2006

SENATE
FINANCE

COMMITTEE
MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

Senate Finance Committee
2006

John H. Kerr, III
Chairman

David W. Hoyle
Chairman

DeAnne Mangum
Committee Assistant

SENATE FINANCE COMMITTEE MEMBERS

2005-2006

David W. Hoyle, Cochairman
John H. Kerr, III, Cochairman

Daniel G. Clodfelter, Vice Chairman
Larry Shaw, Vice Chairman

Fletcher Hartsell, Ranking Minority Member

MEMBERSHIP

Charlie Albertson
Austin M. Allran
Tom Apodaca
Bob Atwater
Phil Berger
Harris Blake
Pete Bland
Julia Boseman
Andrew Brock
Pete Brunstetter
Janet Cowell
Walter Dalton
Charlie Dannelly
Linda Garrou
Eddie Goodall
Kay Hagan
Neal Hunt
Clark Jenkins
Ellie Kinnaird
Martin Nesbitt
Robert Pittenger
William Purcell
Tony Rand
Fred Smith
R.C. Soles
Richard Stevens
A.B. Swindell
Jerry Tillman
Hugh Webster
David Weinstein

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0009	Holliman	THOMASVILLE DEANNEXATION.	SR	Ch. SL 2005-108	04-05-05	06-15-05
H0020	Holliman	HEALTH INSURANCE CREDIT/MINIMUM WAGE.	*S	Re-ref Com On Judiciary I	08-11-05	07-13-06
H0035	Alexander	ADET SCHOOL/FEE/ QUALIS. INCREASE.	*SR	Ch. SL 2005-312	05-18-05	08-10-05
H0085	Womble	VARIOUS SPECIAL LICENSE PLATES	*SR	Ch. SL 2005-216	05-25-05	06-23-05
H0099	Gibson	AMEND WORKERS' COMP ACT.	*SR	Ch. SL 2005-448	03-16-05	08-10-05
H0105	Luebke	MOTOR FUEL TAX CHGS & REV LAWS TECHNICAL CHGS.	*SR	Ch. SL 2005-435	05-12-05	08-09-05
H0116	Brubaker	PROPERTY TAX CHANGES	*SR	Ch. SL 2005-313	05-09-05	08-12-05
H0125=	Wilson	WEST JEFFERSON OCCUPANCY TAX.	SR	Ch. SL 2005-49	04-14-05	05-12-05
H0131	Grady	DEED RECORDING/TAX CERT FOR VARIOUS COUNTIES.	*SR	Ch. SL 2005-109	03-21-05	06-09-05
H0143	Coates	EXEMPT AGRI-TOURISM FROM PRIVILEGE TAX.	*SR	Ch. SL 2006-216	08-24-05	06-30-06
H0254	Crawford	GARVEE BOND ISSUANCE.	*SR	Ch. SL 2005-403	07-14-05	08-11-05
H0278	Brown	WALKERTOWN DEANNEXATIONS.	SR	Ch. SL 2005-50	04-14-05	05-12-05
H0350	Stiller	MARTIN COUNTY OCCUPANCY TAX CHANGES.	*SR	Ch. SL 2006-127	04-14-05	07-07-06
H0351	Owens	MODIFY PASQUOTANK/ ELIZ. CITY OCCUPANCY TAX.	*SR	Ch. SL 2005-16	04-14-05	04-21-05
H0370	Steen	SATELLITE ANNEXATIONS/ VARIOUS MUNICIPLALITIES.	*SR	Ch. SL 2005-173	04-14-05	06-09-05
H0370	Steen	SATELLITE ANNEXATIONS/ VARIOUS MUNICIPLALITIES.	*SR	Ch. SL 2005-173	06-15-05	06-23-05
H0392	LaRoque	AMEND DEFINITION OF MALT BEVERAGE IN ABC LAW.	*SR	Ch. SL 2005-277	07-07-05	08-02-05
H0393=	Stam	HOLLY SPRINGS EMINENT DOMAIN.	SR	Ch. SL 2005-57	04-18-05	05-18-05
H0399	Owens	UNIFIED GOVERNMENT.	*SR	Ch. SL 2005-35	04-14-05	04-21-05
H0446	L. Allen	ROANOKE RAPIDS ANNEXATION/ETJ/WELDON ANNEX.	SR	Ch. SL 2005-9	04-05-05	04-13-05
H0449	Stam	GIFT TAX CHANGES.	*S	Ref To Com On Finance	04-18-05	
H0464	Parmon	WINSTON-SALEM MOTOR VEHICLE TAX INCREASE.	*SR	Ch. SL 2005-278	05-03-05	08-12-05
H0470	Walend	TRANSYLVANIA OCCUPANCY TAX.	*SR	Ch. SL 2005-88	06-01-05	06-09-05
H0474=	Ross	MILL REHABILITATION TAX CREDIT.	*SR	Ch. SL 2006-40	08-24-05	06-15-06
H0476	Tolson	WILSON/GREENE BOUNDARY SETTLEMENT.	SR	Ch. SL 2005-259	04-05-05	08-09-05
H0478	Folwell	TOBACCOVILLE DEANNEXATION.	SR	Ch. SL 2005-51	04-14-05	05-12-05

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0488	Weiss	CARY CHARTER REWRITE.	*SR	Ch. SL 2005-117	05-03-05	06-09-05
[redacted]198=	Hollo	TAYLORSVILLE SATELLITE ANNEXATIONS.	SR	Ch. SL 2005-52	04-05-05	05-12-05
H0540	L. Allen	HALIFAX AND ROANOKE RAPIDS OCCUPANCY TAXES.	*SR	Ch. SL 2005-46	04-14-05	05-11-05
H0544	Rapp	MADISON COUNTY OCCUPANCY TAX.	SR	Ch. SL 2005-118	04-14-05	06-23-05
H0580	Rayfield	BELMONT & TROUTMAN OCCUPANCY TAX.	*SR	Ch. SL 2005-220	05-02-05	06-20-05
H0581=	Rayfield	BELMONT STREET LIGHTING ASSESSMENTS.	SR	Ch. SL 2005-111	05-02-05	06-15-05
H0613	Harrell	UPDATE CERTIFICATION/ LICENSURE/REC. THERAPY.	*SR	Ch. SL 2005-378	08-10-05	08-12-05
H0631	Haire	MAGGIE VALLEY SATELLITE ANNEXATIONS.	*SR	Ch. SL 2005-79	04-05-05	05-26-05
H0646	Holliman	INSURANCE COMPANY FEE CONSOLIDATION.-AB	*SR	Ch. SL 2005-424	05-09-05	08-10-05
H0650	Haire	BUSINESS COURT CASES/ FEE.	*SR	Ch. SL 2005-425	08-12-05	08-23-05
H0688	Gibson	CERTIFY ON-SITE WASTEWATER CONTRACTORS.	*SR	Ch. SL 2006-82	06-01-06	06-15-06
H0689	Gibson	MONROE MEALS TAX.	*SR	Ch. SL 2005-261	05-17-05	08-09-05
H0691	Insko	CARRBORO MOTOR VEHICLE TAX.	*SR	Ch. SL 2005-306	05-03-05	08-10-05
H0705=	Hill	PRESENT-USE VALUE BUYOUT CREDITS.	SR	Ch. SL 2005-293	04-18-05	08-09-05
H0723	Glazier	UNC/CRIMINAL RECORD CHECKS/FEE.-AB	*S	Re-ref Com On Finance	08-11-05	
[redacted]736=	Holliman	CODE ENFORCEMENT OFFICIAL EXAM FEES.-AB	*SR	Ch. SL 2005-289	04-25-05	08-09-05
H0743	Coates	EAST SPENCER ANNEXATION.	SR	Ch. SL 2005-112	04-05-05	06-15-05
H0749=	Cole	DOT AGREEMENT/NO STICKER FEE.	*SR	Ch. SL 2006-230	07-10-06	07-19-06
H0756=	Sauls	CHATHAM, LEE, FRANKLIN, & VANCE LOCAL TAXES.	*S	Ref To Com On Finance	05-09-06	
H0766	Howard	ENHANCE PASSENGER TRAMWAY SAFETY ACT.-AB	*SR	Ch. SL 2005-347	04-25-05	08-09-05
H0770	Dickson	CLAY COUNTY OCCUPANCY TAX CHANGES.	*S	Ref To Com On Finance	06-14-06	07-06-06
H0787	Wilson	VARIOUS LOCAL ACTS.	*SR	Ch. SL 2005-433	06-06-05	08-10-05
H0803	Holliman	MANUFACTURED HOUSING LICENSE AMENDMENTS.	*SR	Ch. SL 2005-297	05-02-05	08-09-05
H0819	Saunders	REGIONAL COUNCILS OF GOVERNMENT.	*SR	Ch. SL 2005-290	05-02-05	08-09-05
H0828	Stiller	BELVILLE DEANNEXATION.	SR	Ch. SL 2005-113	04-05-05	06-15-05
H0843	Tucker	DUPLIN OCCUPANCY TAX.	*SR	Ch. SL 2005-53	04-14-05	05-12-05
H0864	Cole	MAYO STATE PARK CONDEMNATION.	*S	Ref To Com On Finance	04-20-05	
H0871	Preston	EMERALD ISLE CANAL DREDGING FEE.	*SR	Ch. SL 2005-47	04-18-05	05-11-05
H0876	Rapp	HAYWOOD COUNTY SALES	*S	Ref To Com On	08-24-05	

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		TAX.		Finance		
H0882	Sutton	OCRACOKE TOWNSHIP OCCUPANCY TAX.	*SR	Ch. SL 2006-128	04-21-05	07-06-06
H0890	Alexander	CRIME LAB COST RECOVERY FEE.	*SR	Ch. SL 2005-363	05-25-05	08-09-05
H0896	Haire	STATE BAR/APPEAL/FEE.	*SR	Ch. SL 2005-237	06-09-05	07-07-05
H0945	Luebke	OMNIBUS OCC. TAXES.	*SR	Ch. SL 2006-120	06-13-05	08-09-05
H0947	Owens	LOCAL TAX FOR PUBLIC SCHOOLS/COMM COLLEGES-II	*S	Ref To Com On Finance	05-09-06	
H0986	McLawhorn	VARIOUS SATELLITE ANNEXATIONS.	*SR	Ch. SL 2005-71	04-19-05	05-12-05
H0988	Blackwood	PROPERTY TAX - VALUE OF MOTOR VEHICLES.	*SR	Ch. SL 2005-303	05-09-05	08-09-05
H0990	Starnes	DEFINITION OF FARMER FOR SALES AND USE TAX.	*S	Ref To Com On Finance	08-24-05	
H1000	LaRoque	GREENE DEEDS/PROPERTY TAX CERTIFICATION.	S	Ref To Com On Finance	04-20-05	
H1004	Gibson	EXTEND JDIG AND BILL LEE ACT.	*SR	Ch. SL 2005-241	05-09-05	07-12-05
H1005	McMahan	PINEVILLE ANNEXATION.	SR	Ch. SL 2005-119	05-18-05	06-23-05
H1025	Luebke	VARIOUS ABC LAW CHANGES.	*SR	Ch. SL 2006-227	08-12-05	07-11-06
H1030	Stiller	BRUNSWICK COUNTY AIRPORT AUTHORITY.	*SR	Ch. SL 2005-342	05-16-05	08-10-05
H1037	McComas	INCREASE WRIGHTSVILLE BEACH MOTOR VEHICLE TAX.	*S	Ref To Com On Finance	05-03-05	
H1048	Hackney	GOVERNOR'S DWI TASK FORCE RECOMMENDATIONS.	*S	Pres. To Gov. 7/ 27/2006	06-28-06	06-30-06
H1050	Warren	LOCAL TAX FOR PUBLIC SCHOOLS & COMMUNITY COLLEGE	*S	Ref To Com On Finance	05-09-06	
H1051	Haire	MACON-JACKSON REGIONAL AIRPORT AUTHORITY.	*SR	Ch. SL 2005-219	07-12-05	07-20-05
H1056	Preston	AMEND CARTERET COUNTY OCCUPANCY TAX.	SR	Ch. SL 2005-120	04-25-05	06-23-05
H1080	Daughtridge	DORTCHES DEANNEXATION.	SR	Ch. SL 2005-60	04-18-05	05-18-05
H1094=	Gibson	WASTEWATER SYSTEM APPROVALS/SMALL COUNTIES	*SR	Ch. SL 2006-136	06-20-06	06-21-06
H1095=	Gibson	CLARIFY CLEAN WATER FUNDING AND PROCEDURE.	*SR	Ch. SL 2005-454	08-10-05	08-12-05
H1117	Ross	PUBLIC FINANCE CHANGES.	*SR	Ch. SL 2005-238	05-09-05	07-07-05
H1136	Culpepper	MERCURY SWITCH REMOVAL-2.	*SR	Ch. SL 2005-384	08-12-05	08-12-05
H1169	Church	INVESTMENTS OF STATE AND LOCAL FUNDS.	*SR	Ch. SL 2005-394	05-09-05	08-10-05
H1196	Church	REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE.	*S	Ref To Com On Finance	07-19-06	
H1217	Earle	NOTARY FEE INCREASE.	*SR	Ch. SL 2005-328	05-17-05	08-11-05
H1231	Steen	PROHIBIT EXTREME PRICING PRACTICES.	*S	Pres. To Gov. 7/ 20/2006	08-24-05	07-10-06

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1261	Underhill	911/WIRELESS SERVICE/ WIRE EXPENSES & CHARGES	*SR	Ch. SL 2005-439	08-10-05	08-11-05
H1269	Culpepper	CHOWAN OCCUPANCY TAX CHANGES.	*SR	Ch. SL 2006-129	07-05-06	07-06-06
H1277	Faison	CLARIFY HUNTER SAFETY.	*SR	Ch. SL 2005-438	08-09-05	08-12-05
H1281	L. Allen	COUNTY CONTROL/ NOXIOUS AQUATIC WEEDS.	*SR	Ch. SL 2005-440	06-29-05	08-09-05
H1284	Culpepper	IMPROVE REAL ESTATE LICENSING LAW.	*SR	Ch. SL 2005-395	08-10-05	08-11-05
H1327	Harrison	CRIM. RECORD CHECKS/ PSYCHOLOGY PRACTICE ACT.	*SR	Ch. SL 2006-175	08-10-05	07-11-06
H1330	Jeffus	AUTHORIZE LICENSURE/ ANESTHESIOLOGIST ASST'S.	*S	Ref To Com On Rules, Calendar, and Operations of the House	05-18-06	06-01-06
H1349	Wilkins	RAISE CEILING ON FEES/ BOARD OF PHARMACY.	*SR	Ch. SL 2005-402	08-12-05	08-12-05
H1357	Fisher	AMEND ACUPUNCTURE LAWS/FEES.	*SR	Ch. SL 2005-379	06-15-05	08-10-05
H1413=	L. Allen	ENHANCE LOCAL GOVT. ADM. OF ENV. PRGMS.	*S	Pres. To Gov. 7/ 27/2006	06-15-06	07-19-06
H1429	Harrell	WINE SHIPPER FEE/WINE PRIMARY SOURCE	*SR	Ch. SL 2005-380	07-12-05	08-09-05
H1473	Coates	CLAWBACK FAILED INCENTIVES.	S	Ref To Com On Finance	06-06-05	
H1507	Alexander	AMEND INTERPRETER/ TRANSLITERATOR LICENSE ACT.	SR	Ch. SL 2005-299	06-22-05	08-09-05
H1522	McComas	FILM INCENTIVE CHANGES.	*SR	Ch. SL 2006-220	07-11-06	07-11-06
H1541	Earle	HOMEOWNER ASSOCIATION AMENDMENTS.	*SR	Ch. SL 2005-422	08-11-05	08-12-05
$ H1630	**Luebke**	**2005 CONTINUING BUDGET AUTHORITY/ REVENUE.**	***SR**	**Ch. SL 2005-144**	**06-13-05**	**06-23-05**
H1635	Adams	AMEND DISPLACED HOMEMAKER LAWS/UP FUND FEES.	*SR	Ch. SL 2005-405	07-06-05	08-12-05
H1775	McComas	UNC NONAPPROPRIATED CAPITAL PROJECTS.	*SR	Ch. SL 2005-324	07-28-05	08-09-05
$ H1779	**Folwell**	**PROPERTY TAX PAID WITH VEHICLE REGISTRATION.**	***SR**	**Ch. SL 2005-294**	**08-02-05**	**08-09-05**
H1806	Owens	TAX CERTIFICATION - REGISTER OF DEEDS.	SR	Ch. SL 2006-16	05-22-06	06-15-06
H1819=	Crawford	LYONS STATION ANNEXATION.	*SR	Ch. SL 2006-4	05-23-06	05-30-06
H1820	Crawford	VARIOUS SATELLITE ANNEXATIONS.	*SR	Ch. SL 2006-130	06-26-06	07-06-06
H1843	Hackney	STATE GOVERNMENT ETHICS ACT - 1.	*SR	Ch. SL 2006-201	07-18-06	07-19-06
H1852=	Kiser	LINCOLN ANNEXATIONS.	SR	Ch. SL 2006-22	05-22-06	06-21-06
H1881	LaRoque	PINK HILL DEANNEXATION.	*SR	Ch. SL 2005-44	06-14-06	06-28-06

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1891	Wainwright	SIMPLIFY FIRE TAX RATE/OTHER TAX CHANGES.	*SR	Ch. SL 2006-196	07-12-06	07-13-06
H1892	Wainwright	IRC UPDATE.	SR	Ch. SL 2006-18	05-30-06	06-08-06
H1898	Wilkins	S CORP INCOME TAX ADJUSTMENTS.	*SR	Ch. SL 2006-17	05-30-06	06-08-06
H1913	Almond	RED CROSS DEANNEXATION.	*SR	Ch. SL 2006-46	06-14-06	06-28-06
H1915	Hill	SSTA SALES TAX DEFN/ SALES TAX PAYMENTS.	*SR	Ch. SL 2006-33	05-30-06	06-08-06
H1938	Wainwright	AMEND TAXATION OF LOGGING MACHINERY.	SR	Ch. SL 2006-19	05-25-06	06-08-06
H1963=	Luebke	REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES.	*SR	Ch. SL 2006-162	06-14-06	06-30-06
H1989	Langdon	PRINCETON/SMITHFIELD SATELLITE ANNEXATIONS.	*SR	Ch. SL 2006-62	06-14-06	06-29-06
H1992=	Hill	SHALLOTTE ANNEXATION.	*SR	Ch. SL 2006-47	06-14-06	06-28-06
H1993	Glazier	VARIOUS SPECIAL LICENSE PLATES	*S	Re-ref Com On Finance	06-21-06	06-29-06
H1993	Glazier	VARIOUS SPECIAL LICENSE PLATES	*S	Re-ref Com On Finance	06-30-06	
H2027	Hill	GF CTS BENSON, CASWELL BE., CHADBOURN, TABOR CI	*SR	Ch. SL 2006-149	06-28-06	07-13-06
H2047	Carney	VIDEO SERVICE COMPETITION ACT.	*SR	Ch. SL 2006-151	06-28-06	07-05-06
H2048=	Luebke	EXPANSION OF ROYALTY REPORTING OPTION.	S	Ref To Com On Finance	05-25-06	
H2097=	Brubaker	PROPERTY TAX CHANGES.	*SR	Ch. SL 2006-30	06-08-06	06-21-06
S2170	**Harrell**	**BILL LEE CHANGES.**	***S**	**Pres. To Gov. 7/ 27/2006**	**07-17-06**	**07-19-06**
H2181	Crawford	REVISE CAPITAL IMPROVEMENT PLAN.	S	Ref To Com On Finance	07-11-06	
H2259	Harrell	ELKIN/PILOT MTN/ DOBSON OCCUPANCY TAX.	*SR	Ch. SL 2006-118	06-28-06	07-05-06
H2259	Harrell	ELKIN/PILOT MTN/ DOBSON OCCUPANCY TAX.	*SR	Ch. SL 2006-118	07-05-06	07-06-06
H2289=	Sherrill	ASHEVILLE FRANCHISE TAX AMENDMENT.	SR	Ch. SL 2006-63	06-21-06	06-29-06
H2339	Kiser	LINCOLN COUNTY TAX CERTIFICATION.	*SR	Ch. SL 2006-150	06-29-06	07-11-06
H2445	L. Allen	HALIFAX/AHOSKIE OCCUPANCY TAX.	*SR	Ch. SL 2006-164	06-28-06	07-06-06
H2468	Nye	REGULATION OF GOLF CARTS IN CLARKTON.	SR	Ch. SL 2006-152	07-17-06	07-19-06
H2477	Miller	DURHAM COUNTY OCCUPANCY TAX MODIFICATION.	SR	Ch. SL 2006-98	06-28-06	07-06-06
H2491	Goodwin	CANDOR ANNEXATION.	SR	Ch. SL 2006-55	06-26-06	06-28-06
H2524	Williams	CHOCOWINITY ETJ.	SR	Ch. SL 2006-51	06-26-06	06-28-06
H2549	Steen	LANDIS ANNEXATION/ PLANNING.	SR	Ch. SL 2006-58	06-26-06	06-28-06
H2551	Hill	EXEMPTION FOR BALER TWINE FROM SALES TAX.	S	Ref To Com On Finance	06-29-06	
H2604	Daughtry	CLAYTON ANNEXATION.	SR	Ch. SL 2006-57	06-26-06	06-29-06

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H2638	Harrell	DOBSON SATELLITE ANNEXATIONS.	S	Ref To Com On Finance	06-29-06	
H251	Bell	ROTH 401K ACCOUNTS/ LAW ENFORCEMENT OFFICERS.	SR	Ch. SL 2006-141	06-28-06	06-30-06
H2656	Daughtridge	DORTCHES/MORGANTON DEANNEXATION.	*SR	Ch. SL 2006-56	06-26-06	06-28-06
H2658	Stiller	OAK ISLAND SEWER TREATMENT FEE.	*SR	Ch. SL 2006-54	06-26-06	06-28-06
H2725	Insko	CHAPEL HILL ANNEXATION.	*SR	Ch. SL 2006-53	06-26-06	06-28-06
$ H2744=	**Owens**	**ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS.**	***SR**	**Ch. SL 2006-168**	**07-07-06**	**07-11-06**
H2818	West	SALES TAX ON OFF-ROAD VEHICLES.	*S	Ref To Com On Finance	07-18-06	
H2873=	Insko	SAFE DRINKING WATER/ PRIVATE WELLS.	*SR	Ch. SL 2006-202	07-12-06	07-13-06
S0014=	R. C. Soles, Jr.	HOLDEN BEACH CANAL DREDGING FEE.	*SR	Ch. SL 2005-90	01-31-05	03-16-05
S0015=	R. C. Soles, Jr.	WATER & SEWER DISTRICT BOUNDARIES/ PER DIEM.	*SR	Ch. SL 2005-127	01-31-05	03-16-05
S0016=	R. C. Soles, Jr.	TABOR CITY SATELLITE ANNEXATION.	*SR	Ch. SL 2005-8	01-31-05	03-16-05
S0037=	A. B Swindell	REENACT LONG-TERM CARE INSURANCE TAX CREDIT.	S	Ref To Com On Finance	02-03-05	
S0073	Kay R. Hagan	NC WILDLIFE HABITAT FOUNDATION SPECIAL PLATE.	S	Ref To Com On Finance	02-08-05	
S080=	John A. Garwood	WEST JEFFERSON OCCUPANCY TAX.	S	Ref To Com On Finance	02-09-05	
S0083=	Charlie S. Danne	ADET SCHOOL/FEE/ QUALIFICATIONS INCREASE.	*S	Re-ref Com On Finance	02-23-05	
S0092	John A. Garwood	WATAUGA DIST. U OCC. TAX/FORCE ACCOUNT LIMIT.	*SR	Ch. SL 2005-197	04-21-05	05-12-05
S0101	Charles W. Alber	SWEEPERS MOTOR FUEL TAX REFUND.	S	Ref To Com On Finance	02-10-05	
S0117=	William R. Purce	MEDICAID REF. STUDY/ COUNTY SHARE PHASE OUT.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	02-14-05	
S0122=	William R. Purce	LONG-TERM CARE INSURANCE TAX CREDIT.	S	Ref To Com On Finance	02-14-05	
S0126	Harry Brown	MARINE CORPS LEAGUE REGISTRATION PLATE.	S	Ref To Com On Finance	02-14-05	
S0138	Jerry W. Tillman	ARCHDALE EXTRATERRITORIAL JURISDICTION.	*SR	Ch. SL 2005-115	02-16-05	05-12-05
S0145	John H. Kerr III	STREAMLINED SALES TAX CHANGES.	S	Ref To Com On Finance	02-16-05	
S0146	John H. Kerr III	IRC UPDATE.	S	Ref To Com On Finance	02-16-05	
S0153=	Clark Jenkins	GARVEE BOND ISSUANCE.	S	Ref To Com On	02-16-05	

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Finance		
S0159	Fletcher L. Hart	REVENUE LAWS TECHNICAL CHANGES.	S	Ref To Com On Finance	02-16-05	
S0166	Charles W. Alber	REGULATE GOLF CARTS/ SEVEN LAKES MV REGULATION.	*SR	Ch. SL 2005-11	02-23-05	03-30-05
S0170=	Walter H. Dalton	WACO TOWN CENTER.	SR	Ch. SL 2005-199	02-21-05	03-16-05
S0172	Fred Smith	CORPORATE INCOME TAX EXEMPTION.	S	Ref To Com On Finance	02-21-05	
S0175	Hamilton C. Hort	PUBLIC LAWS - 1.	S	Re-ref Com On State and Local Government	05-03-05	08-08-05
S0185	Robert Lee Hollo	WINDSHIELD REPLACERS-STICKERS W/O FEE.	*S	Re-ref Com On Appropriations Subcommittee on Transportation	02-23-05	07-07-05
S0190=	Hamilton C. Hort	INCOME TAX CREDIT - ENERGY EFFICIENT HOMES.	S	Ref To Com On Finance	02-23-05	
S0193	Larry Shaw	NC BRIDGE AND TOLL ROAD AUTHORITY.	S	Ref To Com On Finance	02-23-05	
S0201=	David W. Hoyle	CITY OF BELMONT OCCUPANCY TAX.	S	Ref To Com On Finance	02-24-05	
S0202	David F. Weinste	13TH SENATORIAL DISTRICT LOCAL ACT-1.	S	Re-ref Com On Finance	05-24-05	
S0204=	Richard Stevens	HOLLY SPRINGS EMINENT DOMAIN.	S	Ref To Com On Finance	02-24-05	
S0206	Charles W. Alber	SALEMBURG BOUNDARY VALIDATION.	*SR	Ch. SL 2005-84	04-13-05	05-11-05
S0208=	Jeanne H. Lucas	AMEND OCCUPATIONAL THERAPY LAWS/FEE.	*SR	Ch. SL 2005-432	05-03-05	08-10-05
S0214	Martin L. Nesbit	INCREASE CIGARETTE EXCISE TAX BY 75 CENTS.	S	Ref To Com On Finance	02-24-05	
S0246	John Snow	50TH SENATORIAL DISTRICT LOCAL ACT-4.	S	Re-ref Com On Finance	05-17-05	
S0249	Tom Apodaca	ASHEVILLE SATELLITE ANNEXATIONS.	*SR	Ch. SL 2005-85	05-05-05	05-18-05
S0270	Richard Stevens	CARY CHARTER REWRITE.	S	Ref To Com On Finance	03-01-05	
S0278	Jim Jacumin	FOOTHILLS AIRPORT AUTHORITY LAND ACQUISITION.	*SR	Ch. SL 2005-171	05-11-05	05-26-05
S0290	David W. Hoyle	SECURITIES TRANSFER ON DEATH.	*SR	Ch. SL 2005-411	04-07-05	08-11-05
S0291=	David W. Hoyle	AMEND TAXATION OF CONSTRUCTION MACHINERY.	S	Ref To Com On Finance	03-02-05	
S0301	Fletcher L. Hart	MOUNT PLEASANT CHARTER REVISAL.	S	Ref To Com On Finance	03-02-05	
S0303	Janet Cowell	16TH SENATORIAL DISTRICT LOCAL ACT-1.	S	Re-ref Com On Finance	04-13-05	
S0322	Daniel G. Clodfe	SALES TAX EXEMPTION FOR SCHOOLS.	S	Ref To Com On Finance	03-03-05	
S0327	Tony Rand	NC STATE BAR CHANGES/ FEES.	*SR	Ch. SL 2005-396	06-14-05	07-07-05

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0339	Robert Lee Hollo	OMNIBUS OCCUPANCY TAXES-III	*S	Re-ref Com On Finance	05-09-05	05-12-05
S0339	Robert Lee Hollo	OMNIBUS OCCUPANCY TAXES-III	*S	Re-ref Com On Finance	08-23-05	06-01-06
S0341=	David W. Hoyle	MODERN ESCHEAT INVESTMENT PROGRAM.	SR	Ch. SL 2005-252	03-03-05	05-11-05
S0342=	David W. Hoyle	LEASE PURCHASE FOR SCHOOL WAREHOUSE.	S	Ref To Com On Finance	03-03-05	
S0343	David W. Hoyle	ELECTRICITY FRANCHISE TAX DISTRIBUTION.	*S	Ref To Com On Public Utilities	05-24-05	05-26-05
S0344	David W. Hoyle	2005 ECONOMIC GROWTH AND TAX RELIEF ACT.	*S	Re-ref Com On Finance	07-07-05	08-10-05
S0344	David W. Hoyle	2005 ECONOMIC GROWTH AND TAX RELIEF ACT.	*S	Re-ref Com On Finance	08-13-05	
S0348=	John A. Garwood	NORTH WILKESBORO/LAND FOR PRISONS.	*SR	Ch. SL 2005-258	05-16-05	08-10-05
S0350=	John A. Garwood	2006 VARIOUS LOCAL ACTS.	*SR	Ch. SL 2006-171	03-03-05	03-16-05
S0352=	David W. Hoyle	MILL REHABILITATION TAX CREDIT.	S	Ref To Com On Finance	03-03-05	
S0356=	David W. Hoyle	FUEL TAX REFUND FOR PUMPERS AND SWEEPERS.	*SR	Ch. SL 2005-377	03-03-05	04-20-05
S0358	Philip E. Berger	ROCKINGHAM LOCAL ACT-2.	S	Re-ref Com On Finance	06-21-05	
S0361	Martin L. Nesbit	TOWN OF BLACK MOUNTAIN LOCAL ACT.	S	Re-ref Com On Finance	05-26-05	
S0363=	John Snow	TRANSYLVANIA OCCUPANCY TAX.	S	Ref To Com On Finance	03-03-05	
S0364	Walter H. Dalton	SMALL BUSINESS HEALTH INSURANCE CREDIT.	S	Ref To Com On Finance	03-03-05	
S0369	Doug Berger	OMNIBUS OCCUPANCY TAXES.	*SR	Ch. SL 2005-233	05-12-05	06-01-05
S0370	Doug Berger	7TH SENATORIAL DISTRICT LOCAL ACT-2.	S	Re-ref Com On Finance	05-31-05	
S0390=	David W. Hoyle	BELMONT STREET LIGHTING ASSESSMENTS.	S	Ref To Com On Finance	03-07-05	
S0396	David W. Hoyle	COUNTY SERVICE DISTRICTS.	*SR	Ch. SL 2005-136	03-07-05	03-30-05
S0405	Fletcher L. Hart	WILDLIFE CONSERVATION PRESENT-USE VALUE.	S	Ref To Com On Finance	03-07-05	
S0407	Fletcher L. Hart	CABARRUS LOCAL ACTS.	*SR	Ch. SL 2005-116	03-07-05	05-12-05
S0418	Hugh Webster	TAXPAYERS' BILL OF RIGHTS FOR NC.	S	Ref To Com On Finance	03-07-05	
S0420=	Philip E. Berger	OAK RIDGE VOL. ANNEX./ RED CROSS BUDGET ORD.	*SR	Ch. SL 2005-245	03-16-05	03-30-05
S0425=	Richard Stevens	CARY REIMBURSEMENT.	S	Ref To Com On Finance	03-09-05	
S0429	Tony Rand	SHAG DANCING SPECIAL REGISTRATION PLATE.	S	Ref To Com On Finance	03-09-05	
S0436	Bob Atwater	DURHAM COUNTY LOCAL ACT-1.	S	Re-ref Com On Finance	06-15-05	
S0440	John A. Garwood	ALEXANDER LOCAL SALES TAX.	S	Ref To Com On Finance	03-09-05	
S0442	John A. Garwood	BLOWING ROCK OFF-STREET PARKING FUND.	SR	Ch. SL 2005-86	03-09-05	05-12-05
S0443	Julia Boseman	PUBLIC HOSPITAL	*SR	Ch. SL 2005-417	03-09-05	06-01-05

