained the reasons for the bill. Senator Nesbitt moved a favorable report of the bill. The motion carried.

The meeting adjourned at 1:50 p.m.



Senator R. C. Soles, Jr., Presiding



Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Tuesday, July 18, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) 2885	ESC/Employers' Protest Filing Period.	
	Sequential Referral:	None
	Recommended Referral:	None

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

H.B.	2882	Gen. Contractors/Extend License Validity.	
		Draft Number:	PCS50776
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 2882

Short Title: Gen. Contractors/Extend License Validity.

(Public)

Sponsors: Representative Goforth.

Referred to: Commerce.

June 19, 2006

A BILL TO BE ENTITLED

AN ACT ALLOWING THE STATE LICENSING BOARD OF GENERAL CONTRACTORS TO EXTEND THE PERIOD IN WHICH A LICENSE REMAINS IN EFFECT AFTER A PERSON LICENSED ON BEHALF OF A FIRM OR CORPORATION CEASES TO BE ASSOCIATED WITH THAT FIRM OR CORPORATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-10(c) reads as rewritten:

"(c) If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the personnel of the applicant, and if the person so examined shall cease to be connected with the applicant, then in such event the license shall remain in full force and effect for a period of ~~30~~90 days thereafter, and then be canceled, but the applicant shall then be entitled to a reexamination, all pursuant to the rules to be promulgated by the Board: Provided, that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until said applicant's license is reinstated as provided in this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 2882

PROPOSED SENATE COMMITTEE SUBSTITUTE H2882-PCS50776-SU-40

Short Title: Gen. Con./Extend Lic. Validity/Lic. Except.

(Public)

Sponsors:

Referred to:

June 19, 2006

A BILL TO BE ENTITLED

AN ACT ALLOWING THE STATE LICENSING BOARD OF GENERAL CONTRACTORS TO EXTEND THE PERIOD IN WHICH A LICENSE REMAINS IN EFFECT AFTER A PERSON LICENSED ON BEHALF OF A FIRM OR CORPORATION CEASES TO BE ASSOCIATED WITH THAT FIRM OR CORPORATION, AND CLARIFYING A GENERAL CONTRACTING EXCEPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-10(c) reads as rewritten:

"(c) If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the personnel of the applicant, and if the person so examined shall cease to be connected with the applicant, then in such event the license shall remain in full force and effect for a period of ~~30~~90 days thereafter, and then be canceled, but the applicant shall then be entitled to a reexamination, all pursuant to the rules to be promulgated by the Board: Provided, that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until said applicant's license is reinstated as provided in this Article."

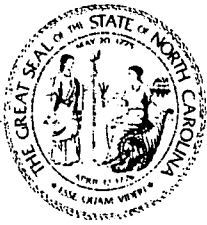
SECTION 2. G.S. 87-1.1 reads as rewritten:

"§ 87-1.1. Exception for licensees under Article 2 or 4.

G.S. 87-1 shall not apply to a licensee under Article 2 or 4 of this Chapter of the General Statutes. G.S. 87-43 shall not apply to a licensee under Article 2 of this Chapter of the General Statutes, and G.S. 87-21(a)(5) shall not apply to a licensee under Article 4 of this Chapter of the General Statutes when the licensee is bidding and contracting directly with the owner of a public building project if: (i) a licensed general

1 contractor performs all work that falls within the classifications in G.S. 87-10(b) and the
2 State Licensing Board of General Contractor's rules; and (ii) the total amount of the
3 general contracting work so classified does not exceed a percentage of the total bid price
4 pursuant to rules established by the Board.Board; and (iii) a licensee with the
5 appropriate license under Article 2 or Article 4 of this Chapter performs all work that
6 falls within the classifications in Article 2 and Article 4 of this Chapter."

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



HOUSE BILL 2882: Gen. Con./Extend Lic. Validity/Lic. Except.

BILL ANALYSIS

Committee:	Senate Commerce	Date:	July 18, 2006
Introduced by:	Rep. Goforth	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition		Committee Counsel
	H2882-PCS50776-SU-40		

SUMMARY: *The PCS for House Bill 2882 would amend the law governing the State Board of General Contractors to extend the period during which a license remains in effect after a person licensed on behalf of a firm or corporation ceases to be associated with that firm or corporation; and would clarify an exception for heating and plumbing contractors and electrical contractors from certain licensing requirements when bidding directly on public building projects.*

BILL ANALYSIS:

Section 1. Under current law, a business organization, such as a corporation or partnership, may obtain a general contractor license if one or more of the managing officers or members of the personnel of the business personally takes the examination. If that person ceases to be associated with the business, then the license will remain in effect for 30 days and then be cancelled. The business may not bid on or undertake new contracts from the time the examined person leaves the business until the license is reinstated.