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		INVESTMENTS.				
[redacted]50	Walter H. Dalton	RUTHERFORD AIRPORT AUTHORITY LEASES.	SR	Ch. SL 2005-105	03-10-05	05-12-05
S0458=	Bob Atwater	LEE LOCAL SALES TAX.	S	Ref To Com On Finance	03-10-05	
S0460	Fletcher L. Hart	KANNAPOLIS SATELLITE ANNEXATIONS.	S	Ref To Com On Finance	03-10-05	
S0466	Philip E. Berger	BURLINGTON/ GIBSONVILLE BOUNDARY.	*SR	Ch. SL 2005-87	03-10-05	05-12-05
S0468=	Malcolm Graham	CRIME LAB COST RECOVERY FEE.	*S	Re-ref Com On Finance	04-13-05	
S0473=	Harry Brown	ONSLOW DEED RECORDING.	S	Ref To Com On Finance	03-10-05	
S0475	John H. Kerr III	GREENVILLE SATELLITE ANNEXATIONS.	S	Ref To Com On Finance	03-10-05	
S0481	Larry Shaw	CUMBERLAND COUNTY OCCUPANCY TAX.	S	Ref To Com On Finance	03-10-05	
S0493=	Kay R. Hagan	GUILFORD BATTLEGROUND SPECIAL PLATE.	S	Ref To Com On Finance	03-15-05	
S0505	William R. Purce	MEDICAL EXAMINER FEE INCREASE.-AB	*SR	Ch. SL 2005-368	03-15-05	08-09-05
S0508	Walter H. Dalton	EXEMPT BUILDERS' INVENTORY.	S	Ref To Com On Finance	03-15-05	
S0511	Eleanor Kinnaird	SPAY/NEUTER FUNDING.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	03-15-05	
S0514	Daniel G. Clodfe	EARNED INCOME TAX CREDIT.	S	Ref To Com On Finance	03-15-05	
S0520	Daniel G. Clodfe	COURT FEE CHANGES.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	03-15-05	
S0521	Daniel G. Clodfe	TAX CREDIT FOR CERTAIN REAL PROP. DONATIONS.	S	Ref To Com On Finance	03-15-05	
S0525	Daniel G. Clodfe	NASCAR HALL OF FAME FINANCING.	*SR	Ch. SL 2005-68	05-11-05	05-18-05
S0527	Daniel G. Clodfe	CAMPUS POLICE ACT.	*SR	Ch. SL 2005-231	04-04-05	05-26-05
S0528	Daniel G. Clodfe	TAX INCREMENT FINANCING CHANGES.	*SR	Ch. SL 2005-407	03-15-05	08-04-05
S0535	Daniel G. Clodfe	HISTORIC REHABILITATION CERTIFICATION CHANGES.	S	Ref To Com On Finance	03-15-05	
S0537	Daniel G. Clodfe	ALLOW PAYMENT OF TAX BY OFFSET.	*SR	Ch. SL 2005-134	03-15-05	05-26-05
S0540	Daniel G. Clodfe	FRANCHISE TAX LOOPHOLE CLOSING.	*S	Ref To Com On Finance	03-15-05	03-30-05
S0541	Daniel G. Clodfe	UPDATE CORPORATE TAX APPORTIONMENT FORMULA.	S	Ref To Com On Finance	03-15-05	
S0545	James Forrester	TEACHER TAX CREDIT.	S	Ref To Com On Finance	03-15-05	
S0546	Tony Rand	INCOME TAX - EXEMPT CERTAIN MILITARY INCOME.	S	Ref To Com On Finance	03-15-05	
S0551=	Don East	PRESENT-USE VALUE	S	Ref To Com On	03-15-05	05-24-05

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		BUYOUT CREDITS.		Finance		
[redacted]559	Eleanor Kinnaird	EXPUNCTION/ CONVICTIONS OF NONVIOLENT CRIMES.	*S	Re-ref Com On Finance	04-26-05	
S0561=	Janet Cowell	INCOME TAX CREDIT FOR PUBLIC SCHOOL TEACHERS.	S	Ref To Com On Finance	03-15-05	
S0587	Scott Thomas	WAIVE 1/3 MILITARY BASE GAS TAX.	S	Ref To Com On Finance	03-16-05	
S0589	David F. Weinste	REGISTERS OF DEEDS/ TAX CERTIFICATION.	S	Ref To Com On Finance	03-16-05	
S0590	Katie G. Dorsett	CONSUMER CREDIT COUNSELING/DEBT MANAGEMENT.	*SR	Ch. SL 2005-408	05-18-05	05-26-05
S0592	Eleanor Kinnaird	INDIGENT DEFENSE TECHNICAL REVISIONS.	*SR	Ch. SL 2005-250	04-14-05	05-25-05
S0593	Eleanor Kinnaird	COPY COSTS IN INDIGENT CASES.	*SR	Ch. SL 2005-251	04-19-05	05-24-05
S0594	Eleanor Kinnaird	RECOUPMENT BY COURT-APPOINTED ATTORNEYS.	*SR	Ch. SL 2005-254	04-19-05	05-25-05
S0605	Clark Jenkins	CONTRACT AGENT FEES.	S	Ref To Com On Finance	03-16-05	
$ S0612=	**Tony Rand**	**AMEND LOBBYING LAWS.**	***SR**	**Ch. SL 2005-456**	**03-31-05**	**04-11-05**
S0614=	Scott Thomas	INSURANCE COMPANY FEE CONSOLIDATION.	S	Ref To Com On Finance	03-17-05	
$ S0622=	**Linda Garrou**	**2005 APPROPRIATIONS ACT.**	***SR**	**Ch. SL 2005-276**	**05-03-05**	**05-03-05**
S0639	Richard Stevens	FRIENDS OF NC NATURAL SCIENCES MUSEUM PLATES.	S	Ref To Com On Finance	03-17-05	
[redacted]643	David W. Hoyle	TAX REFUND DONATION FOR PROSTATE CANCER.	S	Ref To Com On Finance	03-17-05	
S0645=	David W. Hoyle	CODE-ENFORCEMENT OFFICIAL EXAM FEES.	S	Ref To Com On Finance	03-17-05	
S0649	Andrew C. Brock	ANNEXATIONS/MANDATORY WATER/SEWER HOOKUP.	S	Ref To Com On Finance	03-17-05	
S0659=	Clark Jenkins	SCUBA SPECIAL REGISTRATION PLATE.	S	Ref To Com On Finance	03-17-05	
S0668	Fletcher L. Hart	UNIFORM TAX REFUND PROCEDURE.	S	Ref To Com On Finance	03-17-05	
S0670=	Fletcher L. Hart	SPECIAL OBLIGATION BONDS FOR UNC.-AB	S	Ref To Com On Finance	03-17-05	
S0682	Robert Lee Hollo	ADD AGENCIES TO SET-OFF DEBT COLLECTION.	*SR	Ch. SL 2005-326	03-21-05	03-30-05
S0682	Robert Lee Hollo	ADD AGENCIES TO SET-OFF DEBT COLLECTION.	*SR	Ch. SL 2005-326	06-23-05	08-12-05
$ S0684=	**Robert Lee Hollo**	**ADVANCED VEHICLE RESEARCH CENTER INCENTIVE.**	**S**	**Ref to Finance. If fav, re-ref to Appropriations/ Base Budget**	**03-21-05**	
$ S0705	**Martin L. Nesbit**	**AMEND SUBSTANCE ABUSE LAWS.**	***SR**	**Ch. SL 2005-431**	**05-17-05**	**06-01-05**
S0712=	Walter H. Dalton	EXTEND SUNSET ON WORKER TRAINING FUNDS.	S	Ref To Com On Finance	03-21-05	
S0719	David W. Hoyle	TAX CREDIT FOR SUSTAINING NC ECONOMY.	S	Ref To Com On Finance	03-22-05	

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0720	David W. Hoyle	MANUFACTURED HOUSING LICENSE AMENDMENTS.	S	Ref To Com On Finance	03-22-05	
22=	Scott Thomas	INCOME TAX - MILITARY/ NATIONAL GUARD EXEMPT.	S	Ref To Com On Finance	03-22-05	
S0773=	William R. Purce	REGIONAL COUNCILS OF GOVERNMENT.	*S	Re-ref Com On Finance	04-19-05	
S0774	William R. Purce	SEAT BELT USE ENHANCEMENTS.	*SR	Ch. SL 2006-140	05-10-05	08-10-05
S0796	Scott Thomas	CRIMINAL RECORD CHECKS/ARCHAEOLOGICAL OPS.	*SR	Ch. SL 2005-367	06-14-05	06-23-05
S0813	Daniel G. Clodfe	CIGARETTE EXCISE TAX/ MSA PAYMENTS.	S	Ref To Com On Finance	03-23-05	
S0817	David W. Hoyle	ALLOW PERSONALIZED DEALER PLATES.	S	Ref To Com On Finance	03-23-05	
S0820	Clark Jenkins	EXTEND BILL LEE IN TIERS 1-3.	S	Ref To Com On Finance	03-23-05	
S0822	Clark Jenkins	FOOD PROCESSING DISTRIBUTION CENTER CREDIT.	S	Ref To Com On Finance	03-23-05	
$ S0836=	**John H. Kerr III**	**FINANCE NC MUSEUM OF ART EXPANSION.**	**S**	**Ref To Com On Finance**	**03-23-05**	
S0841	John H. Kerr III	TRANSPORTER PLATES.	S	Re-ref Com On Finance	05-12-05	
S0842	John H. Kerr III	TAX ON POTTING SOIL.	S	Ref To Com On Finance	03-23-05	
$ S0847=	**Vernon Malone**	**ENACT VEHICLE PROTECTION PRODUCT ACT.**	***S**	**Re-ref Com On Finance**	**06-21-06**	
S0852	Daniel G. Clodfe	HOMESTEAD PROPERTY TAX EXEMPTION ACT.	S	Ref To Com On Finance	03-23-05	
0860	Robert Lee Hollo	MILITARY VET-FREE SPECIAL REGISTRATION PLATE.	S	Ref To Com On Finance	03-23-05	
S0868	Doug Berger	BILL LEE /EXCISE TAX REFUND.	*SR	Ch. SL 2005-406	03-23-05	08-12-05
S0881	Linda Garrou	LAPSE IN LIABILITY INSURANCE.	*SR	Ch. SL 2006-213	06-29-05	08-09-05
$ S0885	**Robert Pittenger**	**REDUCE TAX/CUT GOVERNMENT SPENDING.**	**S**	**Ref To Com On Finance**	**03-23-05**	
S0905	Janet Cowell	FOUNDER'S STOCK TAX INCENTIVES.	S	Ref To Com On Finance	03-23-05	
S0930	Daniel G. Clodfe	RAILROAD INCENTIVES.	S	Ref To Com On Finance	03-24-05	
S0931	Daniel G. Clodfe	RAISE CIGARETTE TAX FOR MEDICAID.	S	Ref To Com On Finance	03-24-05	
S0934	Fletcher L. Hart	NOTARY PUBLIC ACT.-AB	*S	Re-ref Com On Finance	05-12-05	
S0938	Robert Pittenger	TAX CREDIT FOR ORGAN DONATION.	S	Ref To Com On Finance	03-24-05	
S0948	David W. Hoyle	AMEND BOATING SAFETY/ VESSEL TITLING LAW.	*SR	Ch. SL 2006-185	08-09-05	06-01-06
S0971	Eleanor Kinnaird	NORTH CAROLINA LIBRARIES SPECIAL PLATE.	S	Ref To Com On Finance	03-24-05	
S0977	Hugh Webster	CONFORM TAX FILING	S	Ref To Com On	03-24-05	

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		EXTENSIONS.		Finance		
S0988	David W. Hoyle	TRANSFER TEXTILE CENTER TO GASTON COLLEGE.	*SR	Ch. SL 2005-103	04-13-05	04-19-05
S0994=	Daniel G. Clodfe	CHANGE GAS TAX RATES/ INCREASE TANK FEES.	S	Ref To Com On Finance	03-24-05	
S1000	Charles W. Alber	AGR. DEVELOPMENT FACILITY TAX CREDIT.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	03-24-05	
S1011=	Kay R. Hagan	RANDLEMAN DAM BONDS.	SR	Ch. SL 2005-249	03-24-05	06-01-05
S1013=	David W. Hoyle	GEN. CONTRACTORS/FEES/ COST RECOVERY.	*SR	Ch. SL 2005-381	06-22-05	08-10-05
S1015=	Clark Jenkins	ALTERNATIVE FUEL VEHICLE TAX CREDIT.	S	Ref To Com On Finance	03-24-05	
$ S1017	**Martin L. Nesbit**	**RURAL ENHANCEMENT & SUSTAINABILITY ACT.**	**S**	**Ref to Finance. If fav, re-ref to Appropriations/ Base Budget**	**03-24-05**	
S1022	W. Edward (Eddie	FRANCHISE TAX PENALTIES.	S	Ref To Com On Finance	03-24-05	
S1030	Janet Cowell	ELECTRONICS RECYCLING AND JOB CREATION.	S	Re-ref to Agriculture/ Environment/ Natural Resources. If fav, re-ref to Appropriations/ Base Budget	03-24-05	05-09-06
S1049	David W. Hoyle	BUSINESS GROWTH AND INVESTMENT ACT OF 2005.	S	Ref To Com On Finance	03-24-05	
S1059=	William R. Purce	PERFUSIONISTS LICENSURE.	*SR	Ch. SL 2005-267	05-05-05	06-01-05
S1077	Tony Rand	MOTORCYCLE LEARNER'S PERMIT.	*S	Ref To Com On Finance	05-23-05	06-09-05
S1078	Philip E. Berger	AMEND UNEMPLOYMENT TAX.	S	Ref To Com On Finance	03-24-05	
$ S1085	**Charles W. Alber**	**RENEWABLE ENERGY PORTFOLIO STANDARD.**	***S**	**Re-ref Com On Finance**	**08-11-05**	
S1086	John H. Kerr III	FINANCE FACILITY FOR CHERRY HOSPITAL.	S	Ref To Com On Finance	03-24-05	
S1087	John H. Kerr III	LIMITED DRIVING PRIVILEGES-DWLR.	*SF	Failed 3rd Reading	04-19-05	08-10-05
S1089	John H. Kerr III	PITT COUNTY LOCAL OPTION SALES TAX.	S	Ref To Com On Finance	03-24-05	
S1099	Martin L. Nesbit	SALES TAX ON R&D EQUIPMENT.	S	Ref To Com On Finance	03-24-05	
S1104	Martin L. Nesbit	MODIFY AUTO REPAIR SALES TAX.	S	Ref To Com On Finance	03-24-05	
S1114=	Charles W. Alber	ENHANCE LOCAL GOVT. ADM. OF ENV. PRGMS.	*S	Re-ref Com On Finance	05-31-05	
$ S1126	**Charles W. Alber**	**IMPLEMENT CRFL/AMEND FISHERIES LAWS.**	***SR**	**Ch. SL 2005-455**	**04-05-05**	**04-06-05**
S1144=	Julia Boseman	FILM INDUSTRY JOBS INCENTIVES.	*S	Ref To Com On Finance	03-24-05	06-15-05

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S1149	Clark Jenkins	ENERGY CREDIT BANKING/ SELLING PROGRAM/FUND.	*SR	Ch. SL 2005-413	08-11-05	08-12-05
[redacted]50=	Clark Jenkins	RENEWABLE FUELS MOTOR FUELS TAX EXEMPTION.	S	Ref To Com On Finance	03-24-05	
S1157=	Charles W. Alber	OYSTER SHELLS/TAX CREDIT.	*S	Ref To Com On Finance	04-19-05	06-21-06
S1187	C. W. "Pete" Bla	TRYON PALACE FUND/ INTEREST-BEARING.	SR	Ch. SL 2006-180	05-10-06	06-29-06
S1201	David W. Hoyle	CAP VARIABLE RATE/ GASOLINE EXCISE TAX.	S	Ref To Com On Finance	05-10-06	
S1202	Kay R. Hagan	EARLIER DETECTION...A NEW DIRECTION PLATE.	S	Ref To Com On Finance	05-10-06	
S1203	Charles W. Alber	AGRARIAN GROWTH ZONES - BILL LEE.	S	Ref To Com On Finance	05-10-06	06-21-06
S1211	Julia Boseman	BLAIRE THOMPSON DRUG DEALER LIABILITY ACT.	*S	Re-ref Com On Finance	07-10-06	
S1213	Julia Boseman	FILM INCENTIVE CHANGES.	*S	Ref To Com On Finance	05-10-06	06-01-06
S1224	Fletcher L. Hart	LAB TESTING EQUIP. SALES TAX REFUND.	S	Ref To Com On Finance	05-10-06	
S1242=	Charles W. Alber	STRIPED BASS PERMIT.	S	Pres. To Gov. 7/ 27/2006	06-15-06	07-11-06
S1259	Julia Boseman	PARENTAL SAVINGS TRUST FUND TAX DEDUCTION.	S	Ref To Com On Finance	05-11-06	
S1264=	Keith Presnell	HARNETT CO./RECREAT. FACILITIES.	*S	Re-ref Com On Finance	06-21-06	
S1268=	Robert Lee Hollo	GATES LAND TRANSFER TAX.	S	Ref To Com On Finance	05-11-06	
$ S1281	**John H. Kerr III**	**CLEAN WATER BOND ACT OF 2006.**	**S**	**Ref To Com On Finance**	**05-11-06**	
[redacted]1283	Fletcher L. Hart	FRANCHISE TAX BASE CALCULATION.	*SR	Ch. SL 2006-95	05-11-06	06-01-06
S1284	R. C. Soles, Jr.	LAW ENFORCEMENT USE OF ATVS.	*S	Re-ref Com On Finance	06-28-06	
S1311=	Tom Apodaca	NO ALCOHOL ON POLK COUNTY RIVERS.	*SR	Ch. SL 2006-42	06-26-06	06-28-06
S1326	David W. Hoyle	REINSTATE LEA SALES TAX REFUND.	S	Ref To Com On Finance	05-15-06	
S1328	Tom Apodaca	REGULATE GOLF CARTS/ SALUDA & FAISON.	*SR	Ch. SL 2006-27	05-31-06	06-08-06
S1335	R. C. Soles, Jr.	REGULATION OF GOLF CARTS IN TABOR CITY.	*S	Re-ref Com On Finance	06-01-06	
S1364	Tony Rand	INCOME TAX - EXEMPT CERTAIN MILITARY INCOME.	S	Ref To Com On Finance	05-16-06	
S1372	Tony Rand	PROPERTY TAX DUE DATE CHANGE.	SR	Ch. SL 2006-72	05-16-06	06-08-06
S1373	Tony Rand	VARIOUS SPECIAL PLATES.	*SR	Ch. SL 2006-209	05-16-06	06-19-06
S1374	Walter H. Dalton	SCHOOL SUPPLEMENT TAX.	S	Ref To Com On Finance	05-16-06	
S1376	Fletcher L. Hart	MT. PLEASANT DEANNEXATION.	S	Ref To Com On Finance	05-16-06	
S1393=	Harry Brown	EXPAND HOMESTEAD EXEMPTION VIA TAX	S	Ref To Com On Finance	05-16-06	

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		CREDIT.				
[redacted]895	David W. Hoyle	GASTON COUNTY TAX FOR SCHOOL CONSTRUCTION.	S	Ref To Com On Finance	05-16-06	
S1418	Stan Bingham	SCHOOL BUS DRIVERS CDL LICENSE FEES.	S	Ref To Com On Finance	05-17-06	
S1428	R. C. Soles, Jr.	VARIOUS SATELLITE ANNEXATIONS/ REFERENDUM.	*SR	Ch. SL 2006-122	05-17-06	06-08-06
S1429	R. C. Soles, Jr.	NAVASSA BOUNDARY.	S	Ref To Com On Finance	05-17-06	
S1431	R. C. Soles, Jr.	BURGAW/NEW HANOVER/ WILMINGTON OCCUPANCY TAX.	*SR	Ch. SL 2006-167	05-17-06	06-01-06
S1434=	R. C. Soles, Jr.	SHALLOTTE ANNEXATION.	S	Ref To Com On Finance	05-17-06	
$ S1436	**Linda Garrou**	**LOCAL GOVERNMENT DEBT REVISIONS.**	***SR**	**Ch. SL 2006-211**	**05-17-06**	**07-19-06**
S1447=	Philip E. Berger	CAP GAS TAX VARIABLE RATE.	S	Ref To Com On Finance	05-17-06	
S1451	Fletcher L. Hart	DELINQUENT PROPERTY TAX/INVENTORY/STUDY.	*SR	Ch. SL 2006-106	05-17-06	06-08-06
S1452=	Fletcher L. Hart	PROPERTY TAX CHANGES.	S	Ref To Com On Finance	05-17-06	
S1453=	Fletcher L. Hart	REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES.	S	Ref To Com On Finance	05-17-06	
S1456=	David W. Hoyle	REWARDING WORK TAX CREDIT.	S	Ref To Com On Finance	05-17-06	
S1458=	David W. Hoyle	RENTAL CAR TAX FOR TRANSIT CHANGES.	*S	Ref To Com On Finance	05-17-06	06-28-06
[redacted]459	David W. Hoyle	PHASE OUT TAX INCREASES & RAISE MINIMUM WAGE.	S	Ref To Com On Finance	05-17-06	
S1466	Janet Cowell	LEVEL FIELD FOR BAKED GOODS A 2% SALES TAX.	S	Ref To Com On Finance	05-17-06	
S1479	Kay R. Hagan	UNINC. NONPROFIT ASSOC. ACT/GSC TECH. CORR.	*SR	Ch. SL 2006-226	06-06-06	06-21-06
S1483	Martin L. Nesbit	TECHNICAL CHANGES/ AGENCY FEES.	S	Ref To Com On Finance	05-18-06	
S1487	Martin L. Nesbit	DENTAL HYGIENE LAW CHANGES.	*SR	Ch. SL 2006-235	06-14-06	06-29-06
S1498	W. Edward (Eddie	ELIMINATE UPPER INCOME TAX BRACKET.	S	Ref To Com On Finance	05-18-06	
S1499	W. Edward (Eddie	REPEAL ESTATE AND GIFT TAXES.	S	Ref To Com On Finance	05-18-06	
S1506	David F. Weinste	ADDITIONAL ST. PAULS OCCUPANCY TAX.	*SR	Ch. SL 2006-34	05-18-06	06-01-06
S1510	John H. Kerr III	SSTA SALES TAX DEFN/ SALES TAX PAYMENTS.	S	Ref To Com On Finance	05-18-06	
S1526	Philip E. Berger	REIDSVILLE DEANNEXATION.	SR	Ch. SL 2006-35	05-18-06	06-08-06
S1541	R. C. Soles, Jr.	TABOR CITY SUBDIVISIONS.	S	Ref To Com On Finance	05-18-06	
S1550	Hugh Webster	TAXPAYER AND CITIZEN PROTECTION ACT.	S	Ref To Com On Finance	05-18-06	

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S1552	Hugh Webster	ADDITIONAL PERSONAL INCOME TAX FILING OPTION.	*S	Re-ref Com On Finance	05-18-06	06-01-06
S1553	David W. Hoyle	BILL LEE CHANGES.	S	Ref To Com On Finance	05-18-06	
S1559	Daniel G. Clodfe	VIDEO SERVICE COMPETITION ACT.	*S	Re-ref Com On Finance	06-13-06	
S1563	Daniel G. Clodfe	EXTEND SUNSET ON CERTAIN TAX CREDITS.	*S	Ref To Com On Finance	05-18-06	06-21-06
S1573	James Forrester	IREDELL COUNTY TAX FOR SCHOOL CONSTRUCTION.	S	Ref To Com On Finance	05-18-06	
S1574	James Forrester	LINCOLN COUNTY TAX FOR SCHOOL CONSTRUCTION.	S	Ref To Com On Finance	05-18-06	
S1576	Clark Jenkins	MOTOR FUEL TAX INITIATIVES.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	05-18-06	
S1581	Clark Jenkins	MOTOR FUEL TAX INITIATIVES.	S	Ref To Com On Finance	05-18-06	
S1595	Charles W. Alber	RADIATION PROTECTION PROGRAM FEE AMENDMENTS.	S	Ref To Com On Finance	05-18-06	
S1610	Tom Apodaca	SALES TAX EXPIRATION MODIFICATION.	S	Ref To Com On Finance	05-18-06	
$ S1621	**David W. Hoyle**	**SPECIAL INDEBTEDNESS PROJECTS.**	***SR**	**Ch. SL 2006-231**	**05-18-06**	**06-15-06**
$ S1621	**David W. Hoyle**	**SPECIAL INDEBTEDNESS PROJECTS.**	***SR**	**Ch. SL 2006-231**	**07-17-06**	**07-19-06**
S1630	Martin L. Nesbit	RAISE HOMESTEAD LIMITS.	S	Ref To Com On Finance	05-18-06	
$ S1642	**C. W. "Pete" Bla**	**TRYON PALACE INDEBTEDNESS.**	**S**	**Ref To Com On Finance**	**05-18-06**	
$ S1657	**John H. Kerr III**	**PSYCHIATRIC HOSPITAL SPECIAL INDEBTEDNESS.**	**S**	**Ref To Com On Finance**	**05-18-06**	
S1670=	Linda Garrou	SPECIAL PLATE FOR RETIRED PIEDMONT EMPLOYEES.	S	Ref To Com On Finance	05-18-06	
S1686	Jeanne H. Lucas	DURHAM COUNTY OCCUPANCY TAX MODIFICATION.	S	Ref To Com On Finance	05-18-06	
S1692=	David W. Hoyle	SALES TAX ON R&D EQUIPMENT.	*S	Ref To Com On Finance	05-18-06	06-01-06
S1693	David W. Hoyle	UTILITIES/INSURANCE REGULATORY FEES.	S	Ref To Com On Finance	05-18-06	
S1734	Fletcher L. Hart	HARRISBURG DEANNEXATION.	*SR	Ch. SL 2006-84	05-23-06	06-08-06
S1734	Fletcher L. Hart	HARRISBURG DEANNEXATION.	*SR	Ch. SL 2006-84	06-26-06	07-05-06
S1736	Bob Atwater	GOLD STAR SPECIAL PLATE.	S	Ref To Com On Finance	05-23-06	
S1737=	Walter H. Dalton	TAX ON LOTTERY WINNINGS/COMM. COLL. EQUIP.	S	Ref to Finance. If fav, re-ref to Appropriations/ Base Budget	05-23-06	

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
$ S1741	**Linda Garrou**	**MODIFY APPROPRIATIONS ACT OF 2005.**	***SR**	**Ch. SL 2006-66**	**05-23-06**	**05-23-06**
S1750	Fred Smith	JOHNSTON COUNTY LOCAL ACT.	S	Re-ref Com On Finance	06-20-06	
S1764	Stan Bingham	EXEMPT RECYCLED VEGETABLE OIL - MOTOR FUELS.	S	Ref To Com On Finance	05-23-06	
S1765	Doug Berger	SALES TAX FOR SCHOOL CONSTRUCTION PROJECTS.	S	Ref To Com On Finance	05-23-06	
S1770	Janet Cowell	SALES TAX EXEMPTION FOR LOCAL SCHOOL UNITS.	S	Ref To Com On Finance	05-23-06	
S1771	Harry Brown	RAISE MINIMUM WAGE/ REDUCE CORPORATE TAX RATE.	S	Ref To Com On Finance	05-23-06	
S1773	Malcolm Graham	SPECIAL PLATE KAPPA ALPHA PSI FRATERNITY.	S	Ref To Com On Finance	05-23-06	
S1779=	Walter H. Dalton	INCOME TAX - TITLE 32 NATIONAL GUARD EXEMPT.	S	Ref To Com On Finance	05-23-06	
S1789	Linda Garrou	MANUFACTURERS ENERGY TAX EXEMPTIONS.	S	Ref To Com On Finance	05-24-06	
S1796	W. Edward (Eddie	SALES TAX EXPIRATION MODIFICATION.	S	Ref To Com On Finance	05-24-06	
S1804	Tom Apodaca	TRYON/BOILING SPRINGS OCCUPANCY TAX.	*SR	Ch. SL 2006-148	05-24-06	06-08-06
S1808=	Fletcher L. Hart	EXEMPT GOLD, SILVER, PLATINUM FROM SALES TAX.	S	Ref To Com On Finance	05-24-06	
$ S1809=	**John H. Kerr III**	**UNIVERSITY INDEBTEDNESS PROJECTS.**	***SR**	**Ch. SL 2006-146**	**05-24-06**	**06-01-06**
S1835=	Martin L. Nesbit	ASHEVILLE FRANCHISE TAX AMENDMENT.	S	Ref To Com On Finance	05-24-06	
S1852	Stan Bingham	INCORPORATE MIDWAY.	SR	Ch. SL 2006-37	05-25-06	06-08-06
S1854	W. Edward (Eddie	COUNTY FUNDING FOR CHARTER SCHOOLS.	S	Ref To Com On Finance	05-25-06	
S1855	W. Edward (Eddie	TAX ON LOTTERY WINNINGS/TEACHER STIPEND.	S	Ref To Com On Finance	05-25-06	
S1862	Vernon Malone	LIMIT NUTRIENT OFFSET PAYMENTS.	*SR	Ch. SL 2006-215	06-13-06	06-15-06
$ S1886	**Julia Boseman**	**NC PORTS AUTHORITY FUNDS.**	**S**	**Re-ref Com On Finance**	**07-07-06**	
S1889	David W. Hoyle	WORK OPPORTUNITY TAX CREDIT.	S	Ref To Com On Finance	05-25-06	
S1891	David W. Hoyle	HOMESTEAD PROPERTY TAX DEFERRAL.	S	Ref To Com On Finance	05-25-06	
$ S1892=	**David W. Hoyle**	**SPECIAL INDEBTEDNESS PROJECTS.**	***S**	**Ref To Com On Finance**	**05-25-06**	**06-15-06**
S1893=	David W. Hoyle	CLARIFY MOTOR VEHICLE TAX COLLECTIONS.	S	Ref To Com On Finance	05-25-06	
S1894	David W. Hoyle	MODULAR HOME SALES TAX REBATE.	S	Ref To Com On Finance	05-25-06	
S1905	Tom Apodaca	ASHEVILLE ANNEXATION.	SR	Ch. SL 2006-36	05-25-06	06-08-06
S1906	Daniel G. Clodfe	RAISE MINIMUM WAGE/ EARNED INCOME TAX CREDIT.	S	Ref To Com On Finance	05-25-06	

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

2005-2006 Biennium

	Bill	Introducer	Short Title		Latest Action	In Date	Out Date
$	**S1907**	**Daniel G. Clodfe**	**LAND AND WATER CONSERVATION BOND ACT OF 2006.**	**S**	**Ref To Com On Finance**	**05-25-06**	
	S1914	Robert Lee Hollo	AHOSKIE/CHOWAN OCCUPANCY TAX.	S	Ref To Com On Finance	05-25-06	
	S1926	Janet Cowell	PRIVATE CAPITAL FACILITIES FINANCE ACT CHANGE.	S	Ref To Com On Finance	05-25-06	
	S1927	Fred Smith	CLAYTON/PRINCETON SATELLITE ANNEXATIONS.	S	Ref To Com On Finance	05-25-06	
	S1955=	David W. Hoyle	MOTORSPORTS INCENTIVES.	S	Ref To Com On Finance	05-25-06	
	S1964=	Walter H. Dalton	INTERNET DATA CENTER FACILITIES TAX EXEMPTION.	*S	Ref To Com On Finance	05-26-06	06-29-06
	S1964=	Walter H. Dalton	INTERNET DATA CENTER FACILITIES TAX EXEMPTION.	*S	Ref To Com On Finance	06-30-06	06-30-06
	S1966	John H. Kerr III	SALES TAX ON MODULAR HOMES.	S	Ref To Com On Finance	05-26-06	
$	**S1980**	**Philip E. Berger**	**INCOME TAX REBATE.**	**S**	**Ref To Com On Finance**	**05-26-06**	
	S1999	Philip E. Berger	ADJUST INDIVIDUAL INCOME TAX BRACKETS.	S	Ref To Com On Finance	05-26-06	
	S2002	Neal Hunt	UNC STUDENTS/ CRIMINAL BACKGROUND CHECKS.	S	Re-ref Com On Judiciary II	05-26-06	06-29-06
$	**S2006=**	**David W. Hoyle**	**ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS.**	**S**	**Ref To Com On Finance**	**05-26-06**	
	S2009=	Vernon Malone	PUBLIC-PRIVATE PARTNERSHIPS FOR SCHOOLS.	*SR	Ch. SL 2006-232	05-26-06	06-29-06
	S2010	Kay R. Hagan	AIRCRAFT MECHANICS' LIEN/WINE MAKING.	*SR	Ch. SL 2006-222	06-19-06	06-22-06
	S2010	Kay R. Hagan	AIRCRAFT MECHANICS' LIEN/WINE MAKING.	*SR	Ch. SL 2006-222	07-18-06	07-20-06
	S2011	David W. Hoyle	RAILROAD CARS SALES TAX CHANGES.	S	Ref To Com On Finance	05-26-06	06-08-06
	S2012	Stan Bingham	SUTA MODIFICATIONS.	*S	Pres. To Gov. 7/ 26/2006	05-26-06	06-22-06
	S2021	Hugh Webster	CONFORM PERSONAL EXEMPT. AND STD. DED. TO IRC.	S	Ref To Com On Finance	05-26-06	
	S2030	Tony Rand	INCREASE CONSUMER FINANCE FEES.	S	Ref To Com On Finance	05-26-06	
	S2034	Tony Rand	REGISTRATION PLATES.	S	Ref To Com On Finance	05-26-06	
	S2035	Tony Rand	ALCOHOLIC BEVERAGE SALES/UNC GOLF COURSES.	S	Ref To Com On Finance	05-26-06	
	S2043	Tony Rand	INCREASE MORTGAGE LENDING FEES.	*SR	Ch. SL 2006-239	05-26-06	06-22-06
	S2051	Charles W. Alber	STATE ENERGY USE PLANNING/ENERGY ASSISTANCE	*SR	Ch. SL 2006-206	06-28-06	07-11-06
$	**S2053**	**Martin L. Nesbit**	**UNC/MODIFY BOND &**	**S**	**Ref To Com On**	**05-26-06**	

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		SPEC. INDEBTEDNESS PROJECTS.		Finance		
$ 54	**Andrew C. Brock**	**REIMBURSE TRUST FUNDS/ REBATE.**	**S**	**Ref to Finance. If fav, re-ref to Appropriations/ Base Budget**	**05-26-06**	
S2056=	Bob Atwater	SAFE DRINKING WATER/ PRIVATE WELLS.	*S	Re-ref Com On Finance	06-29-06	

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** and the House Committee on Finance will meet jointly at the following time:

DAY	DATE	TIME	ROOM
Wednesday	May 10, 2006	1:00 PM	544 LOB

The following will be considered:

A presentation from the Office of the State Treasurer on the 2006 Debt Affordability Study.