The PCS for House Bill 2882 would extend the period during which a general contractor business license remains in effect when a person licensed on behalf of the business ceases to be associated with the business from 30 days to 90 days. This would give the business more time to have another person reexamined in order to continue the business license.

Section 2. The PCS would also clarify an existing exception for heating and plumbing contractors and electrical contractors who bid directly on public building projects. G.S. 87-1.1 currently exempts them from general contractor licensing requirements as long as a licensed general contractor performs all work classified as general contracting work and the total amount of that work does not exceed a certain percentage of the total bid price. The PCS would make clear that plumbing and heating contractors are exempt from electrical contractor licensing requirements, and vice versa, under the same circumstances as long as a licensee with the appropriate license performs all work that falls within the statutory classifications.

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

H2882e1-SMSU-PCS50776-SU-40

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

3

HOUSE BILL 2885

Committee Substitute Favorable 7/6/06

Third Edition Engrossed 7/12/06

Short Title: ESC/Employers' Protest Filing Period.

(Public)

Sponsors:

Referred to:

June 19, 2006

A BILL TO BE ENTITLED

AN ACT RELATING TO THE FILING PERIOD FOR EMPLOYERS TO PROTEST
UNEMPLOYMENT INSURANCE CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-15(b)(2) reads as rewritten:

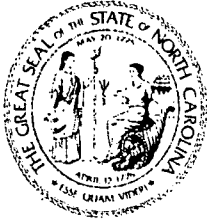
"(2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Commission unless within 15 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to such regulations as the Commission may adopt. The Commission shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed 10 ~~15~~ days from the earlier of mailing or delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no question or issue may be raised or presented by the

1 Commission as to the eligibility of a claimant under G.S. 96-13, or whether any
2 disqualification should be imposed under G.S. 96-14, after 45 days from the first day of
3 the first week after the question or issue occurs with respect to which week an
4 individual filed a claim for benefits. None of the provisions of this subsection shall have
5 the force and effect nor shall the same be construed or interested as repealing any other
6 provisions of G.S. 96-18.

7 An employer shall receive written notice of the employer's appeal rights and any
8 forms that are required to allow the employer to protest the claim. The forms shall
9 include a section referencing the appropriate rules pertaining to appeals and the
10 instructions on how to appeal."

11 **SECTION 2.** This act becomes effective October 1, 2006, and applies to
12 claims filed on or after that date.



HOUSE BILL 2885: ESC/Employers' Protest Filing Period

BILL ANALYSIS

Committee: Senate Commerce
Introduced by: Rep. Wainwright
Version: Third Edition

Date: July 18, 2006
Summary by: Kory Goldsmith and
Tim Hovis,
Staff Attorneys

SUMMARY: *HB2885 would reduce, from 15 to 10, the number of days that an employer has to protest a claim for unemployment insurance.*

The bill becomes effective October 1, 2006, and applies to claims filed on or after that date.

CURRENT LAW: When a person files a claim for unemployment benefits with the North Carolina Employment Security Commission (ESC), the person must provide certain information regarding the employment and the circumstances resulting in the termination of employment. The ESC then sends a notice of claim to the employer and requests similar information from the employer. The ESC then compares the two versions and makes an initial determination regarding whether to pay benefits, and if so, the date benefits will commence, the weekly benefit amount payable, and the potential maximum duration of the benefits. An employer that wants to protest a claim and have it referred to an adjudicator has 15 days to respond to the claim as measured from the earlier of mailing or delivery of the notice of the filing. G.S. 96-15(b)(2).

BILL ANALYSIS: HB 2885 reduces the amount of time, from 15 to 10 days as measured from the earlier of mailing or delivery of the notice of the filing, during which an employer may protest a claim for benefits and have the matter referred to an adjudicator. The bill also requires a copy of the notice to be sent contemporaneously to the employer by telefacsimile transmission, if a fax number is on file.

Finally, the bill requires that the employer receive written notice of the employer's appeal rights and any forms required for the employer to protest the claim. The forms must include a section referencing the rules applicable to appeals and instructions on how to appeal.

BACKGROUND: Federal rules adopted by the U.S. Secretary of Labor require that the ESC must make first payments to eligible claimants on intrastate claims within 14 days of the first compensable week-ending date 87% of the time. 20 CFR 640.5. Failure to meet this requirement ultimately can result in the withholding of federal funds to implement the Federal Unemployment Tax Act.

During 2003, North Carolina averaged 86.2% of payments made within 14 days and in 2004, it averaged 85.4% of claims paid within 14 days. Because North Carolina has not achieved the required 87% average, the U.S. Department of Labor has recommended that North Carolina reduce the number of days that are allowed for employers to respond to a notice of claim for unemployment.

A Federal Requirement Certification has been prepared in conjunction with this bill.