Parties interested in financing proposed projects with bond revenues may also be present to address the Committees.

Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

DeAnne Mangum (Finance CA)

From: Jason Cannon (House Finance)
Sent: Monday, May 08, 2006 4:03 PM
Subject: NOTICE - Joint House/Senate Finance Meeting 5-10-2006
Importance: High

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

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

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

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

LOCATION: **Room 544, LOB**

The following will be considered:

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

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

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

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

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

North Carolina General Assembly

House & Senate Committee on Finance

(JOINT MEETING)

Minutes

~

May 10, 2006

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

Senator Kerr
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

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

Joint Senate and House Finance Committee

MEETING AGENDA

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

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

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

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

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

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

VI. **Other Needs**

V. **Adjournment**

North Carolina Department of Crime Control and Public Safety

Michael F. Easley, Governor

Bryan E. Beatty, Secretary

May 9, 2006

Dear Senators and Representatives:

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

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

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

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

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

Sincerely,

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

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

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

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

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

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

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

Joint Senate and House Finance Committee

Rep. Martha Alexander
Rep. Julia Howard

MEETING AGENDA

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

Sen. Kerr

I. **State of North Carolina Debt Affordability Study** issued 2/1/2006 Funds up to June 30 2005
Vance Holloman, Deputy Treasurer
Rep Blackwood - school construction funds for Union & burden on taxpayers

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

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

IV. **Department of Health and Human Resources Capital Needs**
(1) *Carmon Hooker Odom, Secretary, DHHS*
- **North Carolina State Public Health Lab**

(2) *Dr. Leah Devlin, Acting Health Director and Director of the Division of Public Health, DHHS*
- **Replacement of two State Psychiatric Hospitals: Cherry and Broughton**

(3) *Terry Hatcher, Director of Office of Property and Construction, DHHS*

introduced by Dr. Devlin
Dr. Lou Turner
Future preparedness director

pending

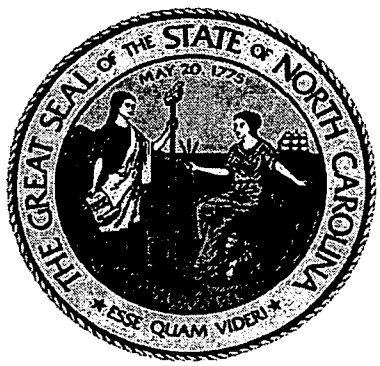
V. **Public Housing Capital Needs**
Bob Kucab, Director, NC Housing Finance Agency

VI. ~~**Other Needs**~~ Terry Hancock low wealth schools consortium
School construction ~~###~~ funding needs

V. **Adjournment**

3pm

State of North Carolina



Debt Affordability Study

February 1, 2006

Debt Affordability Advisory Committee

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

STATE OF NORTH CAROLINA
DEBT AFFORDABILITY ADVISORY COMMITTEE

February 1, 2006

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

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

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

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

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

Respectfully submitted,

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

Members of the Debt Affordability Advisory Committee:

Mr. Richard H. Moore, State Treasurer

Mr. E. Norris Tolson, Secretary of Revenue

Mr. David McCoy, State Budget Officer

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

Mr. Robert Powell, State Controller

Mr. Christopher Henson, Senate Appointee

Mr. James V. Porto, House Appointee

Table of Contents

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

Executive Summary

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

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

Recommended Guidelines and Amounts of Debt

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

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

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

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

Table 1

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

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

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

Other Recommendations

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

General Fund Balance

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

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

Capital Project Prioritization and the use of Pay-Go Funding

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

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

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

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

Conclusions

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

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

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

Introduction and Background

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

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

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

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

Section I -The North Carolina Debt Affordability Model

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

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

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

Debt Used in the Model Calculation

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

Model Assumptions regarding Revenue Growth and Sensitivity Analysis

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

Debt Structuring Assumptions

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

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

Section II – Review of State Debt

Outstanding Debt

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

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

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

Chart 1

State of North Carolina Outstanding Net Tax-Supported Debt

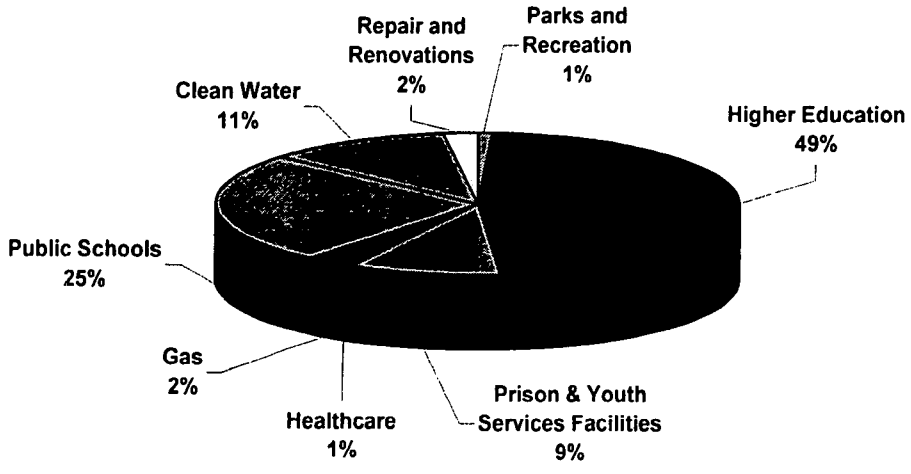
	June 30, 2005
Total General Obligation Bonds	$ 5,693,081,426
Less: Self-Supporting payable from Highway Trust Fund	811,430,000
Net Tax-Supported General Obligation Bonds	$ 4,881,651,426
Certificates of Participation / Lease Revenue Bonds	$ 740,215,000
Less: Self-Supporting payable from Health & Wellness Trust Fund [1]	59,865,150
Net Tax-Supported Certificates of Participation / Lease Revenue Bonds	$ 680,349,850
Plus: Installment Purchase Contracts / Equipment & Capital Leases [2]	16,023,933
Net Appropriation-Supported Indebtedness	$ 696,373,783
Gross Tax-Supported Debt	$ 6,449,320,359
Less: Self - Supporting / Trust Fund Debt	871,295,150
Net Tax-Supported Debt	$ 5,578,025,209

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

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

Chart 2

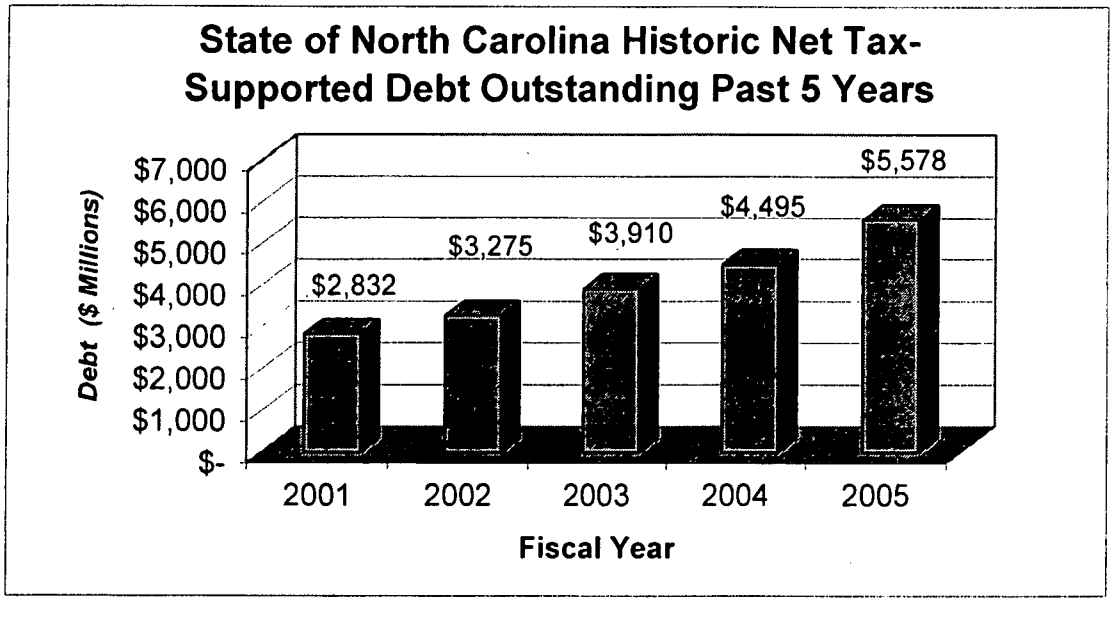
North Carolina Outstanding Net Tax-Supported Debt by Program as of June 30, 2005



Growth in State Debt

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

Chart 3



Authorized but Unissued Debt

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

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

Chart 4

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

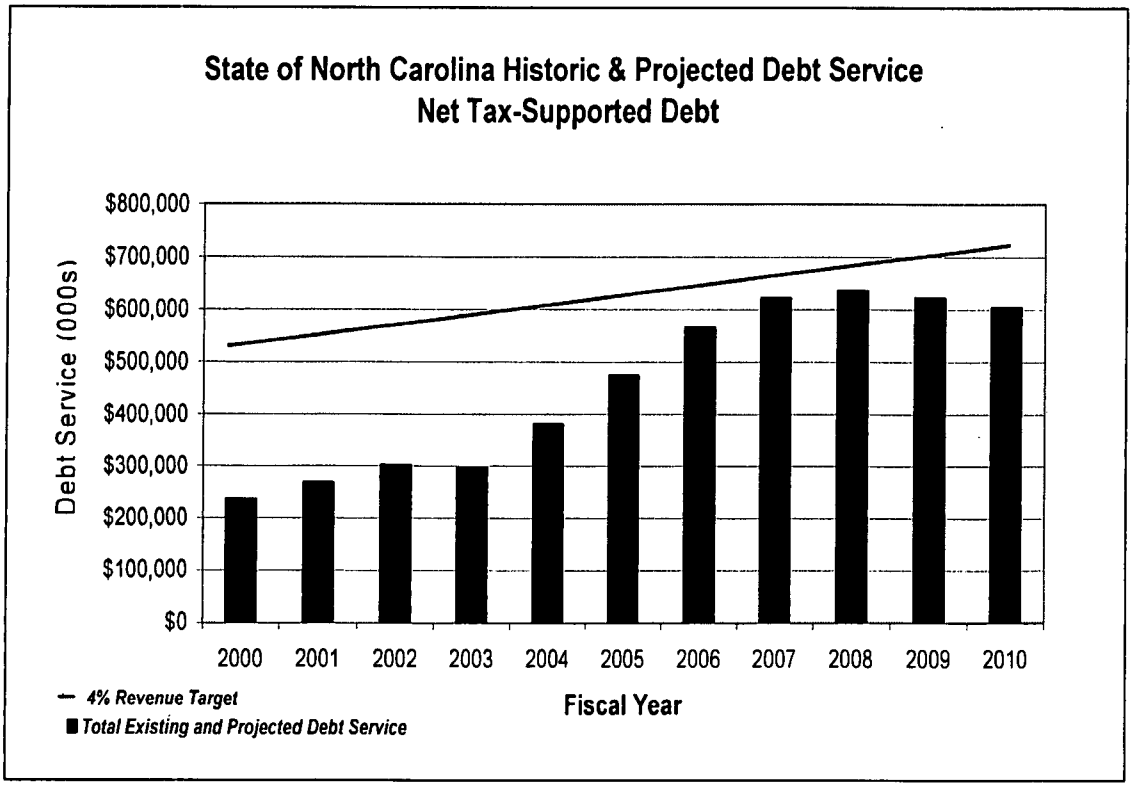
	General Obligation				*Special Indebtedness*					
	University Projects	Community Colleges	Clean Water	Sub Total	Repair & Renovation	Psychiatric Hospital	Parks	Prisons	Sub Total	Total
Authorized & Unissued as of June 30, 2005	$524.20	$179.30	$169.30	$872.80	$175.00	$48.90	$20.80	$52.40	$297.10	$1,169.90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

Debt Service

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

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

Chart 5



Section III - Review of State Credit Ratings and Comparative Ratios

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

Chart 6

North Carolina Credit Rating Matrix

State of North Carolina

General Obligation Bond Credit Ratings as of June 30, 2005

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

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

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

Comparison of Debt Ratios to Selected Medians

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

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

Chart 7

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

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

* Source: Moody's 2005 State Debt Medians

SECTION IV – Guidelines and Model Results

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

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

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

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

4.0% Target Ratio/Debt Service Impact

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

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

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

Table 2

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

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

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

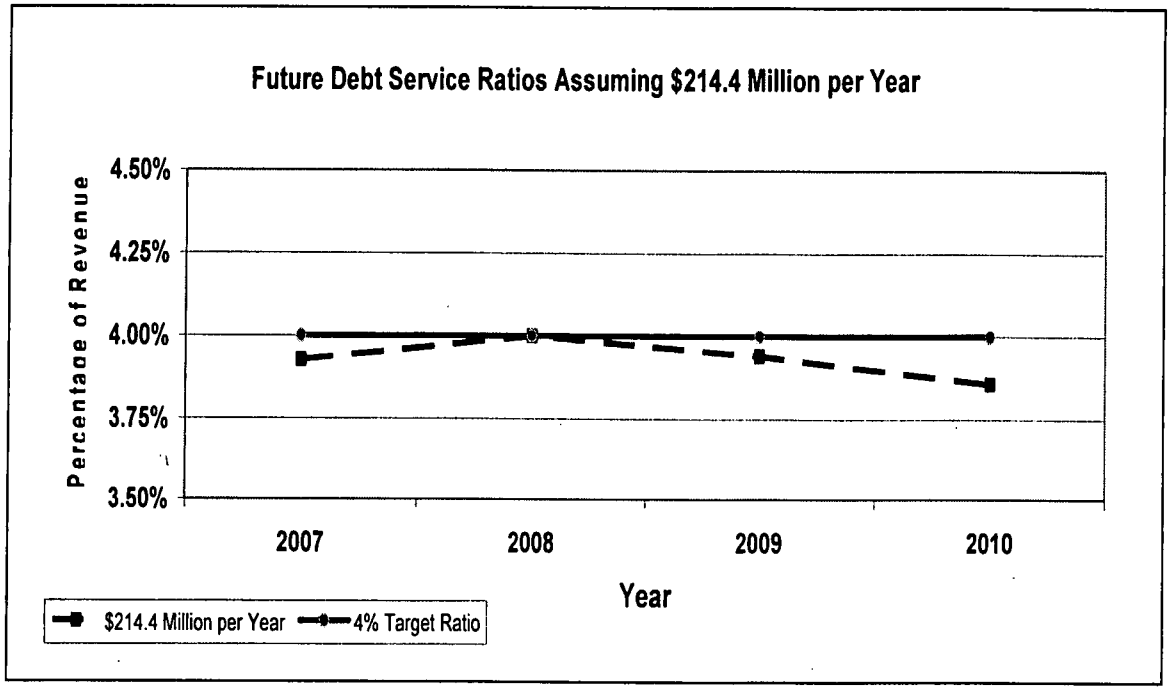
Table 3

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

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

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

Chart 8



Sensitivity Analysis on 4% Target Solution

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

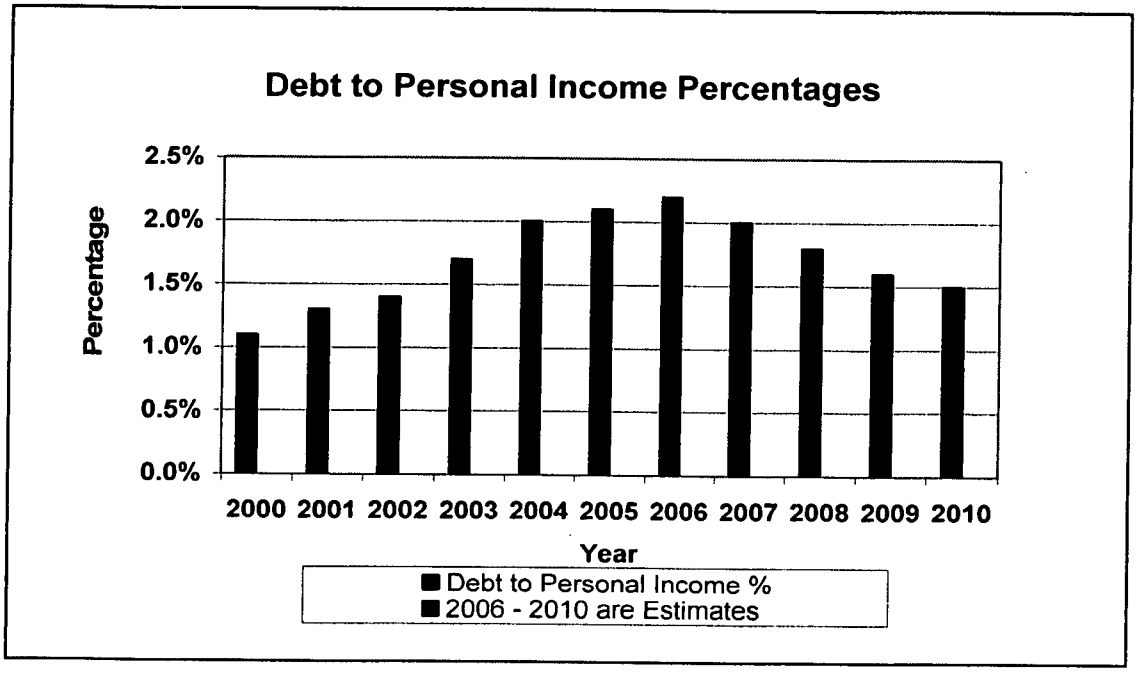
Net Tax-Supported Debt to Personal Income

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

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

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

Chart 9



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

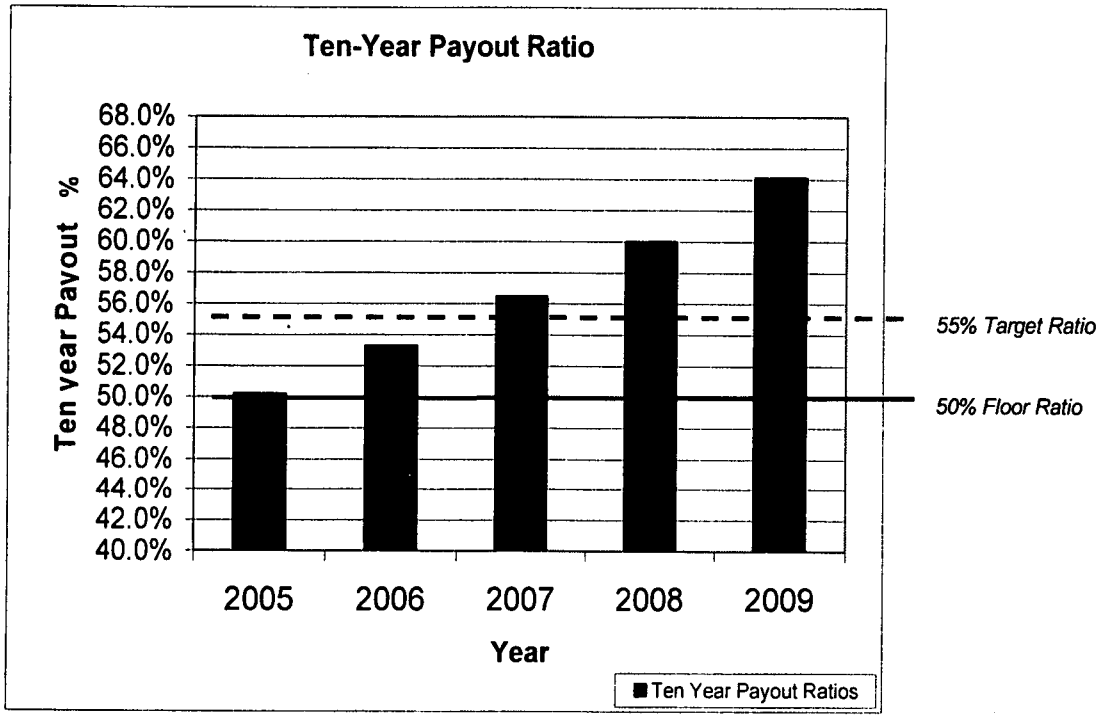
Ten-Year Payout Ratio

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

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

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

Chart 10



Level of Unreserved Fund Balance

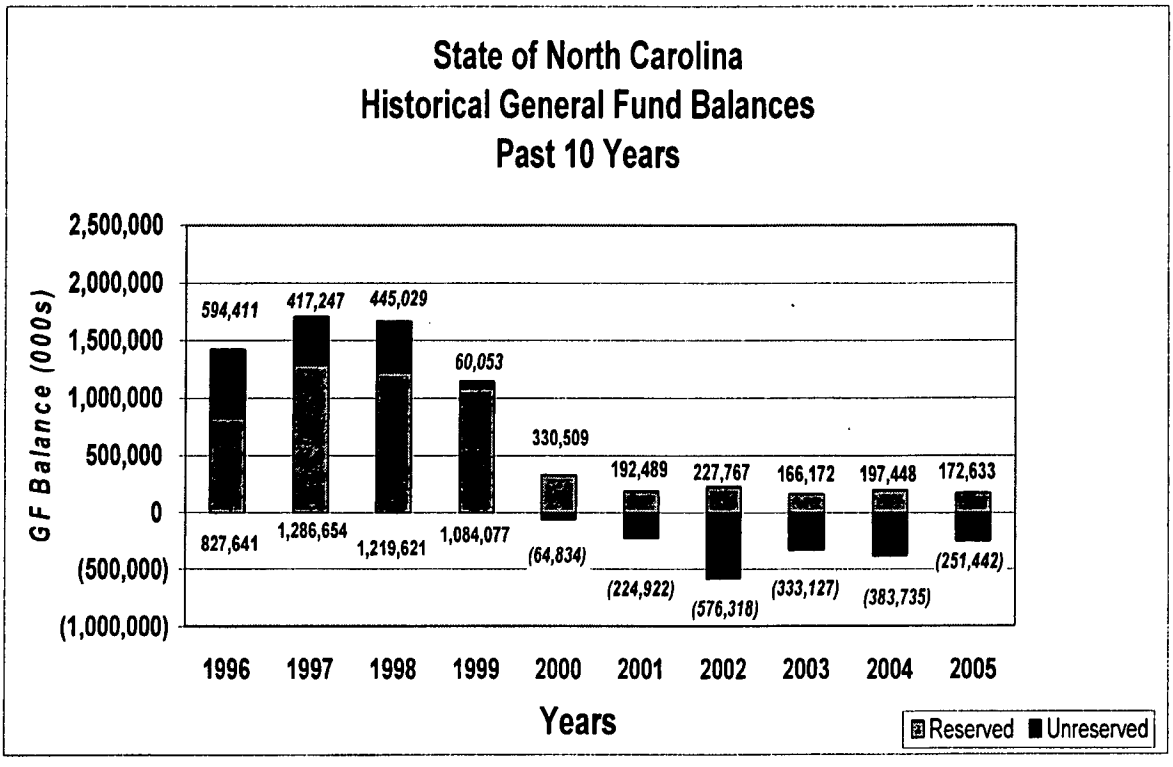
As discussed previously, the rating agencies place emphasis on budgetary reserves. In a report dated December 22, 2005, Standard & Poor's stated that "...reserves are critical to managing economic cycles and providing substantial flexibility to manage the budget and capital requirements of a government."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

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

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

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

Chart 11


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

Section V - Capital Project Prioritization and Pay-Go Funding

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

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

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

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

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

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

Revenues

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

General Fund Tax Revenues

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

Other General Fund Revenue Items

- Investment Income
- Miscellaneous Revenues

Revenue Growth and other Assumptions

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

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

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

Liabilities

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

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

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

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

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

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

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

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

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

Debt Structuring Assumptions

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

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

Appendix B
10-Year Model Solution

4% Debt Service/Revenue Target

Table 4

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

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

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

Table 5

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

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

4.75% Debt Service/Revenue Target

Table 6

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

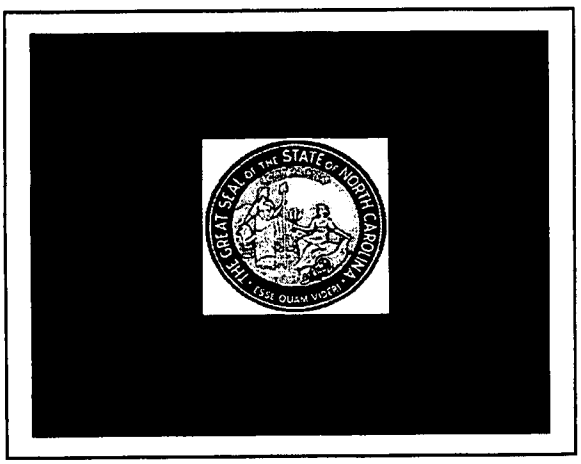
Fiscal Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Total Additional Debt Capacity per Year [1]	$2,016.8	$78.2	$299.9	$105.9	$165.4	$593.3	$372.1	$552.8	$485.8	$548.5
Debt Capacity Available each and every Year	525.9	525.9	525.9	525.9	525.9	525.9	525.9	525.9	525.9	525.9

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

Table 7

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

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



NORTH CAROLINA
Debt Affordability Advisory Committee

Debt Affordability Advisory Committee - Background

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

2

NORTH CAROLINA
Debt Affordability Advisory Committee

Members of the Debt Affordability Advisory Committee

Richard H. Moore
State Treasurer

David McCoy
State Budget Officer

Robert Powell
State Controller

James V. Porto
House Appointee

E. Norris Tolson
Secretary of Revenue

Leslie W. Merritt, Jr.
State Auditor

Christopher Henson
Senate Appointee

3

NORTH CAROLINA
Debt Affordability Advisory Committee

What is Debt Affordability?

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

4

NORTH CAROLINA
Debt Affordability Advisory Committee

Why is Debt Affordability Important?

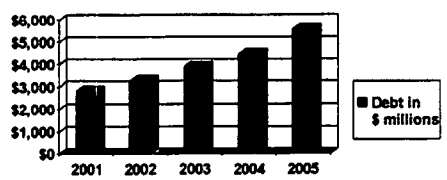
- Rating agencies view control of tax-supported debt as one of four key factors:
  - **Control of Debt Burden**
  - Economic Strength and Diversity
  - Fiscal Performance
  - Administrative Capabilities of Government

5

NORTH CAROLINA
Debt Affordability Advisory Committee

State Debt - Background

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



6

NORTH CAROLINA
Debt Affordability Advisory Committee

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

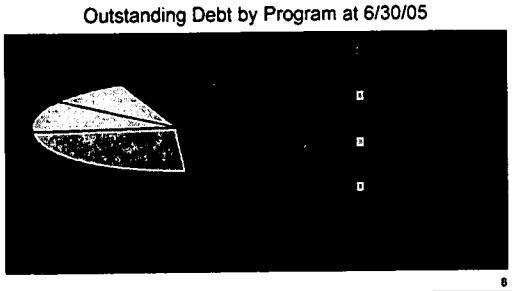
Total GO Bonds	$ 5,693
Less: Highway T.F.-Supported	(811)
Net Tax-Supported GO Bonds	$4,882
Special Indebtedness (COPs, Lease Revenue Bonds)	$740
Less: Health/Wellness T.F.-Supported	(60)
Plus: Installment purchase/leases	16
Net Tax-Supported Special Indebtedness	$696
Total Net Tax-Supported Debt	$5,578

7

NORTH CAROLINA
Debt Affordability Advisory Committee

State Debt -Background

Outstanding Debt by Program at 6/30/05



8

NORTH CAROLINA
Debt Affordability Advisory Committee

Authorized but Unissued Debt as of June 30, 2005

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

9

NORTH CAROLINA
Debt Affordability Advisory Committee

Committee Recommended Guidelines

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

* Used to calculate debt capacity

10

NORTH CAROLINA
Debt Affordability Advisory Committee

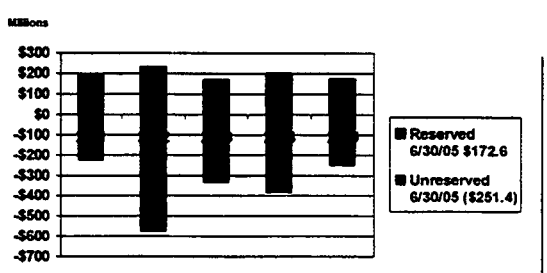
How Does the State Look Currently? Prospectively?

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

11

NORTH CAROLINA
Debt Affordability Advisory Committee

How Does the State Look? Unreserved General Fund Balance



12

NORTH CAROLINA
Debt Affordability Advisory Committee

Debt Affordability Model

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

13

NORTH CAROLINA
Debt Affordability Advisory Committee

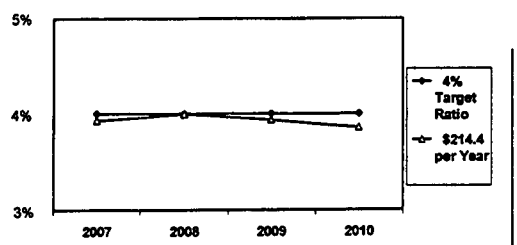
Debt Affordability Model – Results
4% Revenue Target (millions)

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

14

NORTH CAROLINA
Debt Affordability Advisory Committee

Smoothed Model Solution



15

NORTH CAROLINA
Debt Affordability Advisory Committee

Model Results - Sensitivity

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

16

NORTH CAROLINA
Debt Affordability Advisory Committee

Highlights of the 2006 Debt Affordability Advisory Committee Report

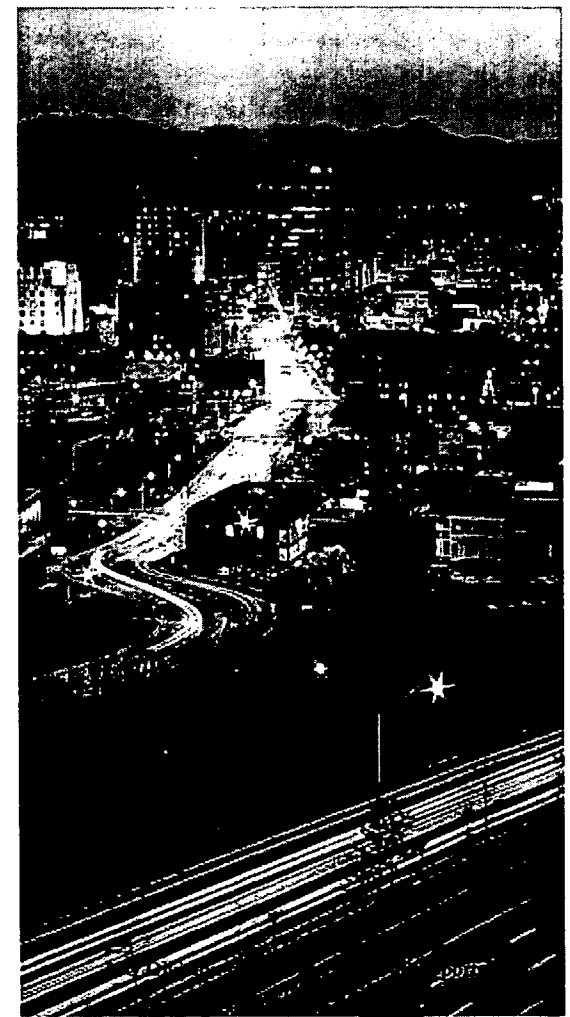
- North Carolina's debt is manageable at current levels.
- The continued negative unreserved General Fund balance is a matter of concern that should be addressed.
- The State could prudently authorize $214.4 million of new tax-supported debt each year for the next 10 years.
- However, the Committee recommends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

17

Land for Tomorrow

Why Act Now?

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



Significant Land Ownership Shifts

- Tobacco Farmers
- Power Companies
- Timber Companies



Escalating Land Prices

Five-Year Protection Goals

- 740,000 acres of land across North Carolina

including

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

plus

- Build trails and facilities for state and local parks

plus

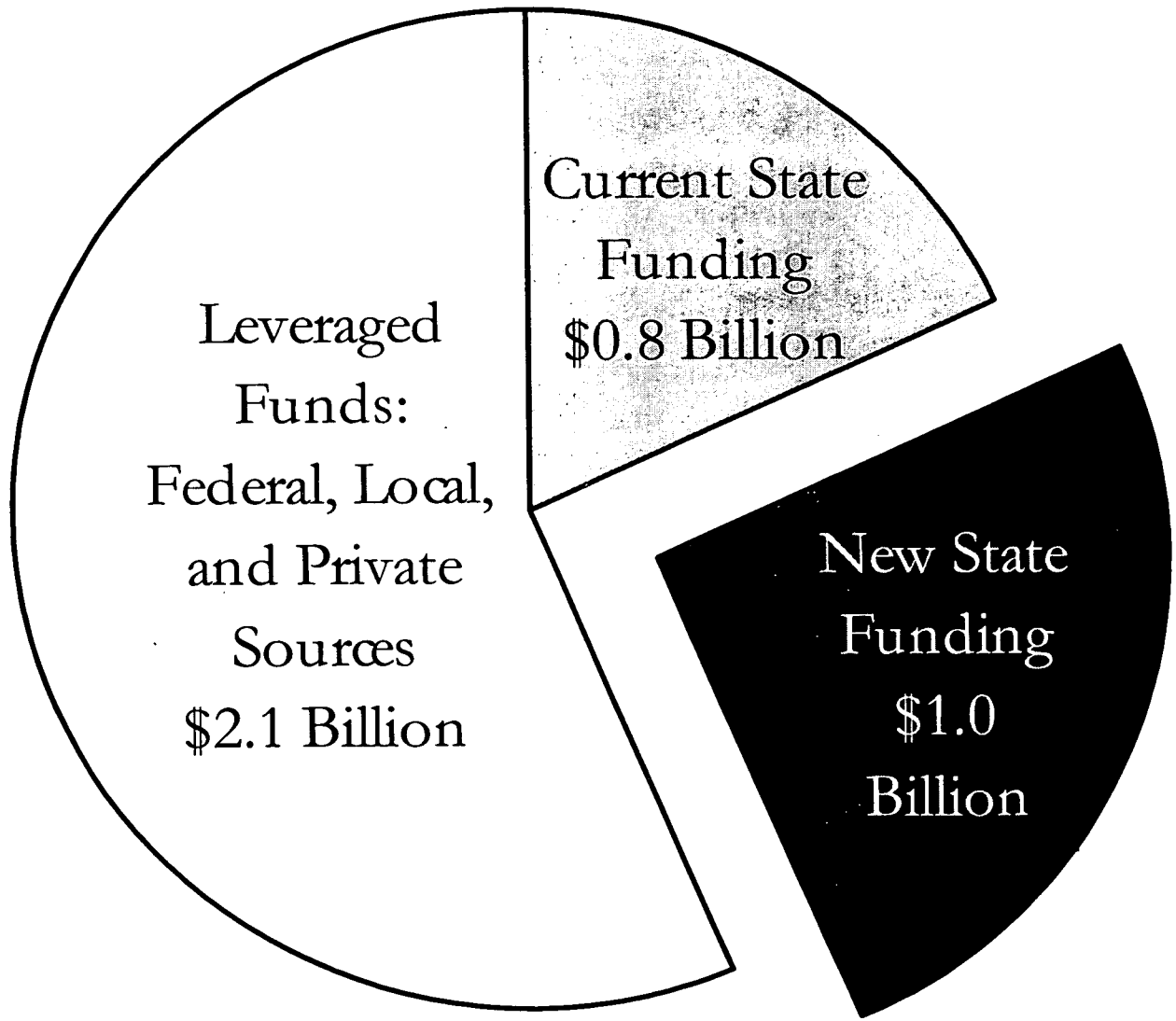
- Restore 350 historic landmarks in public use

plus

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

How much will it take?

Overall Five-Year Funding Need: $3.9 Billion



Build on Current Foundation

Invest more in successful programs

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

If We're Successful....

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

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

The Need for Replacement Facilities for Cherry and Broughton Hospitals

Citizens Served

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

Need for New Hospitals

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

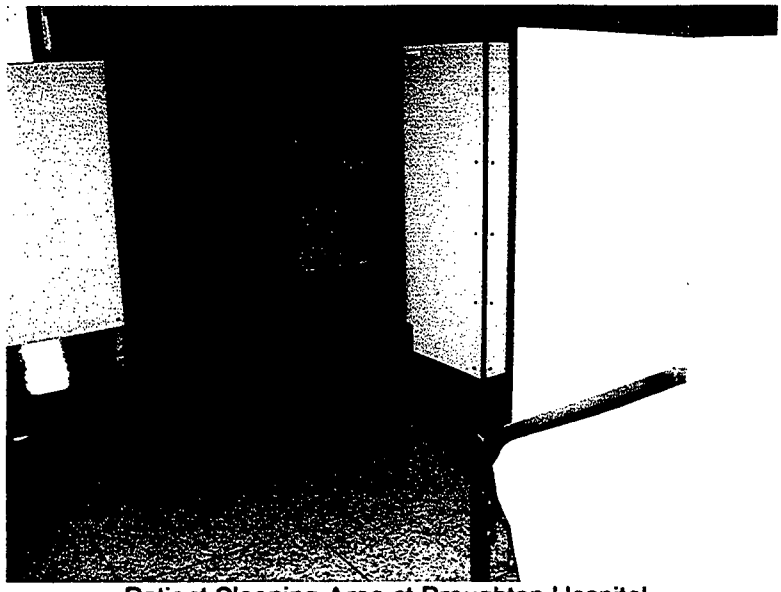
- Age of Buildings. All of the patient facilities are dated and are in need of replacement.
  - Cherry Hospital was founded in 1880. Newer patient buildings date to 1939, and 1951, with the last building constructed in 1962.
  - Broughton Hospital was founded in 1882. The Avery Building, constructed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

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



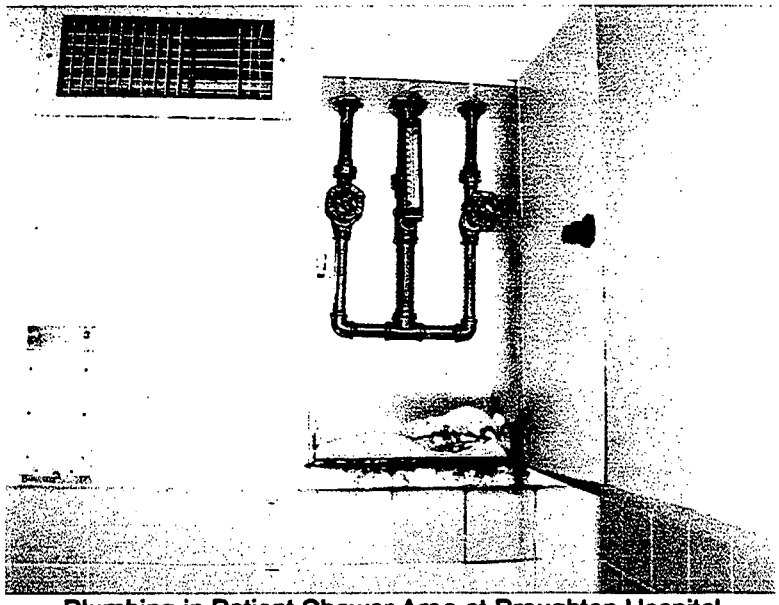
Nursing Staff at Broughton Hospital Transporting Patients and Patient Records to Another Building for Participation in the Treatment Mall

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



Patient Sleeping Area at Broughton Hospital

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



Plumbing in Patient Shower Area at Broughton Hospital

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

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



Typical Staff Meeting in an Overcrowded Nurses Station
At Cherry Hospital

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

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



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



Damage from Steam Leak at Broughton Hospital

Replacement Hospitals - Details

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

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

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

Critical Preparedness Infrastructure

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

May 10, 2006

Key Role for SLPH: PREPAREDNESS

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

Key Role for the Medical Examiner: PREPAREDNESS

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

Governor's Budget Recommendation

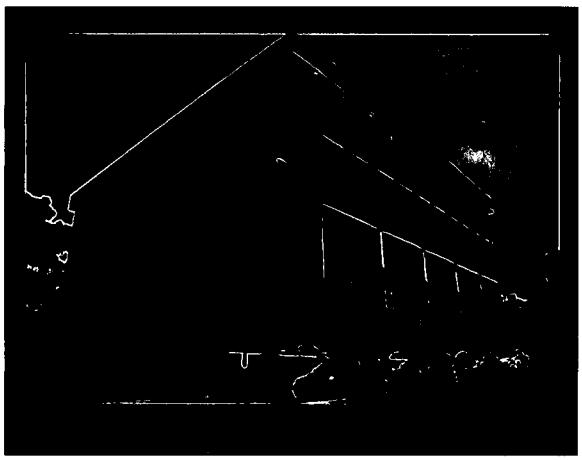
- Pursue design and construction of a new co-located SLPH and OCME facility to replace aging and inadequate facilities.
- $101,000,000
- Based on Updated Feasibility Study 2004

Letter of Support

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

NC State Lab of Public Health

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



State Lab Services

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

Materials handled by State Lab

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

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

Hazardous chemicals

Low-level radioactive materials

Suspected bioterrorism samples (e.g., anthrax)

NC SLPH

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

Office of Chief Medical Examiner

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

Office of the Chief Medical Examiner (continued)

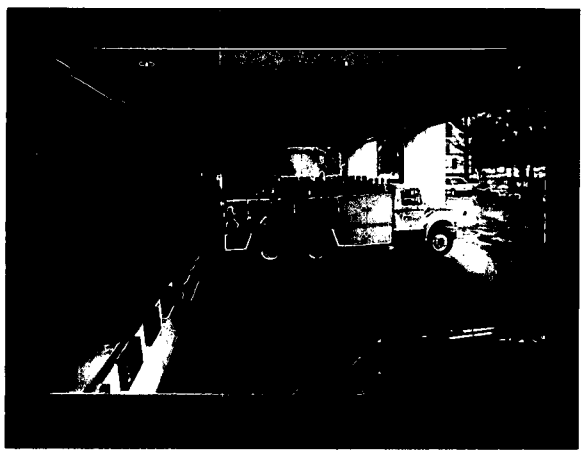
- 1500 autopsies/year – tripled since 1972
- Toxicology tests have doubled since 1999 (quadrupled since 1972) – conduct for all Mes
- Space for Forensic records at capacity

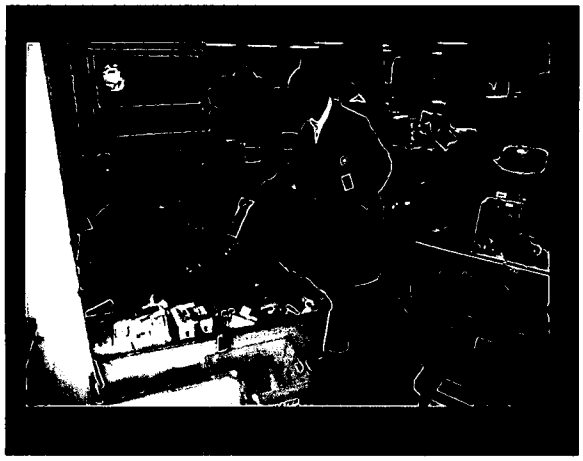
Limitations of today's State Public Health Lab

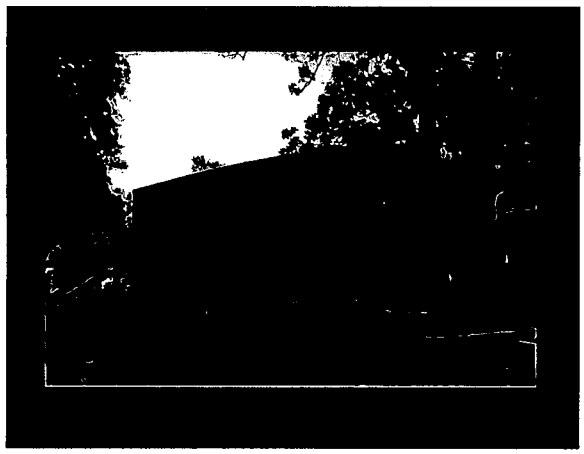
- *Security*
- *Physical space*
- *Safety issues*
- *Electrical power*
- *Ventilation*
- *Efficiency*

Security

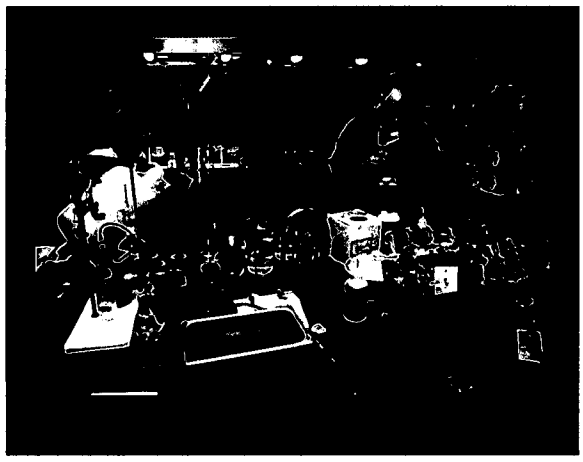
- The loading dock area under building is open; access is not controlled or limited—anyone can drive anything under the building.
- There is no controlled perimeter around the building and no security gate or controlled access.
- Movement through the building of materials/samples

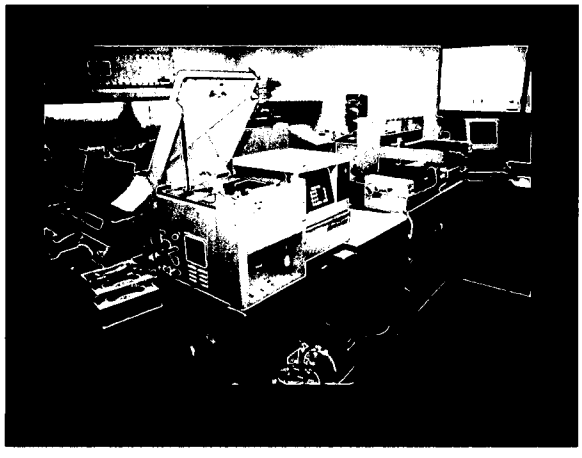


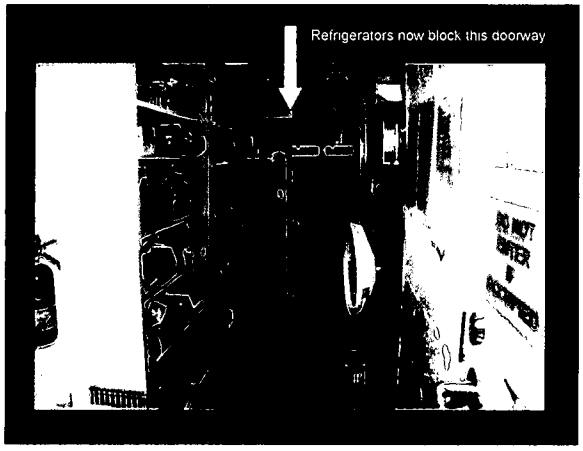


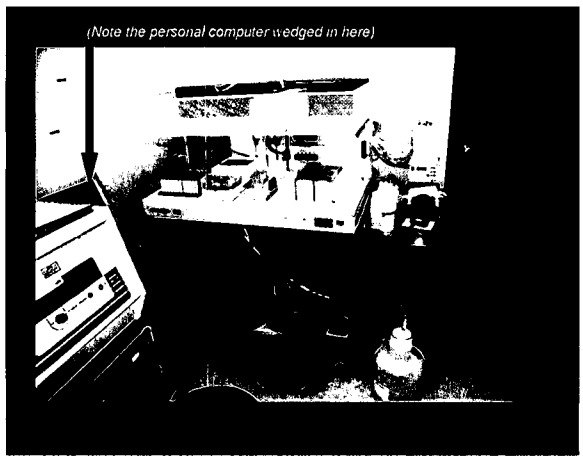









Refrigerators now block this doorway



Safety issues

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

Safety issues, cont.

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

Electrical power problems

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

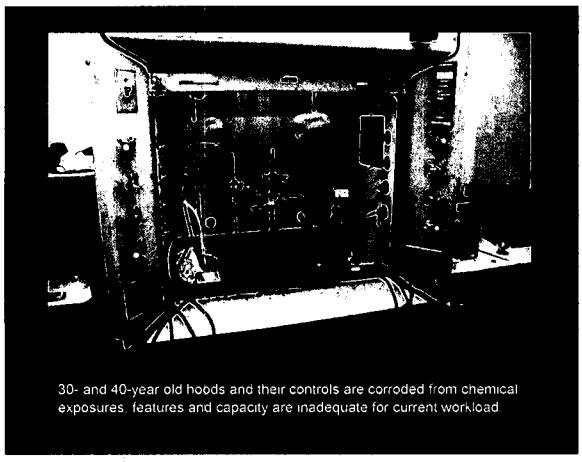
Stinky stuff! Cooker emits ammonium hydroxide fumes



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

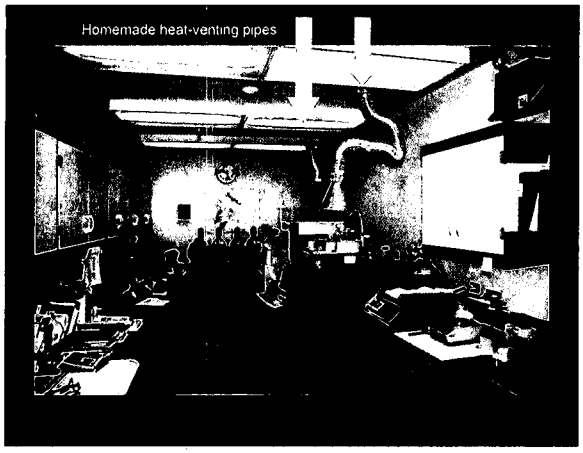
Ventilation limitations

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



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





Efficiency

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

New PH Labs Constructed

Labs constructed in the past 8 years:

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

New PH Labs in the Works

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

New PH Labs Under Discussion

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

New SLPH/OCME facility

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

NC Preparedness and Response Critical Infrastructure

Public Health Lab

Medical Examiners Office

Questions?

HOUSING TRUST FUND

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

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

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

Need

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

Clear Focus

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

Measurable Results

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

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

Flexibility

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

Leverage

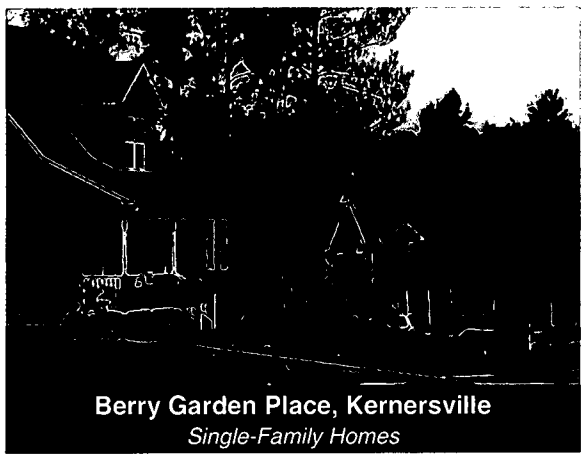
- The Trust Fund leverages an additional $3 of housing for every $1 of state funds, so every $50 million of state funds will result in **$200 million** of housing production.

NORTH CAROLINA
HOUSING
FINANCE
AGENCY

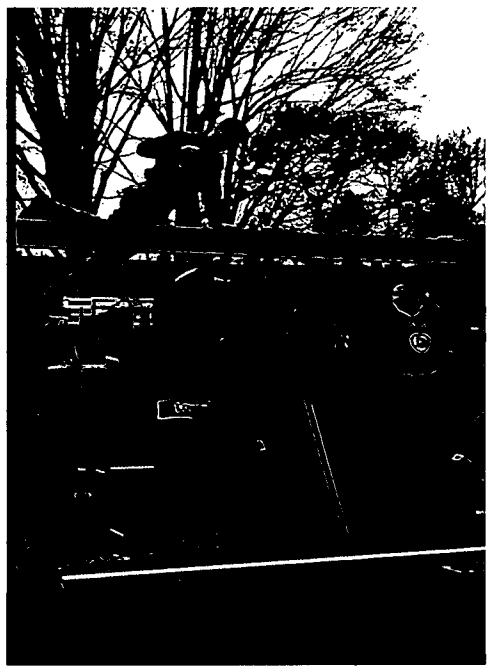
Printed on
recycled paper

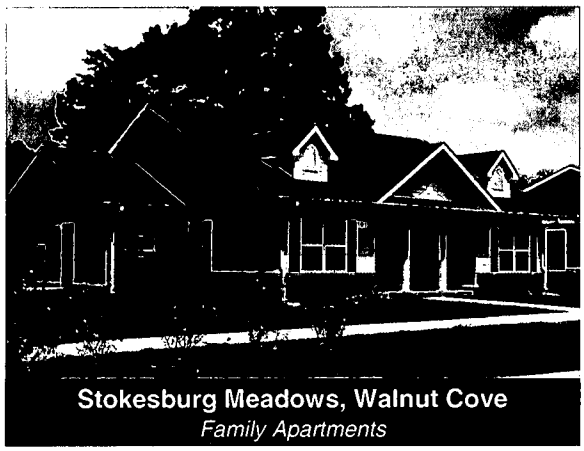
Housing Trust Fund...*investing in North Carolina*

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



Berry Garden Place, Kernersville
Single-Family Homes





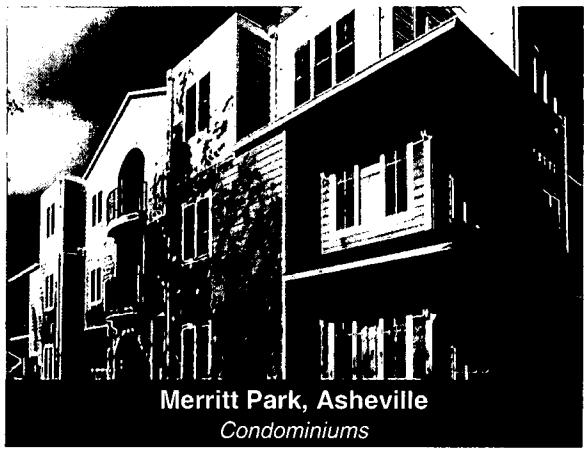
Stokesburg Meadows, Walnut Cove
Family Apartments



Spring Glen, Chapel Hill
Retirement Community for the Developmentally Disabled



White Oak Apartments, Wilmington
Elderly Apartments



Merritt Park, Asheville
Condominiums

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

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

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

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

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

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

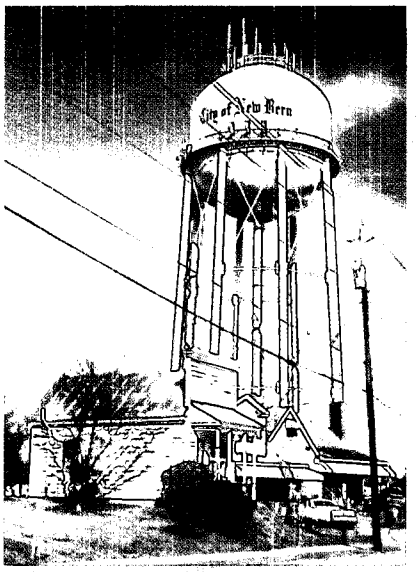
- Federal infrastructure funding has declined and is expected to shrink further, forcing local governments to borrow for water/sewer projects. But more than 60 percent of local governments cannot qualify for loans, mainly in rural areas.

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

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

Conclusions & Recommendations









WATER2030 INITIATIVE

The Rural Center

THE NORTH CAROLINA WATER 2030 INITIATIVE

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

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

Background

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

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

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

The Initiative

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

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

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

Capital Needs Projections

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

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

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

Funding and Partners

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

WHAT WE'VE LEARNED . . .

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

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

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

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

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

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

Strengthen environmental education programs.

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

WATER 2030 FUNDING PARTNERS

N.C. General Assembly

U.S. Congress through the Environmental Protection Agency

N.C. Clean Water Management Trust Fund

N.C. Rural Economic Development Center Board of Directors

WATER 2030 PROJECT DIRECTOR

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

N.C. Rural Economic Development Center

4021 Carya Drive, Raleigh, NC 27610

919.250.4314

www.ncruralcenter.org

WATER2030 RECOMMENDATIONS

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

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

Fund critical water, sewer and stormwater capital needs.

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

Activate the State Water Infrastructure Commission.

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

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

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

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

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

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

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

Financing water and sewer projects is becoming increasingly difficult.

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

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

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

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

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

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

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

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

SENATE FINANCE COMMITTEE
Tuesday, May 23, 2006 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 23, 2006, in Room 544 of the Legislative Office Building. Thirty members of the committee were present. Senator David Hoyle presided. Alexander Lee Peacock and Brooks Best of Wayne County served as pages.

SB 1741 – Modify Appropriations Act of 2005.

Cindy Avrette, staff attorney with the Research Division, was recognized to explain the bill. Sen. Hoyle offered an amendment to cap the gas tax. Sen. Hoyle motioned to adopt the amendment and the motion carried. Sen. Kerr was recognized to offer an amendment, motioned to adopt the amendment and the motion carried. Andrea Russo, a fiscal analyst with the Fiscal Research Division, was available to answer questions regarding the bill. Senator Dannelly motioned for a favorable report as amended and the motioned passed. A copy of the bill, amendments, and summary are attached.

The meeting adjourned at 3:38 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Tuesday, May 23, 2006

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

FAVORABLE, AS AMENDED

S.B.	**1741**	Modify Appropriations Act of 2005.	
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 23, 2006	3:00 PM	544 LOB

The following will be considered:

The Senate 2006 Appropriations Act.

Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Senate Finance Committee
Tuesday, May 23, 2006, 3:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1741	Modify Appropriations Act of 2005.	Senator Garrou

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michael L. Stiles	Sen. Hoyle intern
[illegible]	[illegible]
Brandon Clark	Sen. Hagan Intern
Kathy Hankins	Progress Energy
Rita Harris	NC State Ports Auth
[illegible]	[illegible]
BRUCE THOMPSON	PARKER POE
Henry Jones	Attorney Ral.
Peri Morgan	NC100
Dean Plunkett	NCTBWWA
[illegible]	NCSBC
[illegible]	BSIC
[illegible]	BBCBR

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 23, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jenny Jo Horne	NCMS
Kan Lyn	Smith Anderson
John Bowdich	Astra Zeneca
Kristin R. Kelly	Gov. office
Cally Craggs	Gov. Office
John McHugh	Cooperatics
Jennifer Polson	GlSK
Gary Salamido	GSK
Stephanie Lynn	NCAR
Johanna Reese	DOT
Boyd Cansler	Charlotte

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Wayne Goodwin	NC DOI
Michelle Goryn	Institute for Emerging Issues
Diane Cherry	Institute for Emerging Issues
Alexia Harrington	DPH
Deborah Rowe	NCPHA
Pauline Reeves	NCACC
Sue Harris	WCPSS
Holly Bryan	NCATL
Christie Barbee	CAPTI
Jim Johnson	L&T
Leslie Bevacqua Cima	Capstrat

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 23, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kelly Calabria	Capitol
Susanne Stress	NCRA
Jennie New	Kennedy Covington
Linda Dunston	NCAE
Michael Houser	NCAE
Dan Simpson	CAOC
Joanne Stevens	NCNA
Trent Prayter	NCNA
Bill Faul	NC Justice Center
Wendy Kelly	HMW
Mark Foster	DOT

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 23, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joseph Coletti	John Locke Foundation
Terry Stoops	John Locke Foundation
Shannon Blosser	SLF / Carolina Journal / Pope Center
Marcus Downs	NC State Health Plan

SB 1741 - As Amended by Senate Finance
Tax and Fee Items

Tax Changes	Effective Date	2006-07	2007-08
Reduce Upper Income Individual Income Tax Rate from 8.25% to 8.00%	1/1/2007	(28,600,000)	(35,000,000)
Reduce State Sales Tax Rate from 4.5% to 4.25%	1/1/2007	(118,000,000)	(15,100,000)
Cap Variable Portion of Gas Tax - Create Reserve to Hold Funds Harmless		(23,300,000)	
Fees			
Insurance Regulatory Fee (set at 5.5%, same as previous year)		26,000,000	
Utility Regulatory Fee (set at 0.12%, same as previous year)		12,800,000	
Electric Membership Corporation Regulatory Fee (same as previous year)		200,000	
Technical Correction to Licensure Fee Limits		n/a	n/a
Clarification of Fees for MH/DD/SAS		127,750	127,750
JPS - $90 one time GPS tracking fee for high risk sex offenders		27,000	

Tax and Fee Items

Tax Changes	Effective Date	2006-07	2007-08
Reduce Upper Income Individual Income Tax Rate from 8.25% to 8.00%	1/1/2007	(28,600,000)	(35,000,000)
Reduce State Sales Tax Rate from 4.5% to 4.25%	1/1/2007	(118,000,000)	(15,100,000)
Fees			
Insurance Regulatory Fee (set at 5.5%, same as previous year)		26,000,000	
Utility Regulatory Fee (set at 0.12%, same as previous year)		12,800,000	
Electric Membership Corporation Regulatory Fee (same as previous year)		200,000	
Private Well Water Protection		930,828	1,146,517
Technical Correction to Licensure Fee Limits		n/a	n/a
Clarification of Fees for MH/DD/SAS		127,750	127,750

SENATE BILL 1741:
Modify Appropriations Act of 2005

BILL ANALYSIS

Committee:	Senate Appropriations/Base Budget	**Date:**	May 23, 2006
Introduced by:	Sen. Garrou	**Summary by:**	Cindy Avrette Committee Counsel
Version:	First Edition		

SUMMARY: The Current Operations and Capital Improvements Appropriations Act of 2006 makes the following tax law changes:

- ***It reduces the State sales tax rate from 4.5% to 4.25%, effective January 1, 2007.***
- ***It reduces the upper-income tax bracket from 8.25% to 8%, effective January 1, 2007.***
- ***It sets the insurance regulatory fee, the public utility regulatory fee, and the fee for electric membership corporations at the same rates as last year.***
- ***It authorizes $205.5 million in special indebtedness for FY06-07 and authorizes an additional $162.8 million in special indebtedness for FY08-09.***

Sen. Hoyle's amendment, S1741-ARB-57, would cap the variable wholesale component of the motor fuel excise tax rate at 12.4 cents a gallon. The amendment creates a reserve fund of $23.3 million to be used to hold harmless the Highway Fund and the Highway Trust Fund in the event that the variable wholesale component of the motor fuel excise tax would exceed 12.4 cents a gallon if it was not capped.

BILL ANALYSIS: Section 24.1 of the bill reduces the State sales tax rate from 4.5% to 4.25%, effective January 1, 2007. The rate will be reduced to 4%, effective July 1, 2007. The General Assembly increased the State sales tax rate from 4% to 4.5% in 2001.[1] The increase was to sunset July 1, 2003. S.L. 2003-284 extended the sunset for two years to July 1, 2005. S.L. 2005-276 extended the sunset an additional two years to July 1, 2007. This section will reduce the rate by ¼ cent earlier than required under current law.

Section 24.2 reduces the rate of the top individual income tax bracket for tax year 2007 from 8.25% to 8%. The top bracket will be eliminated for tax year 2008. The General Assembly created a fourth income tax bracket in 2001 that imposed an additional one-half percent income tax (a total rate of 8.25%) on certain North Carolina taxable income for three years. The change was estimated to affect approximately 2% of North Carolina taxpayers. In 2003, the General Assembly extended the tax rate for two years. In 2005, the General Assembly extended the tax rate for an additional two years. The rate is scheduled to be eliminated in 2008. This section reduces it by ¼ percent a year early.

Section 26.1 retains the current rate for the public utility regulatory fee of 0.12% for each public utility's jurisdictional revenues. The rate has remained the same for the past three years. The rate for this fee must be set each year by the General Assembly. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities.[2] The regulatory fee is imposed on all utilities that are subject to

[1] Before 2001, the State sales and use tax rate had last been increased in 1991 from 3% to 4%.

[2] In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund is currently used to finance the work of the Study Commission on the Future of Electric Service in North Carolina. The General Assembly established the Commission in 1997 to examine the cost, adequacy, availability, and pricing of electric service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair,

regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is derived from providing utility service in North Carolina.

Section 26.1 also sets at $200,000 for the 2006-2007 fiscal year the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. The new rate is the same as the rate in effect for the preceding five fiscal years. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations.[3]

Section 26.2 retains the current rate for the insurance regulatory fee of 5.5%. The insurance regulatory charge was first enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's gross premiums tax liability.

Section 27.1 authorizes the State Treasurer and the Council of State to issue or incur special indebtedness up to $205.5 million to pay the cost of the following projects:

- $20 million to complete the construction and equipping of the Central Regional Psychiatric Hospital.
- $145.5 million to construct and equip a new Eastern Regional Psychiatric Hospital.
- $40 million to construct and equip an expansion of the Art Museum. The funds may not be used to acquire additional land.

This section also authorizes the issuance or incurrence of special indebtedness of $162.8 million to construct and equip a new Western Regional Psychiatric Hospital. The special indebtedness for this project may not be issued before July 1, 2008.

Senate Bill 1741 makes the following other finance related changes:

- Section 2.2(e) and (f): Transfer of Tax Proceeds from the Highway Trust Fund to the General Fund. Statutorily, the sum of $170 million must be transferred annually from the Highway Trust Fund to the General. In the past, that sum has increased. In last year's budget, the amount to be transferred for FY05-06 and FY06-07 was $250 million. Section 2.2(e) of the bill would reduce the amount of the transfer for FY06-07 from $250 million to $55 million.

  Section 2.2(f) does not change the law. It calculates the amount to be transferred from the Highway Trust Fund to the General Fund under G.S. 105-187.9(b) and sets that amount in the bill for purposes of budget availability. The amount is $2,486,602.

---

and equitable rates for all consumers of electricity in North Carolina. Section 14.10 of S.L. 2000-67, the Current Operations and Capital Improvements Appropriations Act of 2000, extended the life of the Study Commission and its funding from the Utilities Commission and Public Staff Fund through June 30, 2006.

[3] The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiary must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation. The General Assembly must establish the fee amount each year. The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives." Thus, the fee imposed on the North Carolina Electric Membership Cooperation will be passed on to its member electric membership corporations

- Section 6.3: Consultation not required prior to Establishing or Increasing Fees pursuant to the Executive Budget Act.
  Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in the Current Operations and Capital Improvements Appropriations Act of 2006 or the Senate Appropriations Committee Report on the Continuation, Expansion and Capital Budgets, which was distributed in the Senate Appropriations and Base Budget Committee and used to explain this act.

- Section 6.4: No fee Increases which the General Assembly has Rejected.
  Creates a statutory prohibition against increasing a fee if the General Assembly has rejected an increase in that fee for the current fiscal period. The General Assembly has rejected a fee increase when that fee is included in a bill which fails a reading or is in a version of a bill that passes one house but is enacted without the fee increase.

- Section 7.20: Refund of Local Sales and Use Taxes to a Local School Administrative Unit.
  This section reinstates the refund of local sales and use taxes for local school administrative units and it clarifies that the amount transferred from sales and use tax revenue collections to the State Public School Fund is based upon the amount of State sales and use tax revenue refunded to LEAs and school board cooperatives during FY05-06.

- Section 10.33: Portion of Proceeds from Alcohol Excise Tax Deposited to Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs.
  This section earmarks 5% of the net proceeds of the excise tax on beer, wine, and spirituous liquor for the Trust Fund. This percentage equates to approximately $9.5 to $10 million.