H2885e3-SMRG


SENATE COMMERCE COMMITTEE
Wednesday, July 19, 2006 at 5:00 p.m.
Senate Chamber, Legislative Building

MINUTES

The Senate Commerce Committee met at 5:00 p.m. on July 19, 2006, in the Senate Chamber of the Legislative Building. Thirteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized Senator Harris Blake to move adoption of a proposed committee substitute for House Bill 1827, General Contractor License Exception. The motion carried. Senator Clark Jenkins explained Sections 1-3 of the committee substitute, and Senator Charlie Dannelly explained Section 4. Senator Katie Dorsett then moved an unfavorable report of the original bill, but favorable as to the committee substitute. The motion carried.

The meeting adjourned at 5:10 p.m.



Senator R. C. Soles, Jr., Presiding



Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Wednesday, July 19, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 3, BUT FAVORABLE AS TO
SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #3) 1827	General Contractor License Exceptions.
	Draft Number: PCS30635
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

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HOUSE BILL 1827*
Committee Substitute Favorable 5/30/06
Committee Substitute #2 Favorable 6/21/06
Committee Substitute #3 Favorable 7/13/06

Short Title: General Contractor License Exceptions.

(Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN DEPARTMENT OF TRANSPORTATION CONTRACTORS FROM THE REQUIREMENT FOR A GENERAL CONTRACTOR'S LICENSE, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE, AND TO CLARIFY A GENERAL CONTRACTING EXCEPTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-28.14. Project contractor licensing requirements.

The letting of contracts under this Chapter for the following types of projects shall not be subject to the licensing requirements of Article 1 of Chapter 87 of the General Statutes:

- (1) Routine maintenance and minor repair of pavements, bridges, roadside vegetation and plantings, drainage systems, concrete sidewalks, curbs, gutters, and rest areas.
- (2) Installation and maintenance of pavement markings and markers, ground mounted signs, guardrail, fencing, and roadside vegetation and plantings."

SECTION 2. Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-1.2. Exception for specified Department of Transportation contractors.

The letting of contracts for the types of projects specified in G.S. 136-28.14 shall not be subject to the licensing requirement of this Article."

SECTION 3. G.S. 87-1.1 reads as rewritten:

"§ 87-1.1. Exception for licensees under Article 2 or 4.

1 G.S. 87-1 shall not apply to a licensee under Article 2 or 4 of this Chapter of the
2 General Statutes Statutes, G.S. 87-43 shall not apply to a licensee under Article 2 of this
3 Chapter of the General Statutes, and G.S. 87-21(a)(5) shall not apply to a licensee under
4 Article 4 of this Chapter of the General Statutes when the licensee is bidding and
5 contracting directly with the owner of a public building project if: (i) a licensed general
6 contractor performs all work that falls within the classifications in G.S. 87-10(b) and the
7 State Licensing Board of General Contractor's rules; and (ii) the total amount of the
8 general contracting work so classified does not exceed a percentage of the total bid price
9 pursuant to rules established by the Board-Board; and (iii) a licensee with the
10 appropriate license under Article 2 or Article 4 of this Chapter performs all work that
11 falls within the classifications in Article 2 and Article 4 of this Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1827*

Committee Substitute Favorable 5/30/06

Committee Substitute #2 Favorable 6/21/06

Committee Substitute #3 Favorable 7/13/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1827-PCS30635-LB-174

Short Title: General Contractor License Exceptions/DOT.

(Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN DEPARTMENT OF TRANSPORTATION CONTRACTORS FROM THE REQUIREMENT FOR A GENERAL CONTRACTOR'S LICENSE, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE, TO CLARIFY A GENERAL CONTRACTING EXCEPTION, AND TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING PARTICIPATION BY DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES IN HIGHWAY CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-28.14. Project contractor licensing requirements.

The letting of contracts under this Chapter for the following types of projects shall not be subject to the licensing requirements of Article 1 of Chapter 87 of the General Statutes:

- (1) Routine maintenance and minor repair of pavements, bridges, roadside vegetation and plantings, drainage systems, concrete sidewalks, curbs, gutters, and rest areas.
- (2) Installation and maintenance of pavement markings and markers, ground mounted signs, guardrail, fencing, and roadside vegetation and plantings."

SECTION 2. Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-1.2. Exception for specified Department of Transportation contractors.

1 The letting of contracts for the types of projects specified in G.S. 136-28.14 shall not
2 be subject to the licensing requirement of this Article."