- Section 19.1: Extended DOR Call Center Fee Use.
  This section provides that the $3 million appropriated from the collection assistance fee account to the Department of Revenue and designated to pay the costs of establishing and equipping a central taxpayer telecommunications service center does not revert but remains available until June 30, 2007, for operating costs of the service center.

- Section 19.2.: Revised Maximums for Collection Assistance Fees.
  In 2001, the General Assembly established a system under which the cost of collecting overdue tax debts is to be borne by the delinquent taxpayers, not by the taxpayers who pay their taxes on time. The collection assistance fee is 20% of the overdue tax debt and is a receipt of the Department.[4] The proceeds of the fee are credited to a special, non-reverting account to be used only for collecting overdue tax debts. The Department of Revenue may apply the fee proceeds for the following purposes:
  - To pay contractors for collecting tax debts.
  - To pay the fee charged by the federal government for collecting tax debts by offset.
  - To pay for taxpayer locator services.
  - To pay for postage or other delivery charges for correspondence relating to collecting overdue tax debts, not to exceed $100,000..
  - To pay operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.

[4] Section 22.6 of S.L. 2005-276 amended the law to provide that the amount of the collection assistance fee would be the actual cost of collection, not to exceed 20% of the amount of the overdue tax debt. However, section 37 of S.L. 2005-345 subsequently repealed this section, leaving the amount of the collection assistance fee at 20% of the amount of the overdue tax debt.

- To pay the expenses of the Examination and Collection Division relating to collecting overdue tax debts.

This section increases the dollar amount that may be used to pay for taxpayer locater services from $100,000 to $141,000. It also sets a dollar limit of $353,000 on the amount that may be used to pay for postage and other delivery charges.

- Section 19.3: Consolidate Tax Projects Reports.
  This section consolidates the reports that the Department of Revenue must prepare into one statute.

S1741e1-SMRB

New Authorized Debt in the Senate Budget Bill
2006 Session of the 2005 General Assembly

Project Summaries:

1. **Central Regional Psychiatric Hospital** – Completes the constructing and equipping of the new hospital in Butner. Funds are needed to install necessary IT infrastructure and safety systems.
   - Project cost - $20 million
   - Debt Instrument – Certificates of Participation (COPs)
   - Principal Amount - $20 million
   - Term – 20 years
   - Issuance Schedule
     - Fall 2006 - $20 million (5.75% average interest rate)

2. **Eastern Regional Psychiatric Hospital** – Plans and Constructs a 304 bed hospital in the eastern part of the State to replace Cherry Hospital in Goldsboro.
   - Project cost - $145.5 million
   - Debt Instrument –COPs
   - Principal Amount - $145.5 million
   - Term – 20 years
   - Issuance Schedule
     - Fall 2006 - $20 million (5.75% average interest rate)
     - Fall 2007 - $76 million (6.50% average interest rate)
     - Fall 2008 - $49.5 million (6.50% average interest rate)

3. **NC Museum of Art Expansion** – Plans and Constructs a 126,000 square foot expansion of the Museum to house the permanent collect, exhibitions, and the Rodin Gift.
   - Project Cost - $67 million
   - Debt Instrument – COPs
   - Principal Amount - $40 million
   - Term – 20 years
   - Issuance Schedule
     - Spring 2007 - $40 million (6.50% average interest rate)

4. **Western Regional Psychiatric Hospital** - Plans and Constructs a 382 bed hospital in the western part of the State to replace Broughton Hospital in Morganton.
   - Project Cost - $162.8 million
   - Debt Instrument – COPs
   - Principal Amount - $162.8 million
   - Term – 20 years
   - Issuance Schedule
     - Fall 2008 - $20 million (6.50% average interest rate)
     - Fall 2009 - $86 million (6.50% average interest rate)
     - Fall 2010 - $56.8 million (6.50% average interest rate)

New Authorized De[redacted]the Senate Budget Bill
2006 Session of the [redacted]5 General Assembly

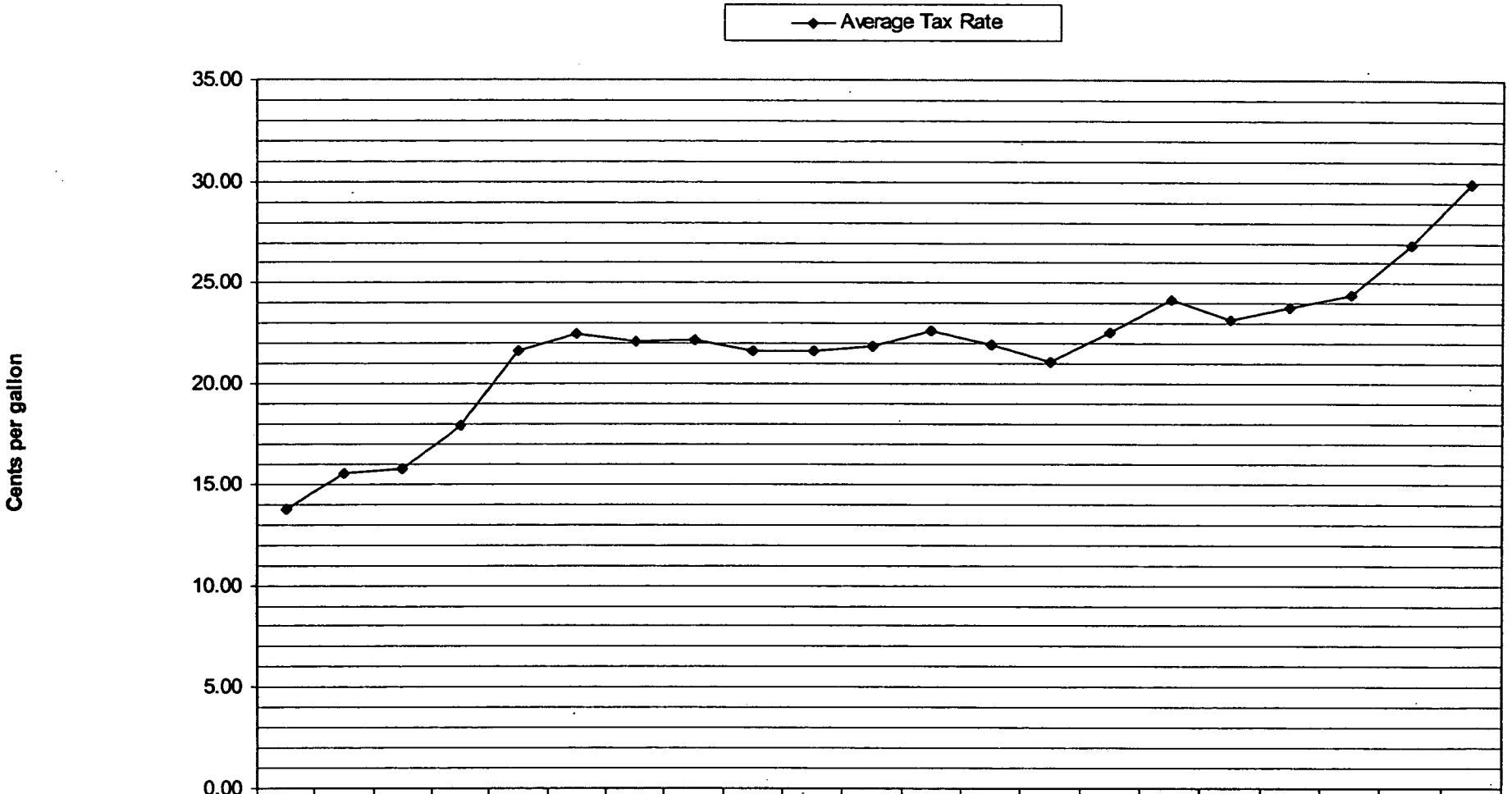
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
1	**Debt Service Projections for Proposed Capital Projects**														
2															
3	**Project**	**Principal**	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**	**FY 2017-18**	**FY 2018-19**
4	Central Regional Psychiatric Hospital	$20,000,000	$575,000	$2,121,250	$2,063,750	$2,006,250	$1,948,750	$1,891,250	$1,833,750	$1,776,250	$1,718,750	$1,661,250	$1,603,750	$1,546,250	$1,488,750
5	Eastern Regional Psychiatric Hospital	$145,500,000	$575,000	$4,591,250	$12,289,000	$15,987,813	$15,522,438	$15,057,063	$14,591,688	$14,126,313	$13,660,938	$13,195,563	$12,730,188	$12,264,813	$11,799,438
6	NC Museum of Art	$40,000,000		$4,600,000	$4,470,000	$4,340,000	$4,210,000	$4,080,000	$3,950,000	$3,820,000	$3,690,000	$3,560,000	$3,430,000	$3,300,000	$3,170,000
7	Western Regional Psychiatric Hospital	$162,800,000			$650,000	$5,062,500	$13,798,750	$18,047,950	$17,518,850	$16,989,750	$16,460,650	$15,931,550	$15,402,450	$14,873,350	$14,344,250
8	**Total**	**$368,300,000**	**$1,150,000**	**$11,312,500**	**$19,472,750**	**$27,396,563**	**$35,479,938**	**$39,076,263**	**$37,894,288**	**$36,712,313**	**$35,530,338**	**$34,348,363**	**$33,166,388**	**$31,984,413**	**$30,802,438**
9															
10															
11															
12															
13	**Project**	**Principal**	**FY 2019-20**	**FY 2020-21**	**FY 2021-22**	**FY 2022-23**	**FY 2023-24**	**FY 2024-25**	**FY 2025-26**	**FY 2026-27**	**FY 2027-28**	**FY 2028-09**	**FY 2029-30**	**FY 2030-31**	
14	Central Regional Psychiatric Hospital	$20,000,000	$1,431,250	$1,373,750	$1,316,250	$1,258,750	$1,201,250	$1,143,750	$1,086,250	$1,028,750					
15	Eastern Regional Psychiatric Hospital	$145,500,000	$11,334,063	$10,868,688	$10,403,313	$9,937,938	$9,472,563	$9,007,188	$8,541,813	$8,076,438	$6,639,813	$2,555,438			
16	NC Museum of Art	$40,000,000	$3,040,000	$2,910,000	$2,780,000	$2,650,000	$2,520,000	$2,390,000	$2,260,000	$2,130,000					
17	Western Regional Psychiatric Hospital	$162,800,000	$13,815,150	$13,286,050	$12,756,950	$12,227,850	$11,698,750	$11,169,650	$10,640,550	$10,111,450	$9,582,350	$9,053,250	$7,556,650	$2,932,300	
18	**Total**	**$368,300,000**	**$29,620,463**	**$28,438,488**	**$27,256,513**	**$26,074,538**	**$24,892,563**	**$23,710,588**	**$22,528,613**	**$21,346,638**	**$16,222,163**	**$11,608,688**	**$7,556,650**	**$2,932,300**	

North Carolina Motor Fuels Tax

- Current rate is 29.9 cents per gallon. Next change is July 1. The rate will either stay the same or decrease slightly (perhaps to 29.8 or 29.7).
- Same rate applies to gasoline, diesel fuel, and alternative fuels
- **Flat rate** of 17.5 cents per gallon, plus
- **Variable rate** of 7% of the weighted average wholesale price of gasoline and diesel for a six month base period ending March 31 or September 30. The floor for the variable rate is 3.5 cents per gallon. (G.S. 105-449.80)
- Exemptions for federal government, state government, local government, LEA's, charter schools, community colleges. (G.S. 105-449.88)
- Other exemptions (less 1 cent per gallon) for certain non-profits, etc. (G.S. 105-449.106). Exemptions for non highway use (e.g. farming, boating) (G.S. 105-449.10)
- An inspection tax of .25 cents per gallon (total of about $15 million) is paid on all fuel, including purchases by exempt users. Funds Dept. of Agriculture for pump inspection, Dept. of Revenue for tax administration, and Leaking Underground Storage Tank Program. (G.S. 119-18)
- *Federal excise tax on motor fuels is 18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel.*

North Carolina Motor Fuels Tax

Motor Fuels Tax Rate 1986-2006



	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Average Tax Rate	13.75	15.50	15.75	17.90	21.60	22.45	22.10	22.15	21.65	21.65	21.85	22.60	21.95	21.10	22.55	24.20	23.15	23.80	24.45	26.85	29.90

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1741

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

S1741-ARB-58 [v.1]

Date _____,2006

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

Senator Kerr

moves to amend the bill on page 91, lines 30 through 48, by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1741

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

S1741-ARB-57 [v.3]

Date _____,2006

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

Senator Hoyle

moves to amend the bill on page 1, line 5, by rewriting the line to read:
"TAX RATE APPLICABLE TO MOST SMALL BUSINESSES, TO CAP THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE AT ITS CURRENT RATE, TO INCREASE";

and on page 5, line 20, by rewriting the line to read:

"Reserve for Other Tax Reductions	(55,100,000)
Reserve for Highway Fund Hold Harmless	(17,600,000)
Reserve for Highway Trust Fund Hold Harmless	(5,700,000)";

and on page 5, line 51, by inserting a new section immediately after that line to read:

"**SECTION 2.2.(g)** The State Treasurer shall transfer funds reserved to hold harmless the Highway Fund and the Highway Trust Fund from the General Fund to the Highway Fund and the Highway Trust Fund only if the variable wholesale component of the motor fuel excise tax rate in G.S. 105-449.80 would, without the imposition of the cap imposed by Section 24.3 of this act, exceed twelve and four-tenths cents (12.4¢) a gallon. A transfer required under this subsection must be made on a monthly basis. The amount to be transferred from the General Fund to the Highway Fund is the difference between the amount of motor fuel excise tax revenue allocated to the Highway Fund under G.S. 105-449.125 for a month and the amount that would have been allocated to it if the variable wholesale component were not capped at twelve and four-tenths cents (12.4¢) a gallon. The total amount transferred to the Highway Fund under this subsection during fiscal year 2006-2007 may not exceed seventeen million six hundred thousand dollars ($17,600,000). The amount to be transferred from the General Fund to the Highway Trust Fund is the difference between the amount of motor

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1741

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

S1741-ARB-57 [v.3]

fuel excise tax revenue allocated to the Highway Trust Fund under G.S. 105-449.125 for a month and the amount that would have been allocated to it if the variable wholesale component were not capped at twelve and four-tenths cents (12.4¢) a gallon. The total amount transferred to the Highway Trust Fund under this subsection during fiscal year 2006-2007 may not exceed five million seven hundred thousand dollars ($5,700,000).";

and on page 156, line 55, by adding the following after that line to read:

"**CAP THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE AT ITS CURRENT RATE FOR ONE YEAR.**

SECTION 24.3(a). Notwithstanding G.S. 105-449.80(a), for the period July 1, 2006, through June 30, 2007, the variable wholesale component of the motor fuel excise tax rate may not exceed twelve and four-tenths cents (12.4¢) a gallon."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1741

Short Title:	Modify Appropriations Act of 2005.	(Public)
Sponsors:	Senators Garrou, Dalton, Hagan; Albertson, Atwater, Berger of Franklin, Bland, Boseman, Clodfelter, Cowell, Dannelly, Dorsett, Graham, Holloman, Hoyle, Kerr, Kinnaird, Lucas, Malone, Purcell, Rand, Snow, Soles, Swindell, and Weinstein.	
Referred to:	Appropriations/Base Budget.	

May 22, 2006

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL APPROPRIATIONS ACT OF 2005, TO ENACT AN EARLY REDUCTION IN THE SALES TAX RATE AND AN EARLY REDUCTION IN THE INCOME TAX RATE APPLICABLE TO MOST SMALL BUSINESSES, TO INCREASE THE MINIMUM WAGE, AND TO PROVIDE FOR THE FINANCING OF CONSTRUCTION OF PSYCHIATRIC HOSPITALS AND OTHER CAPITAL PROJECTS.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

SECTION 1.2. This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2006."

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are adjusted for the fiscal year ending June 30, 2007, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 2006-2007 fiscal year.

Current Operations – General Fund	FY 2006-2007
EDUCATION	
Community Colleges System Office	$ 43,124,642
Department of Public Instruction	129,758,427
University of North Carolina – Board of Governors	
Appalachian State University	2,189
East Carolina University	
Academic Affairs	(1,589,622)
Health Affairs	0
Elizabeth City State University	(28,887)
Fayetteville State University	42,675
NC Agricultural and Technical University	(223,690)
North Carolina Central University	(312)
North Carolina School of the Arts	29,159
North Carolina State University	
Academic Affairs	(3,908,353)
Agricultural Extension	0
Agricultural Research	65,287
University of North Carolina at Asheville	(569,398)
University of North Carolina at Chapel Hill	
Academic Affairs	(846,370)
Health Affairs	(795,501)
Area Health Education Centers	0
University of North Carolina at Charlotte	(471,439)
University of North Carolina at Greensboro	(1,138)
University of North Carolina at Pembroke	(299,992)
University of North Carolina at Wilmington	(100,910)
Western Carolina University	(735,491)
Winston-Salem State University	0
General Administration	0
University Institutional Programs	140,629,097
Related Educational Programs	0
North Carolina School of Science and Mathematics	52,250
UNC Hospitals at Chapel Hill	0
Total	**$ 131,249,554**
HEALTH AND HUMAN SERVICES	
Department of Health and Human Services	
Office of the Secretary	$ (65,275,120)
Division of Aging	3,000,000
Division of Blind Services/Deaf/HH	75,000
Division of Child Development	35,465,513
Division of Education Services	828,548
Division of Facility Services	0
Division of Medical Assistance	(149,850,000)
Division of Mental Health	77,589,934
NC Health Choice	0
Division of Public Health	19,085,242
Division of Social Services	12,799,153

Division of Vocational Rehabilitation Services		0
Total	**$**	**(66,281,730)**
NATURAL AND ECONOMIC RESOURCES		
Department of Agriculture and Consumer Services	$	3,676,261
Department of Commerce		
Commerce		20,222,483
Commerce State-Aid		500,000
NC Biotechnology Center		4,000,000
Rural Economic Development Center		(500,000)
Department of Environment and Natural Resources		
Environment and Natural Resources		14,895,997
Clean Water Management Trust Fund		0
Department of Labor		613,894
JUSTICE AND PUBLIC SAFETY		
Department of Correction	$	33,281,348
Department of Crime Control and Public Safety		3,675,280
Judicial Department		27,095,425
Judicial Department – Indigent Defense		7,483,129
Department of Justice		5,038,339
Department of Juvenile Justice and Delinquency Prevention		2,527,679
GENERAL GOVERNMENT		
Department of Administration	$	4,217,236
Office of Administrative Hearings		281,367
Department of State Auditor		38,500
Office of State Controller		0
Department of Cultural Resources		
Cultural Resources		5,130,562
Roanoke Island Commission		0
State Board of Elections		989,516
General Assembly		168,346
Office of the Governor		
Office of the Governor		100,000
Office of State Budget and Management		409,938
OSBM – Reserve for Special Appropriations		1,353,253
Housing Finance Agency		17,750,000

Department of Insurance		
Insurance		142,057
Insurance – Volunteer Safety Workers' Compensation		0
Office of Lieutenant Governor		88,433
Department of Revenue		1,108,392
Department of Secretary of State		553,067
Department of State Treasurer		
State Treasurer		281,784
State Treasurer – Retirement for Fire and Rescue Squad Workers		514,000
TRANSPORTATION		
Department of Transportation	$	0
RESERVES, ADJUSTMENTS, AND DEBT SERVICE		
Reserve for Compensation Increases	$	692,188,373
Reserve for Teachers' and State Employees' Retirement Rate Adjustment		27,107,200
Retirement System Payback		30,000,000
Information Technology Fund		42,087,229
Reserve for Heating and Cooling Assistance		10,000,000
Reserve for Legal Expenses		1,065,710
Trust Fund for MH, DD, SAS, and Bridge Funding Needs		5,000,000
Establish State Emergency Response Fund		20,000,000
Debt Service		
General Debt Service		(50,000,000)
Federal Reimbursement		0
TOTAL CURRENT OPERATIONS – GENERAL FUND	**$**	**1,170,935,691**

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) Section 2.2(a) of S.L. 2005-276 is repealed. The General Fund availability used in adjusting the 2006-2007 budget is shown below:

		FY 2006-2007
Unappropriated Balance from FY 2005-2006	$	113,386,988
Less: HB 1868 Emergency Appropriation for Department of Correction		(15,000,000)
Projected Reversions from FY 2005-2006		125,000,000
Projected Over Collections from FY 2005-2006		1,072,100,000
Year End Unreserved Credit Balance before Earmarkings	**$**	**1,295,486,988**
Less: Credit to Savings Reserve Account	$	(323,871,747)

Less: Credit to Repairs and Renovations Reserve Account		(225,000,000)
Revised Year End Unreserved Credit Balance	**$**	**746,615,241**
Revenues Based on Existing Tax Structure		**$ 16,951,416,000**
Nontax Revenues		
Investment Income	$	78,700,000
Judicial Fees		168,605,271
Disproportionate Share		100,000,000
Insurance		51,543,813
Other Nontax Revenues		455,382,930
Subtotal Nontax Revenues	**$**	**854,232,014**
Total General Fund Availability		**$ 18,552,263,255**
Adjustments to Availability: 2006 Session		
Adjustment to Baseline Revenue Forecast	$	698,864,995
Reduce Sales Tax from 4.5% to 4.25% – January 1, 2007		(118,000,000)
Reduce Top Personal Income Tax Rate to 8.0% – January 1, 2007		(28,600,000)
Reserve for Other Tax Reductions		(78,400,000)
Redirect Portion of Alcohol Excise Tax to Mental Health Trust Fund		(9,390,000)
Redirect Court of Justice Fee for Legal Service Programs		(1,000,000)
Reduce Transfer from Highway Trust Fund		(195,176,407)
Subtotal Adjustments to Availability: 2006 Session	**$**	**268,298,588**
Revised General Fund Availability for the 2006-2007 Fiscal Year		**$ 18,820,561,843**
Less: Total General Fund Appropriations		
2006-2007 Fiscal Year		(18,820,561,843)
Unappropriated Balance Remaining	**$**	**0**

SECTION 2.2.(b) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer two hundred twenty-five million dollars ($225,000,000) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2006. This subsection becomes effective June 30, 2006.

SECTION 2.2.(c) Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2006-2007 fiscal year to be used in accordance with G.S. 143-15.3A.

SECTION 2.2.(d) Section 2.2(e) of S.L. 2005-276 is repealed effective June 30, 2006.

This subsection becomes effective June 30, 2006

SECTION 2.2.(e) Section 2.2.(f) of S.L. 2005-276 reads as rewritten:

"SECTION 2.2.(f) Notwithstanding G.S. 105-187.9(b)(1), the sum to be transferred under that subdivision for the 2005-2006 fiscal year is two hundred fifty million dollars ($250,000,000) and for the 2006-2007 fiscal year is ~~two hundred fifty million dollars ($250,000,000).~~fifty-five million dollars ($55,000,000)."

SECTION 2.2.(f) Pursuant to G.S. 105-187.9(b)(2), the sum to be transferred under that subdivision for the 2006-2007 fiscal year is two million four hundred eighty-six thousand six hundred two dollars ($2,486,602).

PART III. CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

SECTION 3.1. Appropriations from the Highway Fund of the State for maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the fiscal year ending June 30, 2007, according to the schedule that follows. Amounts set out in brackets are reductions from Highway Fund Appropriations for the 2006-2007 fiscal year.

Current Operations – Highway Fund	**2006-2007**
Department of Transportation	
Administration	$ (2,500,000)
Division of Highways	
Administration	0
Construction	29,439,500
Maintenance	196,018,256
Planning and Research	0
OSHA Program	0
Ferry Operations	1,000,000
State Aid	
Municipalities	1,439,500
Public Transportation	(14,000,000)
Railroads	3,198,750
Governor's Highway Safety	0
Division of Motor Vehicles	1,886,701
Other State Agencies	13,069,364
Reserves and Transfers	25,279,000
TOTAL	**$254,831,071**

HIGHWAY FUND AVAILABILITY STATEMENT

SECTION 3.2. The Highway Fund availability used in developing the 2005-2007 biennial budget is shown below:

Highway Fund Availability Statement	**2006-2007**
Beginning Credit Balance	0
Estimated Revenue	1,767,140,000
Estimated Reversions	26,600,000
Total Highway Fund Availability	$ 1,793,740,000

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 4.1. Appropriations from the Highway Trust Fund of the State for maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the fiscal year ending June 30, 2007, according to the schedule that follows. Amounts set out in brackets are reductions from Highway Trust Fund Appropriations for the 2006-2007 fiscal year.

Current Operations – Highway Trust Fund	**2006-2007**
Intrastate System	97,860,379

Urban Loops	39,570,662
Aid to Municipalities	10,267,836
Secondary Roads	8,987,310
Program Administration	3,180,220
Transfer to General Fund	(195,176,407)
GRAND TOTAL CURRENT OPERATIONS AND EXPANSION	**($35,310,000)**

PART V. BLOCK GRANTS

DHHS BLOCK GRANTS

SECTION 5.1.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2007, according to the following schedule:

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT

Local Program Expenditures

Division of Social Services

01.	Work First Family Assistance (Cash Assistance)	$114,625,680
02.	Work First County Block Grants	94,653,315
03.	County Demonstration Grants	19,598,322
04.	Child Protective Services – Child Welfare Workers for Local DSS	12,452,391
05.	Work First – Boys and Girls Clubs	1,500,000
06.	Work First – After-School Services for At-Risk Children	2,249,642
07.	Work First – After-School Programs for At-Risk Youth in Middle Schools	500,000
08.	Adoption Services – Special Children's Adoption Fund	3,000,000
09.	Family Violence Prevention	2,200,000
10.	Foster Care	2,000,000

Division of Child Development

11.	Subsidized Child Care Program	36,563,266

DHHS Administration

12.	Division of Social Services	586,931
13.	Office of the Secretary	65,836

14. Office of the Secretary/DIRM – TANF Automation Projects	592,500
15. Office of the Secretary/DIRM – NC FAST Implementation	1,800,000
Transfers to Other Block Grants	
Division of Child Development	
16. Transfer to the Child Care and Development Fund	81,292,880
Division of Social Services	
17. Transfer to Social Services Block Grant for Department of Juvenile Justice and Delinquency Prevention – Support Our Students	2,749,642
18. Transfer to Social Services Block Grant for Child Protective Services – Child Welfare Training in Counties	2,550,000
19. Transfer to Social Services Block Grant for Maternity Homes	838,000
20. Transfer to Social Services Block Grant for Teen Pregnancy Prevention Initiatives	2,500,000
21. Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,500,000
22. Transfer to Social Services Block Grant for Foster Care Services	1,181,907
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT	$388,000,312
SOCIAL SERVICES BLOCK GRANT	
Local Program Expenditures	
Divisions of Social Services and Aging & Adult	
01. County Departments of Social Services (Transfer from TANF – $4,500,000)	$ 28,868,189
02. State In-Home Services Fund	2,101,113
03. State Adult Day Care Fund	2,155,301
04. Child Protective Services/CPS Investigative Services-Child Medical Evaluation Program	238,321

05. Foster Care Services (Transfer from TANF – $1,181,907)	1,706,063
06. Child Protective Services-Child Welfare Training for Counties (Transfer from TANF)	2,550,000
07. Maternity Homes (Transfer from TANF)	838,000
08. Local DSS Services for Hurricane Victims	509,272
Division of Aging and Adult Services	
09. Home and Community Care Block Grant (HCCBG)	1,834,077
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	
10. Mental Health Services Program	422,003
11. Developmental Disabilities Services Program	5,000,000
12. Mental Health Services-Adult/Mental Health Services-Child/Developmental Disabilities Program/ Substance Abuse Services-Adult	3,234,601
Division of Child Development	
13. Subsidized Child Care Program	3,150,000
Division of Vocational Rehabilitation	
14. Vocational Rehabilitation Services – Easter Seal Society/UCP	188,263
Office of the Secretary – Office of Economic Opportunity	
15. Elderly Supplemental Grant Program	41,302
Division of Public Health	
16. Teen Pregnancy Prevention Initiatives (Transfer from TANF)	2,500,000
DHHS Program Expenditures	
Division of Aging and Adult Services	
17. UNC-CARES Training Contract	247,920
Division of Services for the Blind	
18. Independent Living Program	3,314,114

Division of Facility Services		
19.	Adult Care Licensure Program	411,897
20.	Mental Health Licensure and Certification Program	205,668
DHHS Administration		
21.	Division of Aging and Adult Services	630,636
22.	Division of Social Services	869,058
23.	Office of the Secretary/Controller's Office	123,059
24.	Office of the Secretary/DIRM	82,009
25.	Division of Child Development	15,000
26.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	18,098
27.	Division of Facility Services	62,986
28.	Office of the Secretary-NC Inter-Agency Council For Coordinating Homeless Programs	250,000
29.	Office of the Secretary-Housing Coalition	100,000
Transfers to Other State Agencies		
Department of Administration		
30.	NC Commission of Indian Affairs In-Home Services for the Elderly	203,198
Department of Juvenile Justice and Delinquency Prevention		
31.	Support Our Students (Transfer from TANF)	2,749,642
Transfers to Other Block Grants		
Division of Public Health		
32.	Transfer to Preventive Health Services Block Grant for HIV/STD Prevention and Community Planning	145,819
TOTAL SOCIAL SERVICES BLOCK GRANT		$ 64,765,609
LOW-INCOME ENERGY BLOCK GRANT		
Local Program Expenditures		
Division of Social Services		

01. Low Income Energy Assistance Program (LIHEAP)	$ 28,684,494
02. Crisis Intervention Program (CIP)	20,831,114
Office of the Secretary – Office of Economic Opportunity	
03. Weatherization Program	9,431,545
04. Heating Air Repair & Replacement Program (HARRP)	4,399,042
Local Administration	
Division of Social Services	
05. County DSS Administration	2,057,992
Office of the Secretary – Office of Economic Opportunity	
06. Local Residential Energy Efficiency Service Providers – Weatherization	257,185
07. Local Residential Energy Efficiency Service Providers – HARRP	119,955
DHHS Administration	
08. Division of Social Services	319,774
09. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	7,146
10. Office of the Secretary/DIRM	245,395
11. Office of the Secretary/Controller's Office	11,211
12. Office of the Secretary/Office of Economic Opportunity – Weatherization	257,185
13. Office of the Secretary/Office of Economic Opportunity – HARRP	119,955
Transfers to Other State Agencies	
14. Department of Administration – N.C. State Commission of Indian Affairs	58,455
TOTAL LOW-INCOME ENERGY BLOCK GRANT	$ 66,800,448
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT	
Local Program Expenditures	
Division of Child Development	
01. Subsidized Child Care Services	$165,102,685

02. Subsidized Child Care Services (TANF to CCDF)	81,292,880
DHHS Program Expenditures	
Division of Child Development	
03. Quality and Availability Initiatives	34,951,707
Local Administrations	
Division of Child Development	
04. Administrative Expenses (Non-Direct Subsidy Services Support)	1,849,000
DHHS Administration	
05. DCD Administrative Expenses	6,028,354
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT	$289,224,626
MENTAL HEALTH SERVICES BLOCK GRANT	
Local Program Expenditures	
01. Mental Health Services – Adult	$ 7,184,481
02. Mental Health Services – Child	3,921,991
03. Comprehensive Treatment Service Program	1,500,000
Local Administration	
04. Division of Mental Health	100,000
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT	$ 12,706,472
SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT	
Local Program Expenditures	
01. Substance Abuse Services – Adult	$ 20,537,390
02. Substance Abuse Treatment Alternative for Women	8,069,524
03. Substance Abuse – HIV and IV Drug	4,816,378
04. Substance Abuse Prevention – Child	5,835,701

05.	Substance Abuse Services – Child	4,940,500
06.	Substance Abuse Strengthening Families – Prevention	851,156
	Division of Public Health	
07.	Risk Reduction Projects	383,980
08.	Aid-to-Counties	209,576
09.	Maternal Health	37,779
	DHHS Administration	
10.	Division of Mental Health	500,000
	TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT	$ 46,181,984
	MATERNAL AND CHILD HEALTH BLOCK GRANT	
	Local Program Expenditures	
	Division of Public Health	
01.	Healthy Mothers/Healthy Children	9,359,236
02.	Children's Health Services	4,114,216
03.	Healthy Beginnings	404,559
04.	Maternal Health	397,761
05.	Teen Pregnancy Prevention Initiatives	85,710
	DHHS Program Expenditures	
	Division of Public Health	
06.	Children's Health Services	3,149,826
07.	Maternal Health	185,488
08.	State Center for Health Statistics	29,432
09.	Local Technical Assistance & Training	47,424
10.	Injury and Violence Prevention	149,438
11.	Office of Minority Health	98,236
12.	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)	22,856

13. Immunization Program – Vaccine Distribution	414,175
DHHS Administration	
14. Division of Public Health Administration	550,681
TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT	$ 19,009,038
PREVENTIVE HEALTH SERVICES BLOCK GRANT	
Local Program Expenditures	
01. NC Statewide Health Promotion	$1,755,653
02. Services to Rape Victims	197,112
03. HIV/STD Prevention and Community Planning (Transfer from Social Services Block Grant)	145,819
DHHS Program Expenditures	
04. NC Statewide Health Promotion	431,444
05. Oral Health	114,251
06. Osteoporosis Program	67,593
DHHS Administration	
07. Division of Public Health	109,211
TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT	$2,821,083
COMMUNITY SERVICES BLOCK GRANT	
Local Program Expenditures	
Office of Economic Opportunity – Community Services Block Grant	
01. Community Action Agencies	$ 15,071,666
02. Limited Purpose Agencies	823,261
DHHS Administration	
03. Office of Economic Opportunity	823,261
TOTAL COMMUNITY SERVICES BLOCK GRANT	$ 16,718,188

GENERAL PROVISIONS

SECTION 5.1.(b) Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

(1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.
(2) A delineation of the proposed State and local administrative expenditures.
(3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.
(4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.
(5) A projection of current year expenditures by program or activity.
(6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

SECTION 5.1.(c) Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Department shall not propose funding for new programs or activities not appropriated in this section or increase State administrative expenditures.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall reduce State administration by at least the percentage of the reduction in federal funds. After determining the State administration, the remaining reductions shall be allocated proportionately across the program and activity appropriations identified for that Block Grant in this section. In allocating a decrease in federal fund availability, the Department shall not eliminate the funding for a program or activity appropriated in this section unless it is related to the State administration.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 5.1.(d) All changes to the budgeted allocations to the Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and a report shall be submitted to the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. All changes to the budgeted allocations to the Block Grant shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. This subsection does not apply to block grant changes caused by legislative salary increases and benefit adjustments.

SECTION 5.1.(e) The Department of Health and Human Services shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on positions funded from federal Block Grants. The report shall include the following for each Block Grant:

(1) All State positions currently funded through the Block Grant, including permanent, temporary, and time-limited positions.
(2) Budgeted salary and fringe benefits for each position.

(3) Identify the percentage of Block Grant funds used to fund each position.

The report shall be submitted no later than December 1, 2006.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT (TANF)

SECTION 5.1.(f) The sum of five hundred eighty-six thousand nine hundred thirty-one dollars ($586,931) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2006-2007 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 5.1.(g) The sum of two million dollars ($2,000,000) appropriated under this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2006-2007 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars ($75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall jointly develop a plan for utilizing these funds. The plan shall include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2006. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars ($5,000); and (ii) each county shall receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2006, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2006. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

SECTION 5.1.(h) The sum of two million two hundred forty-nine thousand six hundred forty-two dollars ($2,249,642) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2006-2007 fiscal year shall be used to expand after-school programs and services for at-risk children. The Department shall develop and implement a grant program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy, school dropout, and gang participation. The Department shall award grants to community-based organizations that demonstrate the ability to develop and implement linkages with local departments of social services, area mental health programs, schools, and other human services programs in order to provide support services and assistance to the child and family. These funds may be used to fund one position within the Division of Social Services to coordinate at-risk after-school programs and shall not be used for other State administration.

SECTION 5.1.(i) The sum of twelve million four hundred fifty-two thousand three hundred ninety-one dollars ($12,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2006-2007 fiscal year for child welfare improvements, shall

be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and postadoption services for eligible families.

SECTION 5.1.(j) The sum of three million dollars ($3,000,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Special Children Adoption Fund, for the 2006-2007 fiscal year shall be used in accordance with Section 10.48 of this act. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

SECTION 5.1.(k) The sum of one million eight hundred thousand dollars ($1,800,000) in this section appropriated to the Department of Health and Human Services in the TANF Block Grant for the 2006-2007 fiscal year shall be used to implement N.C. FAST (North Carolina Families Accessing Services through Technology). The N.C. FAST Program involves the entire automation initiative through which families access services and local departments of social services deliver benefits, supervised by the Department of Health and Human Services, Divisions of Social Services, Aging and Adult Services, Medical Assistance, and Child Development. The statewide automated initiative shall be implemented in compliance with federal regulations in order to ensure federal financial participation in the project. The Department of Health and Human Services shall report on its compliance with this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than January 1, 2007.

SECTION 5.1.(l) The sum of five hundred thousand dollars ($500,000) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2006-2007 fiscal year shall be used to expand after-school programs for at-risk children attending middle school. The Department shall develop and implement a grant program to award funds to community-based programs demonstrating the capacity to reach children at risk of teen pregnancy, school dropout, and gang participation. These funds shall not be used for training or administration at the State level. All funds shall be distributed to community-based programs, focusing on those communities where similar programs do not exist in middle schools.

SECTION 5.1.(m) In implementing the TANF Block Grant, the Department of Health and Human Services shall review policies, programs, and initiatives to ensure that they support men in their role as fathers and strengthen fathers' involvement in their children's lives. The Department shall encourage county departments of social services to ensure their Work First programs emphasize responsible fatherhood and increased participation by noncustodial fathers.

SECTION 5.1.(n) The sum of nineteen million five hundred ninety-eight thousand three hundred twenty-two dollars ($19,598,322) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2006-2007 fiscal year for county demonstration grants shall be used for Work First demonstration projects implemented by county departments of social services. The county demonstration grants may be awarded for up to three years with all projects ending no later than the end of fiscal year 2008-2009. The purpose of the county demonstration grants is to identify best practices that can be used by counties to improve the work participation rates for TANF recipients. The Division of Social

Services is authorized to establish two time-limited positions to manage the grant award process and monitor the demonstration projects through fiscal year 2008-2009.

Funding provided under the county demonstration grants shall not be used to supplant local funds and counties shall be required to maintain the current level of effort and funding for the Work First program.

SOCIAL SERVICES BLOCK GRANT

SECTION 5.1.(o) Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for Coordinating Homeless Programs and the North Carolina Housing Coalition are exempt from the provisions of 10A NCAC 71R.0201(3).

SECTION 5.1.(p) The sum of two million seven hundred forty-nine thousand six hundred forty-two dollars ($2,749,642) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services and transferred to the Department of Juvenile Justice and Delinquency Prevention for the 2006-2007 fiscal year shall be used to support the existing Support Our Students Program, including gang prevention, and to expand the Program statewide, focusing on low-income communities in unserved areas. These funds shall not be used for administration of the Program.

SECTION 5.1.(q) The sum of two million five hundred fifty thousand dollars ($2,550,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2006-2007 fiscal year shall be used to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.
(2) Support the Masters Degree in Social Work/Baccalaureate Degree in Social Work Collaborative.
(3) Provide training for residential child care facilities.
(4) Provide for various other child welfare training initiatives.

SECTION 5.1.(r) The sum of eight hundred thirty-eight thousand dollars ($838,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services for the 2006-2007 fiscal year shall be used to purchase services at maternity homes throughout the State.

SECTION 5.1.(s) The sum of one million seven hundred six thousand sixty-three dollars ($1,706,063) appropriated in this section in the Social Services Block Grant for child caring agencies for the 2006-2007 fiscal year shall be allocated to the State Private Child Caring Agencies Fund.

SECTION 5.1.(t) The sum of one million five hundred thousand dollars ($1,500,000) appropriated in this section to the Department of Health and Human Services in the Social Services Block Grant for Boys and Girls Clubs for the 2006-2007 fiscal year shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of Social Services Block Grant funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall encourage and facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs to submit joint applications for the funds if appropriate.

SECTION 5.1.(u) The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

SECTION 5.1.(v) Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 5.1.(w) The sum of no more than four hundred thousand dollars ($400,000) appropriated in this section to the Department of Health and Human Services in the Child Care and Development Fund Block Grant for the 2006-2007 fiscal year may be used for the operations of the Medical Child Care Pilot.

SECTION 5.1.(x) Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 5.1.(y) If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

MENTAL HEALTH BLOCK GRANT

SECTION 5.1.(z) The sum of one million five hundred thousand dollars ($1,500,000) appropriated in this section in the Mental Health Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2006-2007 fiscal year, and the sum of four hundred twenty-two thousand three dollars ($422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2006-2007 fiscal year shall be used to continue a Comprehensive Treatment Services Program for Children in accordance with Section 10.25 of S.L. 2005-276.

SECTION 5.1.(aa) The Department of Health and Human Services shall contract with the University of North Carolina at Chapel Hill for the purpose of providing psychology student stipends in the amount of fifty thousand dollars ($50,000) for the 2006-2007 fiscal year. Twenty-five thousand dollars ($25,000) of this contract shall be paid from the Mental Health Block Grant.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 5.1.(bb) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2006-2007 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an Abstinence Until Marriage Education Program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

SECTION 5.1.(cc) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

NER BLOCK GRANTS

SECTION 5.2.(a) Appropriations from federal block grant funds are made for fiscal year ending June 30, 2007, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT		
01.	State Administration	$ 1,000,000
02.	Urgent Needs and Contingency	1,000,000
03.	Scattered Site Housing	13,200,000
04.	Economic Development	8,710,000
05.	Community Revitalization	13,500,000
06.	State Technical Assistance	450,000
07.	Housing Development	2,000,000
08.	Infrastructure	5,140,000
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT – 2007 Program Year		$ 45,000,000

SECTION 5.2.(b) Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

SECTION 5.2.(c) Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

SECTION 5.2.(d) Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars ($1,000,000) may be used for State Administration; not less than one million dollars ($1,000,000) may be used for Urgent Needs and Contingency; up to thirteen million two hundred thousand dollars ($13,200,000) may be used for Scattered Site Housing; up to eight million seven hundred ten thousand dollars ($8,710,000) may be used for Economic Development, including Urban Redevelopment Grants and Small Business or Entrepreneurial Assistance; not less than thirteen million five hundred thousand dollars ($13,500,000) shall be used for Community Revitalization; up to four hundred fifty thousand dollars ($450,000) may be used for State Technical Assistance; up to two million dollars ($2,000,000) may be used for Housing Development; up to five million one hundred forty thousand dollars ($5,140,000) may be used for Infrastructure. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

SECTION 5.2.(e) Increase Capacity for Nonprofit Organizations. – Assistance to nonprofit organizations to increase their capacity to carry out CDBG-eligible activities in partnership with units of local government is an eligible activity under any program category in accordance with federal regulations. Capacity building grants may be made from funds available within program categories, program income, or unobligated funds.

SECTION 5.2.(f) Department of Commerce Demonstration Grants in Partnership with Rural Economic Development Center, Inc. – The Department of Commerce, in partnership with the Rural Economic Development Center, Inc., shall award up to two million two hundred fifty thousand dollars ($2,250,000) in demonstration grants to local governments in very distressed rural areas of the State. These grants shall be used to address critical infrastructure and entrepreneurial needs and to provide small business assistance.

SECTION 5.2.(g) The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

(1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(2) The State will lose federal block grant funds or receive less federal block grant funds in the next fiscal year unless a reallocation is made, the Department of Commerce shall provide a written report to the Commission on the proposed reallocation and shall identify the reason that failure to take action will result in the loss of federal funds. If the Commission does not hear the issue within 30 days of receipt of the report, the Department may take the action without consulting the Commission.

PART VI. GENERAL PROVISIONS

CONTINGENCY AND EMERGENCY FUND ALLOCATIONS

SECTION 6.1.(a) Section 6.2 of S.L. 2005-276 is repealed.

SECTION 6.1.(b) Funds in the amount of five million dollars ($5,000,000) for the 2006-2007 fiscal year are appropriated to the Contingency and Emergency Fund. Except as provided in subsection (c) of this section, these funds shall be expended only as:

(1) Required by a court, Industrial Commission, or administrative hearing officer's order;

(2) Required to call out the national guard; or

(3) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado, if funds for this purpose are not available in the Reserve for Disaster Expenses as authorized in G.S. 166A.

SECTION 6.1.(c) Up to five hundred thousand dollars ($500,000) may be spent for purposes other than those set out in subsection (b) of this section. Notwithstanding any other provision of law authorizing expenditures from the Contingency and Emergency Fund, no more than five hundred thousand dollars ($500,000) of these funds shall be expended for purposes other than those set out in subsection (b) of this section.

AUTHORIZATION TO ESTABLISH RECEIPT-SUPPORTED POSITIONS

SECTION 6.2. Notwithstanding G.S. 143-34.1(a1), a department, institution, or other agency of State government may establish receipt-supported positions authorized in this act upon approval by the Director of the Budget. The Director, if necessary, may establish a receipt-supported position pursuant to this section at an annual salary amount different from the salary amount set out in this act if (i) funds are available from the proposed funding source and (ii) the alternative salary

amount remains within the established salary range grade identified for the job classification of the affected receipt-supported position established in this act. The Director shall not change the job classifications or increase the number of receipt-supported positions specified in this act without prior consultation with the Joint Legislative Commission on Governmental Operations.

CONSULTATION NOT REQUIRED PRIOR TO ESTABLISHING OR INCREASING FEES PURSUANT TO THE EXECUTIVE BUDGET ACT

SECTION 6.3. Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in the Current Operations and Capital Improvements Appropriations Act of 2006 or the Senate Appropriations Committee Report on the Continuation, Expansion and Capital Budgets, which was distributed in the Senate Appropriations and Base Budget Committee and used to explain this act.

NO FEE INCREASES WHICH THE GENERAL ASSEMBLY HAS REJECTED

SECTION 6.4. Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-16.7. No fee increases that the General Assembly has rejected.**

Notwithstanding any other provision of law, no fee shall be increased if the General Assembly has rejected an increase of that fee for the current fiscal period. For the purpose of this section, the General Assembly has rejected a fee increase when that fee increase is included in a bill which fails a reading, or if the fee increase is included in the version of a bill that passes one house, but the bill is enacted without the fee increase."

STATE EMERGENCY RESPONSE ACCOUNT

SECTION 6.5.(a) G.S. 166A-6.01(b)(2) reads as rewritten:

"(b) Disaster Assistance Programs – Type I Disaster. – In the event that a Type I disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of individual assistance and public assistance as provided in this subsection.

...

(2) Public assistance. – State disaster assistance in the form of public assistance grants may be made available to eligible entities located within the disaster area on the following terms and conditions:

a. Eligible entities shall meet the following qualifications:

1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;
2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding ~~one-half percent (0.5%)~~ one percent (1%) of the annual operating budget;
3. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and
4. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.
c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:
1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs."

SECTION 6.5.(b) Article 1 of Chapter 166A of the General Statutes is amended by adding a new section to read:

"**§ 166A-6.02. State Emergency Response Account.**

(a) Account Established. – There is established a State Emergency Response Account as a reserve in the General Fund. Any funds appropriated to the Account shall remain available for expenditure as provided by this section, unless directed otherwise by the General Assembly.

(b) Purpose of Funds. – The Governor may spend funds from the Account for the following purposes:

(1) To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster as defined by G.S. 166A-6.

(2) To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.

All other types of disaster assistance authorized by G.S. 166A-6 shall continue to be financed by the funds made available under G.S. 166A-6.01.

(c) Reporting Requirement. – The Governor shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and House of Representatives on any expenditures from the State Emergency Response Account no later than 30 days after making the expenditure. The report shall include a description of the emergency and type of action taken."

SECTION 6.5.(c) G.S. 166A-4(1) reads as rewritten:

"~~(1)~~(1a) Disaster. – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause."

SECTION 6.5.(d) G.S. 166A-4 is amended by adding a new subdivision to read:

"(1) Account. – The State Emergency Response Account established in G.S. 166A-6.02."

INFORMATION TECHNOLOGY FUND AVAILABILITY STATEMENT

SECTION 6.6. Section 6.13(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 6.13.(a)** The availability used to support appropriations made in this act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	FY 2005-2006	**FY 2006-2007**
Estimated Unencumbered Balance, June 30, 2006		$1,120,000
Receipts from Information Technology Enterprise Fee (G.S. 147-33.82)	$5,000,000	$5,000,000

Transfer from June 30, 2005, Information Technology Services Internal Service Fund cash balance to support statewide IT initiatives	$5,000,000	
~~Appropriation from General Fund~~	~~$24,375,000~~	~~$8,025,000~~
Appropriation from General Fund	$24,375,000	$50,112,229
~~Total Funds Available~~	~~$34,375,000~~	~~$13,025,000.~~
Total Funds Available	$34,375,000	$56,232,229."

INFORMATION TECHNOLOGY APPROPRIATIONS

SECTION 6.7. Section 6.14 of S.L. 2005-276 reads as rewritten:

"**SECTION 6.14.** Appropriations are made from the Information Technology Fund established in G.S. 147-33.72H as follows:

Office of Information Technology Services	**FY 2005-2006**	**FY 2006-2007**
To establish two project management assistant positions and one enterprise licensing position and to purchase and maintain asset management software and enterprise licenses.	$1,600,000	$1,400,000
To continue existing activities including project management assistance, security, asset management, legal support, and legacy system assessment.	$5,100,000	$3,300,000
To provide services previously supported by cross subsidies in the rate structure, including State portal maintenance, security services, enterprise identity management, and office operations.	$6,300,000	$5,800,000
To facilitate consolidation of information technology services in State agencies.	$500,000	
To establish two attorneys to assist Information Technology Services (ITS) with complex information technology procurements.		$298,826
Office of State Controller		
~~To initiate replacement of the State's personnel and payroll systems consistent with the analysis and findings of the Statewide Business Infrastructure study~~	~~$20,875,000~~	~~$2,525,000~~
To implement replacement of the State's human resources and payroll system with a new system, Building Enterprise Access for North Carolina's Core Operations (BEACON)/State Business Infrastructure Program (SBIP).	$20,875,000	$44,313,403
To provide funding to integrate and deploy the following data warehousing projects as part of BEACON/SBIP: (i) Department of Revenue: Guest Worker Compliance Project. (ii) Office of StatePersonnel: Workforce Planning Project. (iii) Office of the State Auditor: Business Intelligence Software and Data Warehousing Project.		$1,000,000

~~Total Appropriation~~	~~$34,375,000~~	~~$13,025,000~~
Total Appropriation	$34,375,000	$56,112,229

Funds appropriated under this section are subject to the reporting requirement set out in G.S. 147-33.72H."

REVIEW OF INFORMATION TECHNOLOGY CONTRACTS

SECTION 6.8. G.S. 147-33.103 reads as rewritten:

"**§ 147-33.103. Attorney General contract ~~assistance; rule-making authority.~~assistance; use of private counsel.**

(a) At the request of the State Chief Information Officer, the Attorney General shall provide legal advice and services necessary to implement this Part.

(b) Repealed by Session Laws 2004-129, s. 26, effective July 1, 2004.

(c) The State Chief Information Officer shall retain private counsel to provide legal advice and services and to ensure that the State's interests are protected regarding information technology contracts that obligate the State to expend over five million dollars ($5,000,000) over the life of the contract. The requirements of G.S. 114-2.3 do not apply to this subsection.

The State Chief Information Officer may use funds from the Information Technology Fund, which is established in G.S. 147-33.72H, for this purpose."

AMEND CIVIL PENALTY AND FORFEITURE FUND AVAILABILITY

SECTION 6.9.(a) Section 6.37(a) of S. L. 2005-276 reads as rewritten:

"**SECTION 6.37.(a)** Availability. – The availability used to support appropriations made in this act from the Civil Penalty and Forfeiture Fund is based upon estimated collections of fines and forfeitures from the agencies and in the amounts listed below:

	FY 2005-2006	FY 2006-2007
Department of Revenue	$ 80,000,000	$ ~~85,000,000~~63,000,000
Department of Transportation	$ 15,000,000	$ 15,000,000
Employment Security Commission	$ 3,000,000	$ 3,000,000
Department of Insurance	$ 3,000,000	$ ~~3,000,000~~ 1,000,000
University of North Carolina	$ 5,000,000	$ ~~5,000,000~~ 3,500,000
Other Agencies	$ 14,500,000	$ ~~14,500,000~~10,000,000
Total Funds Available	$ 120,500,000	$ ~~125,500,000~~95,500,000"

SECTION 6.9.(b) Section 6.37(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 6.37.(b)** Appropriations. – Appropriations are made from the Civil Penalty and Forfeiture Fund for the fiscal biennium ending June 30, 2007, as follows:

	2005-2006	2006-2007
School Technology Fund	$ 18,000,000	$ 18,000,000
State Public School Fund	$ 102,500,000	$ ~~107,500,000~~77,500,000
Total Appropriation	$ 120,500,000	$ ~~125,500,000~~95,500,000"

SECTION 6.9.(c) G.S. 115C-457.2 reads as rewritten:

"**§ 115C-457.2. Remittance of moneys to the Fund.**

The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under Page 48 Session Law 2005-276 SL2005-0276 authority conferred by the State, diminished only by the actual costs of collection, not to exceed twenty percent (20%) of the amount

collected. The collection cost percentage to be used by a State agency shall be established and approved by the Office of State Budget and Management on an annual basis based upon the computation of actual collection costs by each agency for the prior fiscal year."

SECTION 6.9.(d) The State Board of Education may use up to five hundred thousand dollars ($500,000) from the State Public School Fund to support the Senior Project initiative. These funds shall be used for training for LEA staff and teachers to implement this graduation requirement which was approved by the State Board of Education in 2004.

FUNDS FOR ENROLLMENT INCREASES

SECTION 6.10. G.S. 143-11 is amended by adding a new subsection to read:

"(a1) In developing the budget, the Director shall consider the information on student enrollment increases submitted to the Director by the State Board of Education, the State Board of Community Colleges, and the Board of Governors of The University of North Carolina. The Director shall include in the continuation budget the amount the Director proposes to fund for the enrollment increases for public schools, community colleges, and the university system."

HOUSING ASSISTANCE FUNDS

SECTION 6.11. Section 5.1(c) of S.L. 2005-1 reads as rewritten:

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

PART VII. PUBLIC SCHOOLS

TEACHER SALARY SCHEDULES

SECTION 7.1.(a) Effective for the 2006-2007 school year, the Director of the Budget shall transfer from the Reserve for Experience Step Salary Increase for Teachers and Principals in Public Schools funds necessary to implement the teacher salary schedules set out in subsection (b) of this section and for longevity in accordance with subsection (c) of this section, including funds for the employer's retirement and social security contributions for all teachers whose salaries are supported from the State's General Fund.

These funds shall be allocated to individuals according to rules adopted by the State Board of Education.

SECTION 7.1.(b) The following monthly salary schedules shall apply for the 2006-2007 fiscal year to certified personnel of the public schools who are classified as teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

2006-2007 Monthly Salary Schedule
"A" Teachers

Years Of Experience	"A" Teachers	NBPTS Certification

0	$2,851	N/A
1	$2,893	N/A
2	$2,937	N/A
3	$3,093	$3,464
4	$3,233	$3,621
5	$3,367	$3,771
6	$3,496	$3,916
7	$3,600	$4,032
8	$3,648	$4,086
9	$3,697	$4,141
10	$3,747	$4,197
11	$3,796	$4,252
12	$3,847	$4,309
13	$3,898	$4,366
14	$3,951	$4,425
15	$4,005	$4,486
16	$4,060	$4,547
17	$4,115	$4,609
18	$4,174	$4,675
19	$4,232	$4,740
20	$4,290	$4,805
21	$4,352	$4,874
22	$4,413	$4,943
23	$4,479	$5,016
24	$4,543	$5,088
25	$4,608	$5,161
26	$4,674	$5,235
27	$4,742	$5,311
28	$4,813	$5,391
29+	$4,884	$5,470

2006-2007 Monthly Salary Schedule
"M" Teachers

Years Of Experience	"M" Teachers	NBPTS Certification
0	$3,136	N/A
1	$3,182	N/A
2	$3,231	N/A
3	$3,402	$3,810
4	$3,556	$3,983
5	$3,704	$4,148
6	$3,846	$4,308
7	$3,960	$4,435
8	$4,013	$4,495
9	$4,067	$4,555
10	$4,122	$4,617
11	$4,176	$4,677
12	$4,232	$4,740
13	$4,288	$4,803
14	$4,346	$4,868
15	$4,406	$4,935
16	$4,466	$5,002
17	$4,527	$5,070
18	$4,591	$5,142

19	$4,655	$5,214
20	$4,719	$5,285
21	$4,787	$5,361
22	$4,854	$5,436
23	$4,927	$5,518
24	$4,997	$5,597
25	$5,069	$5,677
26	$5,141	$5,758
27	$5,216	$5,842
28	$5,294	$5,929
29+	$5,372	$6,017

SECTION 7.1.(c) Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service, and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

SECTION 7.1.(d) Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

SECTION 7.1.(e) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified psychologists.

SECTION 7.1.(f) Speech pathologists who are certified as speech pathologists at the masters degree level and audiologists who are certified as audiologists at the masters degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

Speech pathologists and audiologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for speech pathologists and audiologists. Speech pathologists and audiologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for speech pathologists and audiologists.

SECTION 7.1.(g) Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

SECTION 7.1.(h) As used in this section, the term "teacher" shall also include instructional support personnel.

SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 7.2.(a) Effective for the 2006-2007 school year, the Director of the Budget shall transfer from the Reserve for Compensation Increases funds necessary to implement the salary schedules for school-based administrators as provided in this section. These funds shall be used for State-paid employees only.

SECTION 7.2.(b) The base salary schedule for school-based administrators shall apply only to principals and assistant principals. The base salary schedule for the 2006-2007 fiscal year, commencing July 1, 2006, is as follows:

2006-2007
Principal and Assistant Principal Salary Schedules
Classification

Yrs. of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-4	$3,592				
5	$3,741				
6	$3,884				
7	$4,000				
8	$4,053	$4,053			
9	$4,108	$4,108			
10	$4,163	$4,163	$4,218		
11	$4,218	$4,218	$4,274		
12	$4,274	$4,274	$4,331	$4,389	
13	$4,331	$4,331	$4,389	$4,450	$4,511
14	$4,389	$4,389	$4,450	$4,511	$4,572
15	$4,450	$4,450	$4,511	$4,572	$4,637
16	$4,511	$4,511	$4,572	$4,637	$4,702
17	$4,572	$4,572	$4,637	$4,702	$4,766
18	$4,637	$4,637	$4,702	$4,766	$4,835
19	$4,702	$4,702	$4,766	$4,835	$4,903
20	$4,766	$4,766	$4,835	$4,903	$4,976
21	$4,835	$4,835	$4,903	$4,976	$5,047
22	$4,903	$4,903	$4,976	$5,047	$5,120
23	$4,976	$4,976	$5,047	$5,120	$5,192
24	$5,047	$5,047	$5,120	$5,192	$5,268
25	$5,120	$5,120	$5,192	$5,268	$5,347
26	$5,192	$5,192	$5,268	$5,347	$5,426
27	$5,268	$5,268	$5,347	$5,426	$5,535
28	$5,347	$5,347	$5,426	$5,535	$5,646
29	$5,426	$5,426	$5,535	$5,646	$5,759
30	$5,535	$5,535	$5,646	$5,759	$5,874
31	$5,646	$5,646	$5,759	$5,874	$5,991
32		$5,759	$5,874	$5,991	$6,111
33			$5,991	$6,111	$6,233
34			$6,111	$6,233	$6,358
35				$6,358	$6,485
36				$6,485	$6,615
37					$6,747

Principal and Assistant Principal Salary Schedules
Classification

Yrs. of Exp	PrinV (44-54)	PrinVI (55-65)	PrinVII (66-100)	PrinVIII (101+)
0-14	$4,637			
15	$4,702			
16	$4,766	$4,835		
17	$4,835	$4,903	$5,047	
18	$4,903	$4,976	$5,120	$5,192
19	$4,976	$5,047	$5,192	$5,268
20	$5,047	$5,120	$5,268	$5,347
21	$5,120	$5,192	$5,347	$5,426
22	$5,192	$5,268	$5,426	$5,535
23	$5,268	$5,347	$5,535	$5,646
24	$5,347	$5,426	$5,646	$5,759
25	$5,426	$5,535	$5,759	$5,874
26	$5,535	$5,646	$5,874	$5,991
27	$5,646	$5,759	$5,991	$6,111
28	$5,759	$5,874	$6,111	$6,233
29	$5,874	$5,991	$6,233	$6,358
30	$5,991	$6,111	$6,358	$6,485
31	$6,111	$6,233	$6,485	$6,615
32	$6,233	$6,358	$6,615	$6,747
33	$6,358	$6,485	$6,747	$6,882
34	$6,485	$6,615	$6,882	$7,020
35	$6,615	$6,747	$7,020	$7,160
36	$6,747	$6,882	$7,160	$7,303
37	$6,882	$7,020	$7,303	$7,449
38	$7,020	$7,160	$7,449	$7,598
39		$7,303	$7,598	$7,750
40		$7,449	$7,750	$7,905
41			$7,905	$8,063

SECTION 7.2.(c) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools and in cooperative innovative high school programs shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

SECTION 7.2.(d) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

SECTION 7.2.(e) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars ($126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars ($253.00) per month.

SECTION 7.2.(f) Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

SECTION 7.2.(g) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subsection applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subsection for one calendar year following the date of the merger.

SECTION 7.2.(h) Participants in an approved full-time masters in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the masters program. For the 2006-2007 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time masters in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

SECTION 7.2.(i) During the 2006-2007 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

CENTRAL OFFICE SALARIES

SECTION 7.3.(a) The monthly salary ranges that follow apply to assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 2006-2007 fiscal year, beginning July 1, 2006.

School Administrator I	$3,079	$6,012

School Administrator II	$3,268	$6,378
School Administrator III	$3,468	$6,765
School Administrator IV	$3,608	$7,035
School Administrator V	$3,753	$7,319
School Administrator VI	$3,982	$7,762
School Administrator VII	$4,142	$8,075

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which an employee is placed shall be included in the contract of any employee hired on or after July 1, 2006.

SECTION 7.3.(b) The monthly salary ranges that follow apply to public school superintendents for the 2006-2007 fiscal year, beginning July 1, 2006.

Superintendent I	$4,396	$8,566
Superintendent II	$4,667	$9,084
Superintendent III	$4,952	$9,637
Superintendent IV	$5,225	$10,221
Superintendent V	$5,578	$10,844

The local board of education shall determine the appropriate category and placement for the superintendent based on the average daily membership of the local school administrative unit and within funds appropriated by the General Assembly for central office administrators and superintendents.

SECTION 7.3.(c) Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees under the State Personnel Act.

SECTION 7.3.(d) Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for under this section.

SECTION 7.3.(e) The State Board of Education shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

SECTION 7.3.(f) The annual salary increase for all permanent full-time personnel paid from the Central Office Allotment shall be five percent (5%), commencing July 1, 2006. The State Board of Education shall allocate these funds to local school administrative units. The local boards of education shall establish guidelines for providing salary increases to these personnel.

NONCERTIFIED PERSONNEL SALARY AND FAIR MINIMUM PAY

SECTION 7.4.(a) The annual salary increase for permanent, full-time noncertified public school employees whose salaries are supported from the State's General Fund shall be five percent (5%), commencing July 1, 2006.

SECTION 7.4.(b) Local boards of education shall increase the rates of pay for such employees who were employed for all or part of fiscal year 2005-2006 and who continue their employment for fiscal year 2006-2007 by providing an annual salary increase for employees of five percent (5%). For part-time employees, the pay increase shall be pro rata based on the number of hours worked.

SECTION 7.4.(c) The State Board of Education may adopt salary ranges for noncertified personnel to support increases of five percent (5%) for the 2006-2007 fiscal year.

SECTION 7.4.(d) Effective July 1, 2006, permanent full-time noncertified public school employees whose salaries are supported from the State's General Fund shall be paid a minimum salary of at least twenty thousand one hundred twelve dollars ($20,112) per year. Permanent, full-time employees working on a schedule requiring less than 12 months' service per year and permanent part-time employees, whose salaries are supported from the State's General Fund, shall be paid the minimum salary pro rata. The fair minimum wage salary adjustment provided by this section shall be calculated and awarded after any across-the-board salary increases authorized by this act.

BONUS FOR CERTIFIED PERSONNEL AT THE TOP OF THEIR SALARY SCHEDULES

SECTION 7.5. Effective July 1, 2006, any permanent certified personnel employed on July 1, 2006, and paid on the teacher salary schedule with 29+ years of experience shall receive a one-time bonus equivalent to the average increase of the 26- to 29-year steps, one and fifty-five hundredths percent (1.55%). Effective July 1, 2006, any permanent personnel employed on July 1, 2006, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%). For permanent part-time personnel, the one-time bonus shall be adjusted pro rata. Personnel defined under G.S. 115C-325(a)(5a) are not eligible to receive the bonus.

FUNDS TO IMPLEMENT THE ABCS OF PUBLIC EDUCATION

SECTION 7.6.(a) The State Board of Education shall use funds appropriated in this act for State Aid to Local School Administrative Units to provide incentive funding for schools that met or exceeded the projected levels of improvement in student performance during the 2005-2006 school year, in accordance with the ABCs of Public Education Program. In accordance with State Board of Education policy:

(1) Incentive awards in schools that achieve higher than expected improvements may be up to:
   a. One thousand five hundred dollars ($1,500) for each teacher and for certified personnel; and
   b. Five hundred dollars ($500.00) for each teacher assistant.

(2) Incentive awards in schools that meet the expected improvements may be up to:
   a. Seven hundred fifty dollars ($750.00) for each teacher and for certified personnel; and
   b. Three hundred seventy-five dollars ($375.00) for each teacher assistant.

SECTION 7.6.(b) The State Board of Education may use funds appropriated to the State Public School Fund to provide assistance to low-performing schools.

CHILDREN WITH DISABILITIES

SECTION 7.7. The State Board of Education shall allocate funds for children with disabilities on the basis of two thousand nine hundred sixty-six dollars and sixty-five cents ($2,966.65) per child for a maximum of 172,040 children for the 2006-2007 school year. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities, or (ii) twelve and five-tenths percent (12.5%) of the 2006-2007 allocated average daily membership in the local school administrative unit.

The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate

adjustments, and health benefit adjustments for personnel who serve children with disabilities.

FUNDS FOR ACADEMICALLY GIFTED CHILDREN

SECTION 7.8. The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of nine hundred sixty-one dollars and sixty cents ($961.60) per child. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2006-2007 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The State Board shall allocate funds for no more than 57,419 children for the 2006-2007 school year.

The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

LEA ASSISTANCE PROGRAM

SECTION 7.9.(a) The State Board of Education shall report on a plan to provide assistance to low-performing schools and LEAs and to assist schools and LEAs not meeting adequate yearly progress as identified in the No Child Left Behind Act of 2001. The report shall include historical data on assistance that has been provided and the quantitative outcomes, including student academic performance for each school and LEA assisted. The report shall also include research-based data regarding state LEA and school assistance programs. The plan shall ensure that all assistance to LEAs and schools that is provided on behalf of the State Board of Education (SBE) by the Department of Public Instruction and its contractors shall be consolidated into the LEA Assistance Program (LEAAP) created in the 2003 Session of the General Assembly.