3 **SECTION 3.** G.S. 87-1.1 reads as rewritten:

4 **"§ 87-1.1. Exception for licensees under Article 2 or 4.**

5 G.S. 87-1 shall not apply to a licensee under Article 2 or 4 of this Chapter of the
6 General Statutes. G.S. 87-43 shall not apply to a licensee under Article 2 of this
7 Chapter of the General Statutes, and G.S. 87-21(a)(5) shall not apply to a licensee under
8 Article 4 of this Chapter of the General Statutes when the licensee is bidding and
9 contracting directly with the owner of a public building project if: (i) a licensed general
10 contractor performs all work that falls within the classifications in G.S. 87-10(b) and the
11 State Licensing Board of General Contractor's rules; and (ii) the total amount of the
12 general contracting work so classified does not exceed a percentage of the total bid price
13 pursuant to rules established by the Board; and (iii) a licensee with the
14 appropriate license under Article 2 or Article 4 of this Chapter performs all work that
15 falls within the classifications in Article 2 and Article 4 of this Chapter."

16 **SECTION 4.** G.S. 136-28.4 reads as rewritten:

17 **"§ 136-28.4. State policy concerning participation by ~~disadvantaged~~ disadvantaged**
18 **minority-owned and women-owned businesses in highway contracts.**

19 (a) It is the policy of this State, based on a compelling governmental
20 interest, to encourage and promote participation by ~~disadvantaged~~ disadvantaged
21 minority-owned and women-owned businesses in contracts let by the Department
22 pursuant to this Chapter for the planning, design, preconstruction, construction,
23 alteration, or maintenance of State highways, roads, streets, or bridges and in the
24 procurement of materials for these projects. All State agencies, institutions, and political
25 subdivisions shall cooperate with the Department of Transportation and ~~all other State~~
26 agencies, institutions, and political subdivisions among themselves in all efforts to
27 conduct outreach and to encourage and promote the use of ~~disadvantaged~~ disadvantaged
28 minority-owned and women-owned businesses in these contracts.

29 (b) A ten percent (10%) goal is established for participation by minority
30 businesses and a five percent (5%) goal for participation by women businesses is
31 established in contracts let by the Department of Transportation for the design,
32 construction, alteration, or maintenance of State highways, roads, streets, or bridges and
33 for the procurement of materials for these projects. The Department of Transportation
34 shall endeavor to award to minority businesses at least ten percent (10%), by value, of
35 the contracts it lets for these purposes, and shall endeavor to award to women
36 businesses at least five percent (5%), by value, of the contracts it lets for these purposes.
37 The Department shall adopt written procedures specifying the steps it will take to
38 achieve these goals. The Department shall give equal opportunity for contracts it lets
39 without regard to race, religion, color, creed, national origin, sex, age, or handicapping
40 condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise
41 qualified. At least every five years, the Department shall conduct a study on the
42 availability and utilization of disadvantaged minority-owned and women-owned
43 business enterprises and examine relevant evidence of the effects of race-based or
44 gender-based discrimination upon the utilization of such business enterprises in

1 contracts for planning, design, preconstruction, construction, alteration, or maintenance
2 of State highways, roads, streets, or bridges and in the procurement of materials for
3 these projects. Should the study show a strong basis in evidence of ongoing effects of
4 past or present discrimination that prevents or limits disadvantaged minority-owned and
5 women-owned businesses from participating in the above contracts at a level which
6 would have existed absent such discrimination, such evidence shall constitute a basis for
7 the State's continued compelling governmental interest in remedying such race and
8 gender discrimination in highway contracting. Under such circumstances, the
9 Department shall, in conformity with State and federal law, adopt by rule and contract
10 provisions a specific program to remedy such discrimination. This specific program
11 shall, to the extent reasonably practicable, address each barrier identified in such study
12 that adversely affects contract participation by disadvantaged minority-owned and
13 women-owned businesses.

14 (b1) Based upon the findings of the Department's Second Generation Disparity
15 Study completed in 2004, hereinafter referred to as 'Study', the program design shall, to
16 the extent reasonably practicable, incorporate narrowly tailored remedies identified in
17 the Study, and the Department shall implement a comprehensive antidiscrimination
18 enforcement policy. As appropriate, the program design shall be modified by rules
19 adopted by the Department that are consistent with findings made in the Study and in
20 subsequent studies conducted in accordance with subsection (b) of this section. As part
21 of this program, the Department shall review its budget and establish annual aspirational
22 goals, not mandatory goals, in percentages, for the overall participation in contracts by
23 disadvantaged minority-owned and women-owned businesses. These annual
24 aspirational goals for disadvantaged minority-owned and women-owned businesses
25 shall be established consistent with methodology specified in the Study, and they shall
26 not be applied rigidly on specific contracts or projects. Instead, the Department shall
27 establish contract-specific goals or project-specific goals for the participation of such
28 firms in a manner consistent with availability of disadvantaged minority-owned and
29 women-owned businesses, as appropriately defined by its most recent Study, for each
30 disadvantaged minority-owned and women-owned business category that has
31 demonstrated significant disparity in contract utilization. Nothing in this section shall
32 authorize the use of quotas. Any program implemented as a result of the Study
33 conducted in accordance with this section shall be narrowly tailored to eliminate the
34 effects of historical and continuing discrimination and its impacts on such
35 disadvantaged minority-owned and women-owned businesses without any undue
36 burden on other contractors. The Department shall give equal opportunity for contracts
37 it lets without regard to race, religion, color, creed, national origin, sex, age, or
38 handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses
39 otherwise qualified.