SECTION 7.9.(b) The State Board of Education shall develop the criteria for LEA Assistance Teams (i) the criteria for selecting LEAs and schools to receive assistance, (ii) measurable goals and objectives for the assistance program, (iii) an explanation of the type of assistance to be provided with these combined resources. The Department will develop a revised organizational structure and budget for the provision of assistance services to LEAs to ensure the Department can meet the needs of the LEAs. This structure and budget must be approved by the State Board of Education. The report to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Education Oversight Committee on the criteria and the new organizational structure, proposed budget, functions, and projected workloads shall be submitted by August 15, 2006.

SECTION 7.9.(c) To implement the plan, notwithstanding G.S. 143-23, funds shall be transferred from within existing appropriations to the LEAAP. The State Board of Education may, subject to the approval of the Office of State Budget and Management, use these funds to create positions. For 2006-2007 only, the State Board may transfer General Fund appropriations between personal service and nonpersonal service line items provided that it has been approved by the State Board and has prior approval from the Office of State Budget and Management, in order to have the flexibility during the transition year to structure itself most efficiently for the delivery of services. However, all funds transferred under this provision are only for this program and for the services described herein. Funds are not to be used to raise the salary of existing employees. These funds shall come from appropriations currently supporting positions, and related operating costs within the Department of Public Instruction for school improvement teams and for Closing the Gap positions, and from the funds appropriated to the State Public School Fund being used for contractual services and associated costs for the Assistance Teams. The Office of State Budget and Management shall approve the plan prior to the transfer of funds.

SECTION 7.9.(d) A report shall be submitted on the prior year's expenditure of these funds by August 31 of each year. The report shall contain: (i) the criteria for selecting LEAs and schools to receive assistance, (ii) measurable goals and objectives for the assistance program, (iii) an explanation of the assistance provided, (iv) findings from the assistance program, (v) actual expenditures by category, (vi) recommendations for the continuance of this program, and (vii) any other information the State Board deems necessary. These funds shall not revert at the end of each fiscal year but shall remain available until expended for this purpose.

DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING

SECTION 7.10. Section 7.8 of S.L. 2005-276 is amended by adding a new subsection to read:

"**SECTION 7.8.(c)** Beginning in the 2006-2007 fiscal year, funds appropriated for disadvantaged student supplemental funding (DSSF) shall be allotted based upon a teacher-to-student ratio for the eligible DSSF population using the following formula:

(1) Local education agencies (LEAs) in counties with wealth greater than ninety percent (90%) of the statewide average shall receive one teaching position per 20.5 DSSF population;

(2) LEAs in counties with wealth not less than eighty percent (80%) and not greater than ninety percent (90%) of the statewide average shall receive one teaching position per 20 DSSF population;

(3) LEAs in counties with wealth less than eighty percent (80%) of the statewide average shall receive one teaching position per 19.5 DSSF population;

(4) LEAs receiving DSSF funds in 2005-2006 shall receive one teaching position per 16 DSSF population. These LEAs shall receive no less than the DSSF amount allotted in 2005-2006.

For the purpose of this subsection, wealth shall be calculated under the low wealth supplemental formula."

LEARN AND EARN HIGH SCHOOLS

SECTION 7.11. Section 7.32 of S.L. 2005-276 is amended by adding the following new subsections:

"**SECTION 7.32.(e)** Enrollment fees and tuition for The University of North Carolina courses in which Learn and Earn students are enrolled are allowable uses of these funds. Tuition costs may include laboratory fees assessed to all students enrolled in the course or a similar course.

SECTION 7.32.(f) Textbooks required for college courses in which Learn and Earn students are enrolled may be purchased with these funds.

SECTION 7.32.(g) Payment of fees from these funds by local school administrative units to partnering community colleges and universities are restricted to technology or course fees. Funds appropriated in this act shall not be used to support the cost of athletic or other student activity or campus fees not required by enrollment in a specific course.

SECTION 7.32.(h) The State Board of Education shall allot funds for university enrollment, tuition and fees, and textbooks on the basis of and after verification of the credit hour enrollment of Learn and Earn students in university courses. The State Board of Education shall allot funds for community college fees and textbooks on the basis of and after verification of the credit hour enrollment of Learn and Earn students in community college courses."

NC WISE POSITIONS

SECTION 7.12.(a) Notwithstanding G.S. 143-23, the State Board of Education may, in consultation with the Office of Information Technology Services, use funds appropriated in this act for NC WISE to create a maximum of 20 positions and

incur expenditures necessary to transfer the maintenance and administration of the NC WISE system from the vendor to the Department of Public Instruction.

SECTION 7.12.(b) The Department of Public Instruction shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the NC WISE project.

LITERACY COACHES

SECTION 7.13.(a) Funds in the amount of four million seven hundred sixty-seven thousand four hundred dollars ($4,767,400) are appropriated to support the selection and hiring of 100 literacy coaches. Coaches will be hired and placed in 100 middle schools or other public schools with an eighth grade class. A site selection process including formal criteria will be developed by the State Board of Education in consultation with the North Carolina Teacher Academy. The site must receive formal approval of the State Board of Education to receive funds for this purpose. Sites prioritized for selection will include representation from a wide demographic and will include, but will not be limited to, feeder schools to Learn and Earn schools, New Schools Project schools, Disadvantaged Student Supplemental Funding (DSSF) districts, or select schools with the lowest tier of reading scores in the most recent three years on end-of-grade tests. To be selected, schools must (i) contain an eighth grade class, and (ii) ensure that Literacy Coaches will have no administrative responsibilities in the schools in which they are placed.

SECTION 7.13.(b) National Board for Professional Teaching Standards (NBPTS) certified teachers serving in these positions shall be exempt from the requirements in G.S.115C-296.2(b)(2)d. and shall remain on the NBPTS teacher salary schedule.

EXPAND LEA ACCESS TO EDUCATION VALUE ADDED ASSESSMENT SYSTEM (EVAAS)

SECTION 7.14.(a) The State Board of Education shall identify local school administrative units to receive funds for purchasing licenses to EVAAS diagnostic software based on criteria that shall include (i) identified need, (ii) readiness, and (iii) county wealth, as defined in the Low-Wealth Supplemental Funding Formula. The Board shall identify as many units as possible within funds available for this purpose.

SECTION 7.14.(b) Funds appropriated for EVAAS in the 2005-2006 fiscal year shall not revert, but shall be carried forward to the 2006-2007 fiscal year for expenditures for training related to expanding local school administrative units' access to the EVAAS tool. Any such funds not spent by June 30, 2007, shall revert to the General Fund.

SECTION 7.14.(c) This section becomes effective June 30, 2006.

CLARIFY DEFINITION: PUBLIC SCHOOL CAPITAL FUNDS

SECTION 7.15. G.S. 115C-546.2(d)(2)a. reads as rewritten:

"a. "Effective county tax rate" means the actual county tax ~~rate~~ rate, including any countywide supplemental taxes levied for the benefit of public schools, multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies."

NORTH CAROLINA VIRTUAL PUBLIC SCHOOL

SECTION 7.16.(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction

SECTION 7.16.(b) The Director of NCVPS will ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the NC Virtual

Public School Program, eliminating course duplication. The Director shall report on the proposed consolidation and operating plan for 2007-2008 to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division no later than January 15, 2007. Consolidation will be completed by June 30, 2007. Notwithstanding G.S 143-23, the State Board of Education may move funds within the budget to implement the consolidation.

SECTION 7.16.(c) Subsequent to course consolidation, the Director will prioritize e-learning course offerings for students residing in rural and low-wealth county LEAs, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

SECTION 7.16.(d) The State Board of Education shall develop an allotment formula for funding e-learning, effective in the 2007-2008 fiscal year. In developing the formula, the Board shall consider, at a minimum, the following:

(1) The number of students in average daily membership (ADM) projected to enroll in e-learning,
(2) The projected cost of fees for e-learning courses,
(3) The extent to which projected enrollment in e-learning courses affects funding required for other allotments that are based on ADM.

SECTION 7.16.(e) Any funds appropriated in this act for the NCVPS program that are not expended in fiscal year 2006-2007 shall be carried forward for expenditure in fiscal year 2007-2008. Any such funds that remain unexpended on June 30, 2008, shall revert to the General Fund.

DISTANCE EDUCATION

SECTION 7.17. Notwithstanding G.S. 143-23, the State Board of Education may use monies from the State Public School Fund in 2006-2007 only to pay for the additional costs associated with an increased number of registration fees for students enrolling in Distance Education courses.

In preparation for the 2007-2008 fiscal year, the Office of State Budget and Management is urged to include costs associated with increases in enrollment in Distance Education courses in the continuation budget.

TRANSFER MORE AT FOUR PROGRAM AND OFFICE OF SCHOOL READINESS TO THE DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 7.18.(a) The More at Four program and the Office of School Readiness are transferred from the Office of the Governor to the Department of Public Instruction effective July 1, 2006. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6. The Office of School Readiness will provide oversight to the More at Four program and other related early childhood and prekindergarten education experiences. An Executive Director for the Office of School Readiness will be appointed by the State Board of Education.

SECTION 7.18.(b) Section 10.67(a) of S.L. 2005-276 is repealed.

SECTION 7.18.(c) Section 10.67(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.67.(b)** The ~~Department of Health and Human Services and the~~ Department of Public Instruction~~, with guidance from the Task Force,~~ shall continue the implementation of the "More at Four" prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

(1) A process and system for identifying children at risk of academic failure.

(2) A process and system for identifying children who are not being served ~~first priority~~ in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

(3) A curriculum or several curricula that are research-based and/or built on sound instructional theory.~~recommended by the Task Force. The Task Force will identify and approve appropriate research-based curricula.~~ These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

(4) An emphasis on ongoing family involvement with the prekindergarten program.

(5) Evaluation of child progress through a ~~preassessment and postassessment of children in the~~ statewide evaluation, as well as ongoing assessment of the children by teachers.

(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services and the Department of Public Instruction~~, and the Task Force~~. The Department may use the child care rating system to assist in determining program participation.

(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.

(10) A local contribution. Programs must demonstrate that they are accessing resources other than "More at Four".

(11) A system of accountability.

(12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services and the Department of Public Instruction~~, and the Task Force~~ shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services."

SECTION 7.18.(d) Section 10.67(c) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.67.(c)** The ~~Department of Health and Human Services~~ Department of Public Instruction shall implement a plan to expand ~~plan for expansion of the~~ "More at Four" program standards within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. ~~The Department shall analyze guidelines for use of the "More at Four" funds, State subsidy funds, and Smart Start subsidy funds and devise a complementary plan for administration of funds for all four-year-old classrooms.~~ The "NC Prekindergarten

Program Standards" initiative shall recognize four- and five-star-rated centers that choose to apply and meet equivalent "More at Four" program standards as high quality pre-k classrooms. Classrooms meeting these standards shall, have ~~at a minimum, receive curricula and~~ access to training and workshops for "More at Four" programs. Whenever expansion slots are available, these classrooms shall have first priority to receive them.~~and be considered along with other "More at Four" programs for T.E.A.C.H. funding. The Department shall ensure that no individual receives funding from more than one source for the same purpose or activity during the same funding period. For purposes of this subsection, sources shall include T.E.A.C.H., W.A.G.E.$., and T.E.A.C.H. Health Insurance programs for individual recipients.~~

The "More at Four" program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through ~~December 30, 2005,~~ January 31 of each year, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care."

SECTION 7.18.(e) Section 10.67(d) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.67.(d)** ~~The Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall submit a report by February 1, 2006~~ The Department of Public Instruction shall submit a report by February 1, 2007, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on ~~Health and Human Services~~ Education, the House of Representatives Appropriations Subcommittee on ~~Health and Human Services~~ Education, and the Fiscal Research Division. This final report shall include the following:

(1) The number of children participating in the program.

(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.

(3) The expected expenditures for the programs and the source of the local match for each grantee.

(4) The location of program sites and the corresponding number of children participating in the program at each site.

~~(5) Activities involving Child Find in counties.~~

~~(6)~~(5) A comprehensive cost analysis of the program, including the cost per child served by the program.

~~(7)~~(6) The ~~plan for expansion of "More at Four" through existing resources~~ status of the NC Prekindergarten initiatives as outlined in this section."

SECTION 7.18.(f) Section 10.67(e) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.67.(e)** For the 2005-2006 and the 2006-2007 fiscal years, the "More at Four" program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income~~ to make the program consistent with the child care subsidy requirements~~. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors."

SECTION 7.18.(g) Section 10.67(f) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.67.(f)** The "More at Four" program funding shall not supplant any funding for classrooms serving four-year-olds as of the ~~2003-2004~~ 2005-2006 fiscal year. Support of existing four-year-old classrooms with "More at Four" program funding shall be permitted when current funding is eliminated, reduced or redirected as required to meet other specified federal or State educational mandates."

SECTION 7.18.(h) Section 10.67(g) of S.L. 2005-276 is repealed.

SECTION 7.18.(i) G.S. 115C-242(1) reads as rewritten:

"(1) A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the local school administrative unit. Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of this Article: Provided, that children enrolled in a Headstart program or any More at Four program ~~which is housed in a building owned and operated by a local school administrative unit where school is being conducted~~ may be transported on public school buses, and any additional costs associated with such ~~so long as the~~ contractual arrangements shall be incurred by the benefitting Head Start or More at Four program ~~made cause no extra expense to the State~~: Provided further, that children with special needs may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported are or have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education."

ADMINISTRATIVE FUNDING FOR TEACHING FELLOWS PROGRAM

SECTION 7.19.(a) G.S. 115C-363.23A(f) reads as rewritten:

"(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund shall be used for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments.

The Public School Forum, as administrator for the Teaching Fellows Program, may use up to ~~one hundred fifty thousand dollars ($150,000) annually~~ eight hundred ten thousand dollars ($810,000) for the 2006-2007 fiscal year from the fund balance for costs associated with administration of the Teaching Fellows Program. In subsequent fiscal years, this amount shall be increased by the Office of State Budget and Management as necessary to provide salary increases to Program employees commensurate with legislative salary increases for State employees."

SECTION 7.19.(b) The additional funding provided for administration of the Teaching Fellows Program in G.S. 115C-363.23A(f), as rewritten by subsection (a) of this section, shall be used to meet current administrative expenses of the Program, expand minority recruitment initiatives, and expand the Program to up to four additional campuses using a merit-based selection process developed by the North Carolina Teaching Fellows Commission.

The Teaching Fellows Program shall report to the Joint Legislative Education Oversight Committee by December 1, 2006, on the campuses selected and on the selection process.

REFUND OF LOCAL SALES AND USE TAXES TO A LOCAL SCHOOL ADMINISTRATIVE UNIT

SECTION 7.20.(a) G.S. 105-467(b) reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13, the State sales and use tax holiday contained in G.S. 105-164.13C,

and the State refund provisions contained in G.S. 105-164.14 apply to the local sales and use tax authorized to be levied and imposed under this Article. ~~A~~Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity and telecommunications service. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."

SECTION 7.20.(b) Section 7.51(c) of S.L. 2005-276, as amended by Section 7 of S.L. 2005-345, reads as rewritten:

"**SECTION 7.51.(c)** Subsection (b) of this section becomes effective July 1, 2006. Notwithstanding the provisions of G.S. 105-164.44H, for the 2006-2007 fiscal year, the amount transferred to the State Public School Fund each quarter shall equal one-fourth of the amount refunded under G.S. 105-164.14(c)(2b) and (2c) during the 2005-2006 fiscal year for State sales and use taxes only plus or minus the percentage of that amount by which the total collection of State sales and use tax increased or decreased during the preceding fiscal year. The remainder of this section becomes effective July 1, 2005, and applies to sales made on or after that date."

SECTION 7.20.(c) This section becomes effective July 1, 2005, and applies to sales made on or after that date.

SALARY SUPPLEMENT FOR MATH AND SCIENCE TEACHERS PILOT PROGRAM

SECTION 7.21.(a) Funds in the amount of five hundred fifteen thousand one hundred fifteen dollars ($515,115) are appropriated in this act for a pilot program providing for a salary supplement for newly hired teachers (as defined by the State Board of Education) of mathematics or science at the middle or high school level. The State Board of Education shall develop the pilot program and select three local school administrative units to participate in the pilot program. In selecting the units, the Board shall target low-performing local school administrative units and take geographical diversity into account. Selected local school administrative units shall use salary supplement funds for newly hired teachers at low-performing schools.

Each of the pilot units shall receive funds to provide for a salary supplement of fifteen thousand dollars ($15,000) to up to 10 newly hired teachers at the middle or high school level who have nonprovisional certification in and are teaching in one or more of the following areas of teacher certification:

(1) Middle grades mathematics,
(2) Middle grades science,
(3) Mathematics (9-12),
(4) Science (9-12),
(5) Earth science (9-12),
(6) Biology (9-12),
(7) Physics (9-12), and
(8) Chemistry (9-12).

SECTION 7.21.(b) In accordance with G.S. 115C-325 and by way of clarification, it shall not constitute a demotion as that term is defined in G.S. 115C-325(a)(4) if:

(1) A teacher who receives a salary supplement pursuant to subsection (a) of this section is reassigned to a school at which there is no such salary supplement;

(2) A teacher who receives a salary supplement pursuant to subsection (a) of this section moves to a different local school administrative unit; or

(3) A teacher receives a salary supplement pursuant to subsection (a) of this section and the salary supplement is subsequently discontinued or reduced.

SECTION 7.21.(c) Funds not needed to pay for salary supplements shall revert to the General Fund.

SECTION 7.21.(d) The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the design of the pilot program prior to implementation. The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the implementation of the pilot program by January 15, 2007.

PART VIII. COMMUNITY COLLEGES

SALARIES OF COMMUNITY COLLEGE FACULTY AND PROFESSIONAL STAFF

SECTION 8.1. Section 8.3 of S.L. 2005-276 is amended by adding a new subsection to read:

"**SECTION 8.3.(b1)** For the 2006-2007 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

Education Level	Minimum Salary 2006-2007
Vocational Diploma/Certificate or Less	$31,728
Associate Degree or Equivalent	$32,195
Bachelors Degree	$34,220
Masters Degree or Education Specialist	$36,016
Doctoral Degree	$38,607

No full-time faculty member shall earn less than the minimum salary for his or her education level.

The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members."

USE OF FUNDS APPROPRIATED FOR ISOTHERMAL COMMUNITY COLLEGE

SECTION 8.2. Funds appropriated for composite testing at Isothermal Community College and not used for that purpose may be used to purchase equipment for the Lifelong Learning Center located at Isothermal Community College.

USE OF FUNDS FOR THE COLLEGE INFORMATION SYSTEM PROJECT

SECTION 8.3.(a) Funds appropriated to the Community Colleges System Office for the College Information System Project shall not revert at the end of the 2005-2006 fiscal year but shall remain available until expended.

SECTION 8.3.(b) Notwithstanding G.S. 143-23, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management, in consultation with the Office of Information Technology Services, and after consultation with the Joint Legislative Commission on Governmental Operations, use funds appropriated in this act for the College Information System Project to create a maximum of 20 positions or incur expenditures necessary to transfer the maintenance

and administration of the College Information System Project from the vendor to the System Office.

SECTION 8.3.(c) The Community Colleges System Office shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the College Information System Project.

SECTION 8.3.(d) Subsection (a) of this section becomes effective June 30, 2006.

CARRYFORWARD FOR EQUIPMENT

SECTION 8.4.(a) Subject to the approval of the Office of State Budget and Management and cash availability, the North Carolina Community Colleges System Office may carry forward an amount not to exceed ten million dollars ($10,000,000) of the operating funds that were not reverted in fiscal year 2005-2006 to be reallocated to the State Board of Community Colleges' Equipment Reserve Fund. These funds shall be distributed to colleges consistent with G.S. 115D-31.

SECTION 8.4.(b) This section becomes effective June 30, 2006.

NC COMMUNITY COLLEGE SYSTEM MAY USE STATE FUNDS IN LIEU OF FEDERAL FUNDS DUE TO FEDERAL MANDATES

SECTION 8.5. Notwithstanding G.S. 143-23, the Community Colleges System Office may use State literacy funds to fund the State administration of the GED office. Federal funds previously used to support the State administration functions shall be reallocated to the colleges.

REPORT ON THE NCCCS BIONETWORK

SECTION 8.6. The Community Colleges System Office shall report by November 1, 2006, to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division on the implementation of the NCCCS BioNetwork. This report shall include an explanation of the BioNetwork's activities, accomplishments, and expenditures.

STUDY OF NEW AND EXPANDING INDUSTRY TRAINING

SECTION 8.7. The Office of State Budget and Management shall conduct a study to analyze and evaluate the New and Expanding Industry Training program of the North Carolina Community College System. This study shall examine the companies served, the number of times each company has been served, the number of jobs created, the length of time the company has remained in North Carolina after receiving New and Expanding Industry Training funds, and whether the company has maintained employment levels at the same level promised when training was received. The findings of the study shall be reported to the Joint Legislative Education Oversight Committee no later than April 1, 2007.

MATCHING REQUIREMENT FOR BOND FUNDS

SECTION 8.8. Section 3(d) of S.L. 2000-3 reads as rewritten:

"**Section 3.(d)** If the State Board of Community Colleges determines that a community college has not met its matching requirements by July 1, ~~2006,~~2007, with respect to a capital improvement project for which bond proceeds are allocated in this act, the Board shall certify that fact to the State Treasurer by October 1, ~~2006.~~2007. All of these bond proceeds with respect to which the Board certifies that the matching requirement has not been met by July 1, ~~2006,~~2007, shall be placed by the State Treasurer in a special account within the Community Colleges Bond Fund and shall be used for making grants to community colleges. Bond proceeds in the special account shall be allocated among the community colleges in accordance with the following conditions:

(1) The State Board of Community Colleges shall generate, by October 1, ~~2006,~~2007, a priority ranking of legitimate community college capital improvement needs using a formula based on objective meaningful factors relevant to capital needs, including actual and projected enrollment, space requirements, current capacity, construction costs, and any other factors the State Board considers relevant.

(2) The State Board of Community Colleges shall provide the State Treasurer a projected allocation of the proceeds in the special account in accordance with this priority ranking, except that:

a. No projected allocation shall be made for a community college that the Board certified in accordance with this subsection had failed to meet a matching requirement.

b. No more than four million dollars ($4,000,000) shall be allocated to a single community college.

c. Funds shall not be allocated for more than one project per community college.

(3) The proceeds of grants made from bond proceeds in the special account shall be allocated and expended for paying the cost of community college capital improvements in accordance with this allocation by the State Board of Community Colleges, to the extent and as provided in this act. The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section. The Director of the Budget shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes."

COMMUNITY COLLEGE LOW-WEALTH FUNDING

SECTION 8.9.(a) G.S. 115D-31.3 is amended by adding a new subsection to read:

"(j) Use of funds in low-wealth counties. – Funds retained by colleges or distributed to colleges pursuant to this section may be used to supplement local funding for maintenance of plant if the college does not receive maintenance of plant funds pursuant to G.S. 115D-31.2, and if the county in which the main campus of the community college is located:

(1) Is designated as a Tier 1 or Tier 2 county in accordance with G.S. 105-129.3;

(2) Had an unemployment rate of at least two percent (2%) above the State average or greater than seven percent (7%), whichever is higher, in the prior calendar year; and

(3) Is a county whose wealth, as calculated under the formula for distributing supplemental funding for schools in low-wealth counties, is eighty percent (80%) or less of the State average.

Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended."

SECTION 8.9.(b) This section becomes effective June 30, 2006.

PART IX. UNIVERSITIES

UNC-NCCCS 2+2 E-LEARNING INITIATIVE

SECTION 9.1. The University of North Carolina and Community Colleges System Office shall report by September 1, 2006, to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division of the General Assembly on the implementation of the UNC-NCCCS 2+2 E-Learning Initiative. This report shall include:

(1) The courses and programs within the 2+2 E-Learning Initiative;
(2) The total number of prospective teachers that have taken or are taking part in this initiative to date broken down by the current academic period and each of the previous academic periods since the program's inception;
(3) The total number of teachers currently in the State's classroom, by local school administrative unit, who have taken part in this initiative;
(4) The change in the number of teachers available to schools since the program's inception;
(5) The qualitative data from students, teachers, local school administrative unit personnel, university personnel, and community college personnel as to the impact of this initiative on our State's teaching pool; and
(6) An explanation of the expenditures and collaborative programs between the North Carolina Community College System and The University of North Carolina, including recommendations for improvement.

TEACHER EDUCATION PROGRAM ENROLLMENT PLANS

SECTION 9.2. The University of North Carolina Board of Governors' Task Force on Meeting Teacher Supply and Demand called for the President to develop a plan for enrollment growth in the University System's teacher education programs to respond to the State's shortage of teachers. In a presentation to the Joint Legislative Education Oversight Committee and to the Board of Governors, a commitment was made to increase the number of teacher education graduates. The University of North Carolina General Administration shall obtain plans from each constituent institution as to how they will maintain their current enrollment in the teacher education programs and achieve their growth targets to ensure such increases in those programs occur. Plans may include using enrollment growth funds for targeted admissions, enhanced student support, and advising, recruiting, increases in faculty in necessary instructional areas that lead to certification, and other methods General Administration believes will achieve those results. The University of North Carolina General Administration shall report back to the Office of State Budget and Management and the Joint Legislative Education Oversight Committee no later than December 30, 2006, on each constituent institution's plan. No later than March 31, 2007, The University of North Carolina General Administration shall submit a report on progress towards meeting this priority for the 2007-2008 academic year, based on each constituent institution's current students in the education programs, and the students who have been accepted for the 2007-2008 fiscal year who are enrolling in the education programs. The report shall also explain the distribution of enrollment growth funds by specific initiative.

NORTH CAROLINA IN THE WORLD PROJECT

SECTION 9.3. In collaboration with the State Board of Education and the NC Department of Commerce, the NC Center for International Understanding shall develop a plan to ensure that public K-12 international education efforts such as teacher and student exchanges, curriculum development, and other initiatives for students, teachers, and administrators are focused on key countries and regions of strategic economic interest to North Carolina. The NC Center for International Understanding shall report to the Office of State Budget and Management and the Joint Legislative Education Oversight Committee on the activities and accomplishments of the two

hundred thousand dollar ($200,000) nonrecurring appropriation for North Carolina in the World Project no later than March 31, 2007.

STUDY THE FEASIBILITY OF ADDING NORTH CAROLINA WESLEYAN COLLEGE TO UNC SYSTEM

SECTION 9.4.(a) The Board of Governors of The University of North Carolina shall study the feasibility of making North Carolina Wesleyan College a constituent institution of The University of North Carolina. The study shall include all of the following:

(1) Mission. – The Board of Governors shall evaluate the potential missions of the campus that would meet the academic and economic needs of the region, the State, and of the University System. The Board of Governors shall take into account the need to avoid duplication of curriculum and programs at other campuses, particularly those within the same geographic area, unless the need for duplication is warranted. The Board of Governors shall seek recommendations, suggestions, and comments from community leaders, educational experts, and business leaders in defining the mission of the new campus. Particular focus shall be placed on utilizing the campus in a manner that addresses both the economic and educational challenges of the region in a unique and focused manner, such as in the areas of science, technology, education, and economic development.

(2) Cost. – The Board of Governors shall analyze the potential operating costs of the campus. Factors such as the mission, staff and faculty salaries, benefits, total faculty and staff levels, total projected student enrollment, facility needs, and tuition rates shall be taken into account.

(3) Facility Needs. – The Board of Governors shall consider what additional facility needs there may be, taking into account the proposed mission of the campus. Examples of those needs may be lab facility upgrades, new buildings to house an expanded student population, and associated infrastructure expansion.

(4) Asset Transfer. – The Board of Governors shall obtain legal and financial analyses to determine if there are any restrictions attached to any of the College's assets (title to property, gifts to endowment, assets purchased with restricted grant funds, etc.) that would prohibit the transfer of the assets to the State. If there are restrictions, then the analyses shall also include the steps necessary to lift the restrictions and the costs of obtaining a clear title.

(5) Liability Analysis. – The Board of Governors shall also obtain a legal analysis to determine whether there are pending liabilities against the campus or reasonably foreseeable future liabilities against the campus. If there are such liabilities, the legal analysis shall also address the action needed to avoid transfer of any liability to the State.

(6) Transition of Current Students/Programs. – The Board of Governors shall consider how best to handle the transition of the currently enrolled student population, both on and off campus, into continuing or new curriculum programs during the conversion period.

(7) Personnel. – The Board of Governors shall assess the employment status of current personnel to determine what, if any, contractual and other employment issues may arise in the conversion.

(8) Legislative Action. – The Board of Governors shall determine the legislative action and statutory amendments needed to authorize and implement the conversion.

SECTION 9.4.(b) Of the funds available to the Board of Governors of The University of North Carolina, the sum of fifty thousand dollars ($50,000) for the 2006-2007 fiscal year shall be used to conduct the study required by this act.

NORTH CAROLINA PROGRESS BOARD

SECTION 9.5.(a) G.S. 143B-372.1 reads as rewritten:

"**§ 143B-372.1. North Carolina Progress Board.**

(a) The North Carolina Progress Board is established. The Board shall be located administratively in the Board of Governors of The University of North Carolina and may be located at any constituent institution within The University of North Carolina, or at any institution to which it is invited formally, but shall exercise all its prescribed statutory powers independently of the Board of Governors or the institution at which it resides.

(b) The North Carolina Progress Board shall consist of 24 members of statewide prominence as follows:

~~(1) The Governor, ex officio;~~

(2) ~~Eight~~ Six persons appointed by the Governor, none of whom shall be State employees or officers;

(3) ~~Five~~ Six persons appointed by the Speaker of the House of Representatives, two of whom shall be members of the House of Representatives;

(4) ~~Five~~ Six persons appointed by the President Pro Tempore of the Senate, two of whom shall be members of the Senate; and

(5) ~~Five~~ Six persons appointed by the North Carolina Progress Board.

(c) ~~The Governor or the Governor's designee shall be chair of the North Carolina Progress Board.~~ The ~~Governor~~ Progress Board shall ~~appoint~~ elect a ~~vice-chair~~ chair from among the membership of the ~~North Carolina~~ Progress Board to serve at the pleasure of the ~~Governor.~~ Progress Board. The ~~North Carolina~~ Progress Board may elect ~~such other~~ any officers as it sees fit.

(d) The North Carolina Progress Board shall meet at least twice annually on the call of the chair or as additionally provided by the North Carolina Progress Board. A quorum is 12 members of the Board. Members may not send designees to board meetings, nor may they vote by proxy.

(e) Board appointments shall be for terms to begin July 1, 1999, with subsequent appointments to be made as terms expire or resignations occur. Of the Governor's appointments, two shall be for one-year terms, two shall be for two-year terms, two shall be for three-year terms, and two shall be for four-year terms. Of the appointments made by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the North Carolina Progress Board, one member appointed by each shall be appointed for a one-year term, one member appointed by each shall be appointed for a two-year term, one member appointed by each shall be appointed for a three-year term, and two members appointed by each shall be appointed for a four-year term. As terms expire, successors shall be appointed for four-year terms.

(d1) Effective July 1, 2006, the initial term for the additional member appointed by the Speaker of the House of Representatives to the North Carolina Progress Board shall be for a four-year term to begin on July 1, 2006, and the initial term for the additional member appointed by the President Pro Tempore of the Senate to the North Carolina Progress Board shall be for a four-year term to begin on July 1, 2006. The Governor shall not appoint any members on July 1, 2006, for four-year terms.

(f) No member may be appointed to more than two consecutive terms. A member of the House of Representatives appointed by the Speaker of the House vacates membership on the North Carolina Progress Board when that person is no longer a member of the House of Representatives, except that if that person is in office at the expiration of the term of office in the House of Representatives but has not been elected to the next term, that person shall continue to serve until the convening of the regular

session. A member of the Senate appointed by the President Pro Tempore of the Senate vacates membership on the North Carolina Progress Board when that person is no longer a member of the Senate, except that if that person is in office at the expiration of the term of office in the Senate but has not been elected to the next term, that person shall continue to serve until the convening of the regular session."

SECTION 9.5.(b) G.S. 143B-372.3 reads as rewritten:

"**§ 143B-372.3. Staff.**

(a) ~~Upon the recommendation of the Board, the Governor~~ The Progress Board or its supporting nonprofit entity shall ~~appoint an Executive Director who shall serve at the pleasure of the Board and the Governor but, for administrative purposes, shall report to the Board of Governors of The University of North Carolina. The Executive Director shall report to the North Carolina Progress Board and the Governor. The Executive Director shall~~ hire or contract with support ~~staff, who shall work at the pleasure of the Executive Director.~~staff and obtain any other resources and take any other actions reasonably required to fulfill the duties of the Progress Board as set forth in G.S. 143B-372.2.

(b) The Office of State Budget and Management shall also provide support, information, reports, and other assistance to the North Carolina Progress Board as requested.

(c) Repealed by Session Laws 1999-237, s. 10.12(a)."

GRADUATE NURSE SCHOLARSHIP PROGRAM FOR FACULTY PRODUCTION

SECTION 9.6. Article 9H of Chapter 90 of the General Statutes is amended by adding the following new sections to read:

"**§ 90-171.95. Graduate Nurse Scholarship Program for Faculty Production established; administration.**

(a) There is established the Graduate Nurse Scholarship Program for Faculty Production. The North Carolina Nursing Scholars Commission shall determine selection criteria, methods of selection, and shall select recipients of scholarship loans made under the Graduate Nurse Scholarship Program for Faculty Production.