40 (c) The following definitions apply in this section:

- 41 (1) "Disadvantaged business" has the same meaning as "disadvantaged
42 business enterprise" in 49 C.F.R. § 23.62-26.5 or any subsequently
43 promulgated replacement regulation.

1 (2) "Minority" has the same meaning as in 49 C.F.R. § 23.5 includes only
2 those racial or ethnicity classifications identified by a study conducted
3 in accordance with this section that have been subjected to
4 discrimination in the relevant marketplace and that have been
5 adversely affected in their ability to obtain contracts with the
6 Department.

7 (d) The Department shall report semiannually to the Joint Legislative
8 Transportation Oversight Committee on the utilization of disadvantaged
9 minority-owned businesses and women-owned businesses and any program adopted to
10 promote contracting opportunities for those businesses. Following each study of
11 availability and utilization, the Department shall report to the Joint Legislative
12 Transportation Oversight Committee on the results of the study for the purpose of
13 determining whether the provisions of this section should continue in force and effect.

14 (e) This section expires August 31, 2009."

15 **SECTION 5.** Chapter 120 of the General Statutes is amended by adding a
16 new Article to read:

17 "Article 30.

18 "Joint Legislative Commission on the Department of Transportation
19 Disadvantaged Minority-Owned and Women-Owned Businesses Program.

20 **"§ 120-270. Commission established.**

21 There is established the Joint Legislative Commission on the Department of
22 Transportation Disadvantaged Minority-Owned and Women-Owned Businesses
23 Program.

24 **"§ 120-271. Membership; terms.**

25 (a) Membership. – The Commission shall be composed of 12 members as
26 follows:

- 27 (1) Five members of the House of Representatives appointed by the
28 Speaker of the House.
29 (2) Five members of the Senate appointed by the President Pro Tempore
30 of the Senate.
31 (3) The Senate and House cochaurs of the Joint Legislative Transportation
32 Oversight Committee, or their designees, shall serve as ex officio
33 members.

34 (b) Terms. – Members of the Commission shall serve two-year terms, beginning
35 July 1 of each odd-numbered year. Members shall serve at the pleasure of the
36 appointing authority. Members may complete a term of service on the Commission even
37 if they do not seek reelection or are not reelected to the General Assembly, but
38 resignation or removal from service in the General Assembly constitutes resignation or
39 removal from the Commission.

40 (c) Vacancies. – Vacancies on the Commission shall be filled by the appointing
41 authority.

42 **"§ 120-271. Duties of the Commission.**

43 The Commission shall:

- 1 (1) Monitor the implementation, and assess and evaluate the effectiveness,
2 of the Department of Transportation program under G.S. 136-28.4.
- 3 (2) Review the strategies the Department of Transportation plans to use to
4 implement the requirements of G.S. 136-28.4.
- 5 (3) Develop recommendations for submittal to the Department of
6 Transportation or the General Assembly to improve the program under
7 G.S. 136-28.4.

8 **"§ 120-272. Department of Transportation reporting.**

9 The Department of Transportation shall report quarterly to the Commission on the
10 status of the program under G.S. 136-28.4 and efforts made to achieve the goals of the
11 program.

12 **"§ 120-273. Organization of Commission.**

13 (a) The President Pro Tempore of the Senate and the Speaker of the House of
14 Representatives shall each designate a cochair of the Joint Legislative Commission on
15 the Department of Transportation Disadvantaged Minority-Owned and Women-Owned
16 Businesses Program. The Commission shall meet upon the joint call of the cochairs.

17 (b) A quorum of the Commission is seven members. No action may be taken
18 except by a majority vote at a meeting at which a quorum is present. While in the
19 discharge of its official duties, the Commission has the powers of a joint commission
20 under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

21 (c) Members of the Commission receive subsistence and travel expenses as
22 provided in G.S. 120-3.1. The Commission may contract for consultants or hire
23 employees in accordance with G.S. 120-32.02. The Legislative Services Commission,
24 through the Legislative Services Officer, shall assign professional staff to assist the
25 Commission in its work. Upon the direction of the Legislative Services Commission,
26 the Directors of Legislative Assistants of the Senate and of the House of
27 Representatives shall assign clerical staff to the Commission. The expenses for clerical
28 employees shall be borne by the Commission."

29 **SECTION 6.** The provisions of this act are severable. In the event that any
30 provision of this act shall be declared invalid, that invalidity shall not affect the
31 remaining provisions of this act.

32 **SECTION 7.** This act is effective when it becomes law. Section 5 of this act
33 expires June 30, 2015.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Wednesday, July 26, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

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

H.B.	859	Continuing Education of Mortgage Brokers.
		Draft Number: PCS50780
		Sequential Referral: None
		Recommended Referral: None
		Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

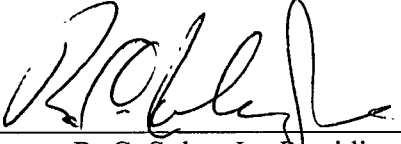
SENATE COMMERCE COMMITTEE
Wednesday, July 26, 2006 at 4:40 p.m.
Senate Chamber, Legislative Building

MINUTES

The Senate Commerce Committee met at 4:40 p.m. on July 26, 2006, in the Senate Chamber of the Legislative Building. Fourteen members of the committee were present. Senator R.C. Soles, Jr., presided.

Senator Soles recognized Senator Vernon Malone to move adoption of a proposed committee substitute for House Bill 859, Continuing Education of Mortgage Brokers. The motion carried. Senator Clark Jenkins explained the committee substitute. Senator Tony Rand then moved an unfavorable report of the original bill, but favorable as to the committee substitute. The motion carried.

The meeting adjourned at 4:45 p.m.



Senator R. C. Soles, Jr., Presiding



Dot Waugaman, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 859*

Short Title: Continuing Education of Mortgage Brokers.

(Public)

Sponsors: Representatives Brubaker, Church, and LaRoque (Primary Sponsors).

Referred to: Financial Institutions.

March 23, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE LAW GOVERNING THE CONTINUING EDUCATION
3 OF MORTGAGE BROKERS BY ESTABLISHING REQUIREMENTS FOR LIVE
4 BROADCASTS OF CONTINUING EDUCATION COURSES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 53-243.07 reads as rewritten:

7 "§ 53-243.07. Continuing education.

8 (a) As a condition of license renewal, the Commissioner may adopt rules to
9 require continuing education of licensees under this Article for the purpose of enhancing
10 the professional competence and professional responsibility of all licensees. The rules
11 may include criteria for:

12 (1) The content of continuing education courses.

13 (2) Accreditation of continuing education sponsors and programs.

14 (3) Accreditation of videotape or other audiovisual programs.

15 (4) Computation of credit.

16 (5) Special cases and exemptions.

17 (6) General compliance procedures.

18 (7) Sanctions for noncompliance.

19 (8) Conditions under which a continuing education course may be
20 broadcast simultaneously to one or more remote locations.

21 (b) Annual continuing professional education requirements shall be determined
22 by the Commissioner. However, the requirements shall not exceed eight credit hours
23 within a one-year period.

24 Continuing professional education credit hours may be given only for courses that
25 are taught live by an instructor or instructors. To receive credit hours for a course, a
26 licensee must attend and view the live teaching of the course or a live broadcast of the
27 course. Only the period of live instruction shall apply to the satisfaction of the
28 continuing professional education requirement established in this section. Courses
29 consisting solely of recorded or printed materials or of electronic images, other than live

1 broadcast images, shall not apply to the satisfaction of the continuing professional
2 education requirement.

3 Licensees shall receive continuing professional education credit hours for live
4 courses that are broadcast simultaneously to licensees in one or more remote locations
5 only if the continuing education course provider, or an employee or agent of the
6 provider, certifies to the Commissioner the identity and attendance of each licensee at
7 the remote location. False certification of attendees by a continuing education course
8 provider shall be grounds for the suspension or revocation of the course provider's
9 privilege to provide courses in this State. The Commissioner may take disciplinary
10 action against the licensee pursuant to G.S. 53-243.12 for false certification of
11 attendance at a continuing education course.

12 (c) The Commissioner may require education providers of the fundamentals
13 mortgage lending course required under the provisions of G.S. 53-243.05(b)(2) and the
14 continuing education courses required under this section to file information regarding
15 the contents and materials of proposed courses to satisfy the education requirements
16 with the Commissioner for review and approval. The Commissioner may set fees for the
17 initial and continuing review of courses for which credit hours will be granted. The
18 initial filing fee for review of materials shall not exceed five hundred dollars (\$500.00)
19 and the fee for continued review shall not exceed two hundred fifty dollars (\$250.00)
20 per annum per course offered."

21 **SECTION 2.** G.S. 53-243.12(a) reads as rewritten:

22 "(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or
23 renew a license of a licensee or applicant under this Article or may restrict or limit the
24 activities relating to mortgage loans of any licensee or any person who owns an interest
25 in or participates in the business of a licensee, if the Commissioner finds both of the
26 following:

- 27 (1) That the order is in the public interest.
28 (2) That any of the following circumstances apply to the applicant,
29 licensee, or any partner, member, manager, officer, director, loan
30 officer, managing principal, or any person occupying a similar status
31 or performing similar functions or any person directly or indirectly
32 controlling the applicant or licensee. The person:
33 a. Has filed an application for license that, as of its effective date
34 or as of any date after filing, contained any statement that, in
35 light of the circumstances under which it was made, is false or
36 misleading with respect to any material fact.
37 b. Has violated or failed to comply with any provision of this
38 Article, rule adopted by the Commissioner, or order of the
39 Commissioner.
40 c. Has been convicted of any felony, or, within the past 10 years,
41 has been convicted of any misdemeanor involving mortgage
42 lending or any aspect of the mortgage lending business, or any
43 offense involving breach of trust, moral turpitude, or fraudulent
44 or dishonest dealing.

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- d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.
- e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.
- f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.
- g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.
- h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.
- i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.
- j. Has falsely certified attendance at a continuing professional education course."

SECTION 3. This act becomes effective January 1, 2006, and applies to licenses issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 859*
PROPOSED SENATE COMMITTEE SUBSTITUTE H859-CSR-V-35 [v.1]

7/26/2006 2:53:52 PM

Short Title: Amend Transportation Corridor Map Act.

(Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADOPTION OR AMENDMENT OF A
TRANSPORTATION CORRIDOR OFFICIAL MAP BY THE WILMINGTON
URBAN AREA MPO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-44.50(a) reads as rewritten:

"(a) A transportation corridor official map may be adopted or amended by any of
the following:

- (1) The governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.
- (2) The Board of Transportation for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.
- (3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.
- (4) The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.
- (5) The Wilmington Urban Area Metropolitan Planning Organization for any project that is within its urbanized boundary and identified in G.S. 136-179.

1 Before a city adopts a transportation corridor official map that extends beyond the
2 extraterritorial jurisdiction of its building permit issuance and subdivision control
3 ordinances, or adopts an amendment to a transportation corridor official map outside the
4 extraterritorial jurisdiction of its building permit issuance and subdivision control
5 ordinances, the city shall obtain approval from the Board of County Commissioners.

6 (a1) No transportation corridor official map shall be adopted or amended, nor may
7 any property be regulated under this Article until:

8 (1) The governing board of the city, the regional transportation authority,
9 the North Carolina Turnpike Authority, or the Department of
10 Transportation has held a public hearing in each county affected by the
11 map on the proposed map or amendment. Notice of the hearing shall
12 be provided:

- 13 a. By publication at least once a week for four successive weeks
14 prior to the hearing in a newspaper having general circulation in
15 the county in which the transportation corridor to be designated
16 is located.
- 17 b. By two week written notice to the Secretary of Transportation,
18 the Chairman of the Board of County Commissioners, and the
19 Mayor of any city or town through whose corporate or
20 extraterritorial jurisdiction the transportation corridor passes.
- 21 c. By posting copies of the proposed transportation corridor map
22 or amendment at the courthouse door for at least 21 days prior
23 to the hearing date. The notice required in sub-subdivision a.
24 above shall make reference to this posting.
- 25 d. By first-class mail sent to each property owner affected by the
26 corridor. The notice shall be sent to the address listed for the
27 owner in the county tax records.

28 (2) A permanent certified copy of the transportation corridor official map
29 or amendment has been filed with the register of deeds. The
30 boundaries may be defined by map or by written description, or a
31 combination thereof. The copy shall measure approximately 20 inches
32 by 12 inches, including no less than one and one-half inches binding
33 space on the left-hand side.

34 (3) The names of all property owners affected by the corridor have been
35 submitted to the Register of Deeds."

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

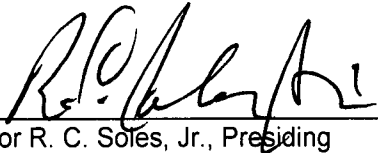
SENATE COMMERCE COMMITTEE
Thursday, July 27, 2006
Senate Chamber

MINUTES

The Senate Commerce Committee met at 10:05 a.m. on July 27, 2006, in the Senate Chamber of the Legislative Building. Ten members of the Committee were present. Senator R. C. Soles, Jr. presided.

Senator Soles called the meeting to order to consider the Committee Substitute for H.B. 2147, Use of Existing Plans for State Construction. After discussion on the bill, Senator Soles recognized Senator Apodaca for a motion. Senator Apodaca moved for a favorable report, seconded by Senator Blake. The motion carried.

The meeting adjourned at 10:08 a.m.



Senator R. C. Soles, Jr., Presiding



Mona Fitzgerald, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Thursday, July 27, 2006

Senator SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) 2147	Use of Existing Plans for State Construction.	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

3

HOUSE BILL 2147*
Committee Substitute Favorable 7/20/06
Third Edition Engrossed 7/25/06

Short Title: Use of Existing Plans for State Construction.

(Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE STATE AGENCIES TO USE EXISTING PLANS FOR
STATE CONSTRUCTION PROJECTS WHERE FEASIBLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-31.1 reads as rewritten:

"§ 143-31.1. ~~Study~~ Use of existing plans for State construction projects; study and review of plans and specifications for building, improvement, etc., projects.

(a) All State agencies shall use existing plans and specifications for construction projects, where feasible. Prior to designing a project, State agencies shall consult with the Department of Administration on the availability of appropriate existing plans and specifications and the feasibility of using them for a project.

(b) ~~It shall be the duty and responsibility of the~~The Director of the Budget to ~~shall~~ determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectural features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications, and until economic conditions of the construction industry are considered by the Office of State Budget and Management to be favorable to the letting of construction contracts. The Director of the Budget may, when he considers it in the best interest of the State to do so, terminate design contracts when it is documented that the designer has failed to perform the conditions enumerated in the contract.

1 Notwithstanding G.S. 143-135, the Director of the Budget may authorize the
2 Department of Health and Human Services and the Department of Correction to use
3 funds necessary for projects that correct deficiencies, improve living conditions, or
4 renovate unneeded patient space for State office space."

5 **SECTION 1.1.** If House Bill 914, 2005 Regular Session becomes law,
6 effective July 1, 2007, G.S. 143-341(3) as amended by Section 96 of House Bill 914
7 reads as rewritten:

8 (3) Architecture and Engineering:

9 a. To examine and approve all plans and specifications for the
10 construction or renovation of:

- 11 1. All State buildings or buildings located on State lands,
12 except those buildings over which a local building code
13 inspection department has and exercises jurisdiction; and
14 2. All community college buildings requiring the estimated
15 expenditure for construction or repair work for which
16 public bidding is required under G.S. 143-129 prior to
17 the awarding of a contract for such work; and to examine
18 and approve all changes in those plans and specifications
19 made after the contract for such work has been awarded.

20 b. To assist, as necessary, all agencies in the preparation of
21 requests for appropriations for the construction or renovation of
22 all State buildings.

23 b1. To certify that a statement of needs pursuant to G.S. 143C-3-3
24 is feasible. For purposes of this sub-subdivision, "feasible"
25 means that the proposed project is sufficiently defined in overall
26 scope; building program; site development; detailed design,
27 construction, and equipment budgets; and comprehensive
28 project scheduling so as to reasonably ensure that it may be
29 completed with the amount of funds requested. At the discretion
30 of the General Assembly, advanced planning funds may be
31 appropriated in support of this certification. This
32 sub-subdivision shall not apply to requests for appropriations of
33 less than one hundred thousand dollars (\$100,000).

34 c. To supervise the letting of all contracts for the design,
35 construction or renovation of all State buildings and all
36 community college buildings whose plans and specifications
37 must be examined and approved under a.2. of this subdivision.

38 d. To supervise and inspect all work done and materials used in
39 the construction or renovation of all State buildings and all
40 community college buildings whose plans and specifications
41 must be examined and approved under a.2. of this subdivision;
42 and no such work may be accepted by the State or by any State
43 agency until it has been approved by the Department.

- 1 e. To require all State agencies to use existing plans and
2 specifications for construction projects, where feasible. Prior
3 to designing a project, State agencies shall consult with the
4 Department of Administration on the availability of appropriate
5 existing plans and specifications and the feasibility of using
6 them for a project.

7 Except for sub-subdivisions ~~b. and b1-b~~, b1., and e. of this subdivision, this subdivision
8 does not apply to the design, construction, or renovation of projects by The University
9 of North Carolina pursuant to G.S. 116-31.11.' "

10 **SECTION 2.** G.S. 116-31.11(a) reads as rewritten:

11 "(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with
12 respect to the design, construction, or renovation of buildings, utilities, and other
13 property developments of The University of North Carolina requiring the estimated
14 expenditure of public money of two million dollars (\$2,000,000) or less:

- 15 (1) Conduct the fee negotiations for all design contracts and supervise the
16 letting of all construction and design contracts.
17 (2) Develop procedures governing the responsibilities of The University
18 of North Carolina and its affiliated and constituent institutions to
19 perform the duties of the Department of Administration and the
20 Director or Office of State Construction under G.S. 133-1.1(d) and
21 G.S. 143-341(3).
22 (3) Develop procedures and reasonable limitations governing the use of
23 open-end design agreements, subject to G.S. 143-64.34 and the
24 approval of the State Building Commission.
25 (4) Use existing plans and specifications for construction projects, where
26 feasible. Prior to designing a project, the Board shall consult with the
27 Department of Administration on the availability of existing plans and
28 specifications and the feasibility of using them for a project."

29 **SECTION 3.** This act becomes effective September 1, 2006, and applies to
30 construction projects on which design is begun after that date.