(b) The Graduate Nurse Scholarship Program for Faculty Production shall be used to provide the following:

(1) A scholarship loan for up to two years in the amount of fifteen thousand dollars ($15,000) per year, per recipient, to students enrolled in a masters degree program in nursing education or any other area of the nursing field that would permit them to become a nursing instructor at a North Carolina community college or university.

(2) A scholarship loan for up to three years in the amount of fifteen thousand dollars ($15,000) per year, per recipient, to students enrolled in a doctoral degree program in nursing education or any other area of the nursing field that would permit them to become a nursing instructor at a North Carolina community college or university.

The State Education Assistance Authority shall adopt specific rules to regulate these scholarship loans.

(b1) If a recipient is awarded a scholarship loan under this program and is enrolled, or accepted for enrollment, in an eligible program, but is unable to pursue the course of study in nursing for a semester due to limited faculty resources at the institution for that semester, then the recipient shall continue to receive the scholarship loan for that semester and shall not be required to forfeit or repay the scholarship loan for that semester, provided that the recipient remains otherwise eligible for the program. This waiver shall be valid for only one semester of study and may extend a recipient's eligibility for funding under the program by no more than one semester.

(c) The Commission shall adopt stringent standards, which may include minimum grade point average, scholastic aptitude test scores, and other standards

deemed appropriate by the Commission, to ensure that only the best potential students receive loans under the Graduate Nurse Scholarship Program for Faculty Production. Standards adopted by the Commission shall include provisions for ensuring that the qualifications of applicants who are or would be nontraditional students are considered fairly in providing them with opportunities to compete for the loans. Loans under the Graduate Nurse Scholarship Program for Faculty Production shall be awarded only to applicants who meet the standards set by the Commission and who agree to teach in a North Carolina public nursing program upon completion of the nursing education program supported by the loan.

(d) The Commission shall develop and administer the Graduate Nurse Scholarship Program for Faculty Production in cooperation with nursing schools at institutions approved by the Commission and the North Carolina Board of Nursing. The Graduate Nurse Scholarship Program for Faculty Production shall provide for participants to be exposed to a range of extracurricular activities while in school, which activities shall be aimed at instilling in students a strong motivation to remain in the practice of nursing education and to provide leadership for the nursing profession.

(e) The Commission may form regional review committees to assist it in identifying the best high school seniors and other applicants for the program. The Commission and the review committees shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in nursing to apply for the Graduate Nurse Scholarship Program for Faculty Production.

(f) Upon the naming of recipients of loans from the Graduate Nurse Scholarship Program for Faculty Production, the Commission shall inform the State Education Assistance Authority (SEAA) of its decisions. The SEAA shall perform all of the administrative functions necessary to implement this Article, which functions shall include: rulemaking, dissemination of information to the public, distribution and receipt of applications for scholarship loans, and the functions necessary for the execution, payment, and enforcement of promissory notes required under this Article.

"**§ 90-171.96. Terms of loans; receipt and disbursement of funds.**

(a) All scholarship loans shall be evidenced by notes made payable to the State Education Assistance Authority that bear interest at the rate of ten percent (10%) per year beginning 90 days after completion of the nursing education program, or 90 days after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated upon the recipient's withdrawal from school or by the recipient's failure to meet the standards set by the Commission.

(b) The State Education Assistance Authority shall forgive the loan if, within seven years after graduation from a nursing education program, the recipient teaches in a public nursing education program in a public educational institution in North Carolina for one year for every year a scholarship loan was provided. If the recipient repays the scholarship loan by cash payments, all indebtedness shall be repaid within 10 years. The Authority may provide for accelerated repayment and for less than full-time employment options to encourage the practice of nursing education in either geographic or nursing specialty shortage areas. The Authority shall adopt specific rules to designate these geographic areas and these nursing specialty shortage areas, upon recommendations of the North Carolina Center for Nursing. The North Carolina Center for Nursing shall base its recommendations on objective information provided by interested groups or agencies and upon objective information collected by the Center. The Authority may forgive the scholarship loan if it determines that it is impossible for the recipient to teach in a public nursing program in North Carolina for a sufficient time to repay the loan because of the death or permanent disability of the recipient within 10 years following graduation or termination of enrollment in a nursing education program.

(c) All funds appropriated to or otherwise received by the Graduate Nurse Scholarship Program for Faculty Production for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in

a revolving fund. This revolving fund may be used only for scholarship loans granted under the Graduate Nurse Scholarship Program for Faculty Production."

MANAGEMENT FLEXIBILITY TO REORGANIZE BUDGET CODE 16012 UNC BOARD OF GOVERNORS RELATED EDUCATIONAL PROGRAMS

SECTION 9.7. Notwithstanding G.S. 143-23, for the 2006-2007 fiscal year, the General Administration of The University of North Carolina and the State Educational Assistance Authority shall, with the approval of the Office of State Budget and Management, reorganize budget code 16012, UNC Board of Governors Related Educational Programs, so that the budget reflects and segregates each specific program individually. The Office of State Budget and Management shall work with The University of North Carolina General Administration and the State Educational Assistance Authority to ensure that each program represented in code 16012 is identified and budgeted separately.

TRANSFERS OF APPROPRIATION

SECTION 9.8. G.S. 116-30.2(a) reads as rewritten:

"(a) All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8), each special responsibility constituent institution may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. Special responsibility constituent institutions may transfer appropriations between budget codes. These transfers shall be considered certified even if as a result of agreements between special responsibility constituent institutions. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions."

NURSING SCHOLARS PROGRAM MODIFICATION

SECTION 9.9.(a) G.S. 90-171.61 reads as rewritten:

"**§ 90-171.61. Nursing Scholars Program established; administration.**

(a) There is established the Nursing Scholars Program. The North Carolina Nursing Scholars Commission shall determine selection criteria, methods of selection, and shall select recipients of scholarship loans made under the Nursing Scholars Program.

(b) The Nursing Scholars Program shall be used to provide the following:

(1) ~~A four-year scholarship loan~~Scholarship loans in ~~the amount~~amounts of up to ~~of five thousand dollars ($5,000)~~six thousand five hundred dollars ($6,500) per year, for each scholarship of no more than four years per recipient, to North Carolina ~~high school seniors or other persons~~residents interested in preparing to become ~~a~~ registered ~~nurse~~ nurses through ~~a~~ associate or baccalaureate degree ~~program.~~programs or through diploma programs.

~~(2) A two-year scholarship loan in the amount of three thousand dollars ($3,000) per year, per recipient, to persons interested in preparing to be~~

~~a registered nurse through an associate degree nursing program or a diploma nursing program.~~

~~(3) A two-year scholarship loan in the amount of three thousand dollars ($3,000) per year, per recipient, for two years of baccalaureate nursing study for college juniors or community college graduates interested in preparing to be a registered nurse.~~

~~(4) A two-year scholarship loan of three thousand dollars ($3,000) per year, per recipient, for two years of baccalaureate study in nursing for registered nurses who do not hold a baccalaureate degree in nursing.~~

(5) ~~A two-year scholarship loan~~Scholarship loans of six thousand five hundred dollars ~~($6,000)~~($6,500) per year, per recipient, for two years of study leading to a master of science in nursing degree for ~~people~~ residents already holding a baccalaureate degree in nursing.

In ~~addition to the~~awarding scholarship loans ~~awarded~~ pursuant to subdivisions (1) ~~through~~ and (5) of this subsection, the Commission may award pro rata scholarship loans to recipients enrolled at least half-time in study to become registered nurses or to attain a master of science in nursing degree.~~in study leading to a master of science in nursing degree who already hold a baccalaureate degree in nursing and to recipients enrolled at least half-time in study leading to a baccalaureate degree in nursing who already are licensed as registered nurses.~~ In awarding all scholarship loans, the Commission shall give priority to full-time students over part-time students. The State Education Assistance Authority shall adopt specific rules to regulate scholarship loans to part-time ~~master of science in~~ nursing ~~students and part-time baccalaureate degree students.~~students.

Within current funds available or with any additional funds provided by the General Assembly for this purpose, the Commission may set aside slots for scholarship loans prescribed by ~~subdivisions (1) and (2)~~ subdivision (1) of this subsection to enable licensed practical nurses to become registered nurses. The State Education Assistance Authority shall adopt specific rules to regulate these scholarship loans.

(b1) If a recipient is awarded a scholarship loan under this program and is enrolled, or accepted for enrollment, in a baccalaureate nursing program, but is unable to pursue the course of study in nursing for a semester due to limited faculty resources at the institution for that semester, then the recipient shall continue to receive the scholarship loan for that semester and shall not be required to forfeit or repay the scholarship loan for that semester provided that the recipient remains otherwise eligible for the program. This waiver shall be valid for only one semester of study and may extend a recipient's eligibility for funding under the program by no more than one semester.

(c) The Commission shall adopt stringent standards, which may include minimum grade point average, scholastic aptitude test scores, and other standards deemed appropriate by the Commission, to ensure that only the best potential students receive and retain loans under the Nursing Scholars Program. Standards adopted by the Commission shall include provisions for ensuring that the qualifications of applicants who are or would be nontraditional students are considered fairly in providing them with opportunities to compete for the loans. Loans under the Nursing Scholars Program shall be awarded only to applicants who meet the standards set by the Commission and who agree to practice nursing in North Carolina upon completion of the nursing education program supported by the loan.

(d) The Commission shall develop and administer the Nursing Scholars Program in cooperation with nursing schools at institutions approved by the Commission and the North Carolina Board of Nursing. The Nursing Scholars Program shall provide for participants to be exposed to a range of extracurricular activities while in school, which activities shall be aimed at instilling in students a strong motivation to remain in the practice of nursing and to provide leadership for the nursing profession.

(e) The Commission may form regional review committees within North Carolina to assist it in identifying the best high school seniors and other applicants for the program. The Commission and the review committees shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in nursing to apply for the Nursing Scholars Program.

(f) Upon the naming of recipients of loans from the Nursing Scholars Program, the Commission shall inform the State Education Assistance Authority (SEAA) of its decisions. The SEAA shall perform all of the administrative functions necessary to implement this Article, which functions shall include: rule-making, dissemination of information to the public, distribution and receipt of applications for scholarship loans, and the functions necessary for the execution, payment, and enforcement of promissory notes required under this Article."

SECTION 9.9.(b) This section applies to all scholarship loans awarded or renewed on or after July 1, 2006.

UNC BOARD OF GOVERNORS MEDICAL AND DENTAL SCHOLARSHIPS

SECTION 9.10.(a) Section 9.9(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 9.9.(a)** The current Board of Governors' Dental Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Dental Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Dental Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers for first-year students, required dental equipment, and an annual payment of five thousand dollars ($5,000) per year to students who have been accepted for admission to the School of Dentistry at the University of North Carolina at Chapel Hill. The Board may adopt standards, including minimum grade point average and DAT scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices dentistry in North Carolina for four years. An extension of the seven-year period for satisfaction of the service requirements for the scholarship loan may be granted subject to the approval on the finding of extenuating circumstances by the State Education Assistance Authority. Such extenuating circumstances may include, but are not be limited to, participation in a dental residency program. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice dentistry in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year."

SECTION 9.10.(b) Section 9.10(a) reads as rewritten:

"**SECTION 9.10.(a)** The current Board of Governors' Medical Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Medical Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Medical Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers, and

an annual payment of five thousand dollars ($5,000) per year to students who have been accepted for admission to either Duke University School of Medicine, Brody School of Medicine at East Carolina University, the University of North Carolina at Chapel Hill School of Medicine, or the Wake Forest University School of Medicine. The Board may adopt standards, including minimum grade point average and MCAT scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices medicine in North Carolina for four years. An extension of the seven-year period for satisfaction of the service requirements of the scholarship loan may be granted subject to the approval of the State Education Assistance Authority. Such extenuating circumstances may include, but not be limited to, participation in a medical residency program. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice medicine in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year."

SECTION 9.10.(c) This section is effective when it becomes law and applies to all scholarship loans issued after July 1, 2005.

NC SCHOOL OF SCIENCE AND MATH/HIGH SCHOOL CONSTITUENT INSTITUTION

SECTION 9.11.(a) G.S. 116-2 reads as rewritten:

"**§ 116-2. Definitions.**

As used in this Article, unless the context clearly indicates a contrary intent:

(1) "Board" means the Board of Governors of the University of North Carolina.

(2) "Board of trustees" means the board of trustees of a constituent institution.

(3) "Chancellor" means the chancellor of a constituent institution.

(4) "Constituent institution" or "institution" means one of the 16 public ~~senior institutions,~~ institutions of higher education, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State ~~University.~~University, and the constituent high school, the North Carolina School of Science and Mathematics.

(5) "President" means the President of the University of North Carolina.

(6) "Vending facilities" has the same meaning as it does in G.S. 143-12.1."

SECTION 9.11.(b) G.S. 116-4 reads as rewritten:

"§ 116-4. Constituent institutions of the University of North Carolina.

~~On July 1, 1972, the~~ The University of North Carolina shall be composed of the following ~~institutions:~~institutions of higher education: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State ~~University.~~University, and the constituent high School, the North Carolina School of Science and Mathematics."

SECTION 9.11.(c) G.S. 116-12 reads as rewritten:

"§ 116-12. Property and obligations.

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. All property of whatsoever kind and all rights and privileges held by the Board of Trustees of the North Carolina School of Science and Mathematics, as said property, rights and privileges may exist immediately prior to July 1, 2007, shall be and hereby are, effective July 1, 2007, transferred to and vested in the Board of Governors of The University of North Carolina. All obligations of whatsoever kind of the Board of Trustees of the North Carolina School of Science and Mathematics as said obligations may exist immediately prior to July 1, 2007, shall be, and the same hereby are, effective July 1, 2007, transferred to and assumed by the Board of Governors of The University of North Carolina. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the

intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof."

SECTION 9.11.(d) G.S. 116-17 reads as rewritten:

"**§ 116-17. Purchase of annuity or retirement income contracts for faculty members, officers and employees.**

Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees of universities, ~~colleges~~ colleges, constituent institutions, and other institutions of higher learning as named and set forth in this Article, and other State agencies qualified as educational institutions under section 501(c)(3) of the United States Internal Revenue Code, the governing boards of any such universities, ~~colleges~~ colleges, constituent institutions, and other institutions of higher learning may authorize the business officer or agent of same to enter into annual contracts with any of the faculty members, administrative officers and employees of said institutions ~~of higher learning~~ which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the faculty member, administrative officer or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said faculty member, administrative officer or employee of said universities, colleges and ~~institutions of higher learning~~ institutions. A faculty member, administrative officer or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the faculty member, administrative officer or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the various governing boards of the various institutions ~~of higher learning~~ and on forms prepared by said governing boards. Notwithstanding any other provision of this section or law, the amount by which the salary of any faculty member, administrative officer or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes.

In lieu of the annuity and related contracts provided for under this section, interests in custodial accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal Revenue Code of 1986 as amended may be purchased for the benefit of qualified employees under this section with the funds derived from the reduction in the salaries of such employees."

SECTION 9.11.(e) The catch line of G.S. 116-30.2 reads as rewritten:

"**§ 116-30.2. Appropriations to special responsibility constituent ~~institutions and to the North Carolina School of Science and Mathematics.~~ institutions.**"

SECTION 9.11.(f) G.S. 116-30.2(b) is repealed.

SECTION 9.11.(g) G.S. 116-31(d) reads as rewritten:

"(d) ~~Effective~~ Except as provided in G.S. 116-65, effective July 1, 1973, each of the 16 ~~constituent~~ institutions of higher education set out in G.S. 116-2(4) shall have board of trustees composed of 13 persons chosen as follows:

(1) Eight elected by the Board of Governors,
(2) Four appointed by the Governor, and
(3) The president of the student government ex officio.

The Board of Trustees of the North Carolina School of Science and Mathematics shall be established in accordance with G.S. 116-233."

SECTION 9.11.(h) G.S. 116-40.22(c) reads as rewritten:

"(c) Tuition and Fees. – Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, in addition to any tuition and fees set by the Board of

Governors pursuant to G.S. 116-11(7), the Board of Trustees of the institution may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs at that institution without regard to whether an emergency situation exists and not inconsistent with the actions of the General Assembly. The institution shall retain any tuition and fees set pursuant to this subsection for use by the institution. Notwithstanding this subsection, neither the Board of Governors of The University of North Carolina nor its Board of Trustees shall impose any tuition or mandatory fee at the North Carolina School of Science and Mathematics without the approval of the General Assembly."

SECTION 9.11.(i) G.S. 116-143 reads as rewritten:

"**§ 116-143. State-supported institutions of higher education required to charge tuition and fees.**

The Board of Governors of ~~the~~ The University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions of higher education enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished. Notwithstanding this section, neither the Board of Governors of The University of North Carolina nor its Board of Trustees shall impose any tuition or mandatory fee at the North Carolina School of Science and Mathematics without the approval of the General Assembly.

Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of ~~the~~ The University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of ~~the~~ The University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of ~~the~~ The University of North Carolina may during the period of normal employment enroll for not more than one course per semester in ~~the~~ The University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations."

SECTION 9.11.(j) G.S. 116-230.1 reads as rewritten:

"**§ 116-230.1. Policy.**

It is hereby declared to be the policy of the State to foster, encourage, promote, and provide assistance in the development of skills and careers in science and mathematics among the people of the State."

SECTION 9.11.(k) G.S. 116-231 reads as rewritten:

"**§ 116-231. Reestablishment of the North Carolina School of Science and Mathematics as ~~an Affiliated School~~a Constituent High School of The University of North Carolina.**

The North Carolina School of Science and Mathematics is hereby reestablished, as ~~an affiliated~~a constituent high school of The University of North Carolina, and shall be

governed by the Board of Governors as prescribed in this Chapter and a Board of Trustees as prescribed in this Article."

SECTION 9.11.(l) G.S. 116-232 reads as rewritten:

"**§ 116-232. Purposes.**

The purposes of the School shall be to foster the educational development of North Carolina high school students who are academically talented in the areas of science and mathematics and show promise of exceptional development and global leadership through participation in a residential educational setting emphasizing instruction in the areas of science and mathematics; ~~to develop, evaluate, and disseminate experimental instructional programs; and to serve all schools of the State through research and outreach activities.~~and to provide instruction, methods, and curricula designed to improve teaching and learning in North Carolina and the nation with an emphasis on distance education and programs that expand pathways for students into careers in science and mathematics."

SECTION 9.11.(m) The introductory language of G.S. 116-233(a) reads as rewritten:

"(a) ~~There~~ Notwithstanding the provisions of G.S. 116-31(d), there shall be a Board of Trustees of the School, which shall consist of 27 members as follows:

..."

SECTION 9.11.(n) G.S. 116-234 reads as rewritten:

"**§ 116-234. Board of Trustees; meetings; rules of procedure; officers.**

(a) The Board of Trustees shall meet at least ~~four~~ three times a year and may hold special meetings at any time, at the call of the chairman or upon petition addressed to the chairman by at least four of the members of the Board.

(b) ~~The~~ Notwithstanding the provisions of G.S. 116-32, the Board of Trustees shall elect a chairman and a vice-chairman; no ex officio member may hold such an office.

(c) The Board of Trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233(a)(3), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233(a)(3) shall be reimbursed for travel expenses as provided by G.S. 138-6."

SECTION 9.11.(o) The catch line of G.S. 116-235 reads as rewritten:

"**§ 116-235. Board of Trustees; additional powers and duties.**"

SECTION 9.11.(p) G.S. 116-235 is amended by adding a new subsection to read:

"(a) In addition to the powers enumerated in Chapter 116, Article I, Part 3, the Board of Trustees shall have the powers and duties set out in this section."

SECTION 9.11.(q) G.S. 116-235(a) reads as rewritten:

"~~(a)~~(a1) Academic Program. –

(1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade.

(2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the instructional day, and the number of instructional days in each term."

SECTION 9.11.(r) G.S. 116-235(b) reads as rewritten:

"(b) Students. –

(1) Admission of Students. – The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an

applicant must be either a legal resident of the State, as defined by G.S. 116-143.1(a)(1), or a student whose parent is an active duty member of the armed services, as defined by G.S. 116-143.3(2), who is abiding in this State incident to active military duty at the time the application is submitted, provided the student shares the abode of that parent; eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified ~~rising high school juniors~~applicants is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of ~~rising high school juniors~~qualified applicants offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.

(2) School Attendance. – Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 1 misdemeanor. The ~~Director~~ Chancellor of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(3) Student Discipline. – Rules of conduct governing students of the School shall be established by the Board of Trustees. The ~~Director,~~Chancellor, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

SECTION 9.11.(s) G.S. 116-235(c) through G.S. 116-235(h) is repealed.

SECTION 9.11.(t) G.S. 116-236 is repealed.

SECTION 9.11.(u) G.S. 116-237 is repealed.

SECTION 9.11.(v) G.S. 116-238 is repealed

SECTION 9.11.(w) G.S.66-58(c)(3) reads as rewritten:

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

...

(3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by ~~public postsecondary educational~~constituent institutions of The University of North Carolina of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of the stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use

articles. Provided further that, notwithstanding this subsection, profits from a campus store operated by the endowment of the North Carolina School of Science and Mathematics are used exclusively for student activities, athletics, and other programs to enhance student life. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of the University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina."

SECTION 9.11.(x) G.S. 66-58(g) is repealed.

SECTION 9.11.(y) G.S. 126-5(c1)(8) reads as rewritten:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

...

(8) Instructional and research staff, physicians, and dentists of The University of North ~~Carolina.~~Carolina, including the faculty of the North Carolina School of Science and Mathematics.

..."

SECTION 9.11.(z) G.S. 126-5(c1)(11) is repealed.

SECTION 9.11.(aa) The catch line of G.S. 135-5.1 reads as rewritten:

"**§ 135-5.1. Optional retirement program for ~~State institutions of higher education.~~The University of North Carolina.**"

SECTION 9.11.(bb) G.S. 135-5.1(a) reads as rewritten:

"(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of participants in the Program. Participation in the Optional Retirement Program shall be limited to ~~university~~ University personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program and who are:

(1) Administrators and faculty of The University of North Carolina with the rank of instructor or above;

(2) The President and employees of The University of North Carolina who are appointed by the Board of Governors on recommendation of the President pursuant to G.S. 116-11(4), 116-11(5), and 116-14 or who are appointed by the Board of Trustees of a constituent institution of The University of North Carolina upon the recommendation of the Chancellor pursuant to G.S. 116-40.22(b);

(3) Nonfaculty instructional and research staff who are exempt from the State Personnel Act, as defined by the provisions of G.S. ~~126-5(c1)(8);~~126-5(c1)(8), and the faculty of the North Carolina School of Science and Mathematics; and

(4) Field faculty of the Cooperative Agriculture Extension Service, and tenure track faculty in North Carolina State University agriculture research programs who are exempt from the State Personnel Act and who are eligible for membership in the Teachers' and State Employees'

Retirement System pursuant to G.S. 135-3(1), who in any of the cases described in this subsection (i) had been members of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought membership as required in subsection (b), below. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf."

SECTION 9.11.(cc) G.S. 143-597(a) is amended by adding a new subdivision to read:

"(7) The North Carolina School of Science and Mathematics."

SECTION 9.11.(dd) This section becomes effective July 1, 2007. Subsection (bb) of this section applies only to eligible persons who are employees as of July 1, 2007, or who are employed thereafter.

EXPAND TUITION WAIVER PROGRAM FOR UNC FACULTY & STAFF

SECTION 9.12. G.S. 116-143 reads as rewritten:

"**§ 116-143. State-supported institutions of higher education required to charge tuition and fees.**

(a) The Board of Governors of the University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

(b) In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished.

(c) Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of the University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

(d) Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of the University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of the University of North Carolina may during the period of normal employment enroll for not more than ~~one course~~ three courses per ~~semester~~ year in the University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations."

TUITION AND CONTRACTUAL GRANTS FOR TEACHING/NURSING

SECTION 9.13.(a) G.S. 116-19 reads as rewritten:

"**§ 116-19. Contracts with private institutions to aid North Carolina ~~students;~~students and licensure students; reporting requirement.**

(a) In order to encourage and assist private institutions to continue to educate North Carolina ~~students,~~students and licensure students, the State Education Assistance

Authority may enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students and licensure students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the State Education Assistance Authority would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student and licensure student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the State Education Assistance Authority to an institution on certification of the institution showing the number of North Carolina students and licensure students enrolled at the institution as of October 1 of any year for which funds may be appropriated. For purposes of this subsection, "needy North Carolina ~~students"~~students and licensure students" are those eligible students and licensure students who have financial need as determined by the institution under the institutional methodology or the federal methodology as defined by the State Education Assistance Authority. For purposes of this subsection, "institutional methodology" means a need-analysis formula, developed by College Scholarship Service, that determines the student's ~~and~~ or licensure student's and his or her family's capacity to pay for postsecondary education each year.

(b) The State Education Assistance Authority shall document the number of full-time equivalent North Carolina undergraduate students and full-time and less than full-time licensure students that are enrolled in off-campus programs and the State funds collected by each institution pursuant to G.S. 116-19 for those students. The State Education Assistance Authority shall also document the number of scholarships and the amount of the scholarships that are awarded under G.S. 116-19 to students and licensure students enrolled in off-campus programs. An "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

The State Education Assistance Authority shall include in its annual report to the Joint Legislative Education Oversight Committee the information it has compiled and its findings regarding this program."

SECTION 9.13.(b) G.S. 116-20 reads as rewritten:

"**§ 116-20. Scholarship and contract terms; base period.**

In order to encourage and assist private institutions to educate additional numbers of North Carolinians, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts within the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students and licensure students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student and licensure student enrolled as of October 1 of any year for which appropriated funds may be available, over and above the number of North Carolina students enrolled in that institution as of October 1, 1997, which shall be the base date for the purpose of this calculation. Funds appropriated pursuant to this section shall be paid by the State Education Assistance Authority to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina students and licensure students enrolled at the institution as of October 1 of any year for which funds may be appropriated over the number enrolled on the base date. In the event funds are appropriated for expenditure pursuant to this section and funds are also appropriated, for the same fiscal year, for expenditure pursuant to G.S. 116-19, students and licensure

students who are enrolled at an institution in excess of the number enrolled on the base date may be counted under this section for the purpose of calculating the amount to be paid to the institution, but the same students and licensure students may also be counted under G.S. 116-19, for the purpose of calculating payment to be made under that section."

SECTION 9.13.(c) G.S. 116-21.1 reads as rewritten:

"**§ 116-21.1. Financial aid for North Carolina students and licensure students attending private institutions of higher education in North Carolina.**

(a) Funds shall be appropriated each fiscal year in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina for aid to institutions and shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22.

(b) The funds appropriated in compliance with this section shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in the account shall be provided as scholarship funds for needy North Carolina students and licensure students during the fiscal year. Each student and licensure student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be available for the tuition grant program as defined in G.S. 116-21.2."

SECTION 9.13.(d) G.S. 116-21.2 reads as rewritten:

"**§ 116-21.2. Legislative tuition grants to aid students and licensure students attending private institutions of higher education.**

(a) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to institutions, or to ~~students~~ persons attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, to be determined by the General Assembly for each academic year which shall be distributed to the full-time undergraduate student as provided by this subsection.

(a1) The legislative tuition grant provided by this section shall also be granted to each full-time licensure student who is enrolled in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant provided by this section shall be awarded on a pro rata basis to any licensure student who is enrolled less than full-time in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant and prorated legislative tuition grant authorized under this subsection shall be paid for undergraduate courses only.

(b) The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student or licensure student applying for the grant is ~~an eligible student.~~eligible. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times as it prescribes the grant to the approved institution on behalf, and to the credit, of the ~~student.~~student or licensure student.

(c) ~~In~~ Except as provided in subsection (a1) of this section, in the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If a licensure student on whose behalf a prorated grant has been paid in accordance with subsection (a1) of this section is not enrolled in the undergraduate class as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the

institution has properly certified eligibility and enrollment of students and licensure students and credited grants paid on behalf of ~~the students.~~them.

(d) In the event there are not sufficient funds to provide each eligible student or licensure student with a full ~~grant:~~grant as provided by subsection (a) of this section or a full or a prorated grant as provided by subsection (a1) of this section:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections ~~(a)~~ (a), (a1), and (b) of this section; and

(2) Each eligible student and licensure student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Any remaining funds shall revert to the General Fund."

SECTION 9.13.(e) G.S. 116-21.3 reads as rewritten:

"**§ 116-21.3. Legislative tuition grant limitations.**

(a) For purposes of this section, an "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

(b) No legislative tuition grant funds shall be expended for a program at an off-campus site of a private institution, as defined in G.S. 116-22(1), established after May 15, 1987, unless (i) the private institution offering the program has previously notified and secured agreement from other private institutions operating degree programs in the county in which the off-campus program is located or operating in the counties adjacent to that county or (ii) the degree program is neither available nor planned in the county with the off-campus site or in the counties adjacent to that county.

(c) Any member of the armed services, as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes, as defined under G.S. 116-143.1, is eligible for a legislative tuition grant pursuant to this section if the member is enrolled as a full-time ~~student.~~undergraduate student or as a licensure student. The member's legislative tuition grant shall not exceed the cost of tuition less any tuition assistance paid by the member's employer.

(d) A legislative tuition grant authorized under ~~G.S. 116-21.2~~ G.S. 116-21.2(a) shall be reduced by twenty-five percent (25%) for any individual student who has completed 140 semester credit hours or the equivalent of 140 semester credit hours."

SECTION 9.13.(f) G.S. 116-21.4(b) reads as rewritten:

"(b) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 shall not be used for any student or licensure student who:

(1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or

(2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years."

SECTION 9.13.(g) G.S. 116-22 is amended by adding a new subdivision to read:

"(1b) 'Licensure student' shall mean a person who:

a. Has a bachelors degree;

b. Is enrolled either full-time or less than full-time in a program intended to result in licensure in teaching or nursing;

c. Attends an institution located in the State; and

d. Qualifies as a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of The University of North Carolina and published in the residency manual of the Board."

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHANGE REPORTING DATE OF AGING STUDY COMMISSION

SECTION 10.1. The third paragraph of Section 10.40A.(p) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.40A.(p)**

...

The Department shall submit a progress report to the North Carolina Study Commission on Aging and to the Senate Appropriations Committee on Health and Human Services and to the House of Representatives Subcommittee on Health and Human Services on or before ~~April 1, 2006.~~January 1, 2007.

..."

RATE SETTING FOR CHILD CARING INSTITUTIONS

SECTION 10.2.(a) Section 10.47(b) of S.L. 2005-276 is repealed.

SECTION 10.2.(b) G.S. 110-93.1 is repealed.

SECTION 10.2.(c) G.S. 143B-153(2)d. reads as rewritten:

"**§ 143B-153. Social Services Commission – creation, powers and duties.**

There is hereby created the Social Services Commission of the Department of Health and Human Services with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Health and Human Services shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

...

(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

...

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social ~~services; and~~services. The Commission shall establish standardized rates for child caring institutions in this State, which rates shall be updated annually on July 1. Rate-setting recommendations provided by the Office of the State Auditor shall be incorporated into the Department of Social Services' rate-setting methodology; and

...

...."

SECTION 10.2.(d) The effective date for establishing standardized rates for child caring institutions in this State, as enacted in subsection (c) of this section, shall be July 1, 2007.

MEDICAID

SECTION 10.3. Section 10.11 of S.L. 2005-276 reads as rewritten:

"SECTION 10.11.(a) Use of Funds, Allocation of Costs, Other Authorizations.

(1) Use of Funds. – Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy.

(2) Allocation of Nonfederal Cost of Medicaid. – The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section.

In addition, the State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.

(3) Funds for Development and Acquisition of Equipment and Software. – If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed the currently allocated funds for the new contract for the fiscal agent for the Medicaid Management Information System.

(4) Reports. – Unless otherwise provided, whenever the Department of Health and Human Services is required by this section to report to the General Assembly, the report shall be submitted to the House of Representatives Appropriations Subcommittee for Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division of the Legislative Services Office. Reports shall be submitted on the date provided in the reporting requirement.

SECTION 10.11.(b) Policy. –

(1) Volume purchase plans and single source procurement. – The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other contracting processes in order to improve cost containment.

(2) Cost-containment programs. – The Department of Health and Human Services, Division of Medical Assistance, may undertake cost-containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(3) Fraud and abuse. –

a. The Division of Medical Assistance, Department of Health and Human Services, may provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

b. For the purposes of investigating and reducing client fraud and abuse, the Department of Health and Human Services, Division of Medical Assistance, shall, unless prohibited by federal law, include in the Medicaid enrollment process the requirement that the applicant for Medicaid consent to or authorize in writing the release of the applicant's medical records for the three years immediately preceding the application for Medicaid benefits. The Department shall obtain and use information from the applicant's medical records in a manner and form that complies with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), P.L. 104-191, as amended, and that protects the privacy of the information as required by other applicable federal or State law. In addition to fraud and abuse detection, the Department may require the applicant's consent for other

purposes permitted by HIPAA and required or authorized by other applicable federal or State law.

(4) Medical policy. –

Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars ($3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars ($3,000,000).

SECTION 10.11.(c) Eligibility. – Eligibility for Medicaid shall be determined in accordance with the following:

(1) Medicaid and Work First Family Assistance, Income Eligibility Standards. – The maximum net family annual income eligibility standards for Medicaid and Work First Family Assistance and the Standard of Need for Work First Family Assistance shall be as follows:

Categorically Needy-WFFA*		Medically Needy Families and Children	
Family Size	Standard Of Need	Income Level	AA,AB,AD*
1	$4,344	$2,172	$2,900
2	5,664	2,832	3,900
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

(2) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to all elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines, as revised each April 1.

(3) The Department of Health and Human Services shall provide Medicaid to 19-, 20-, and 21-year-olds in accordance with federal rules and regulations.

(4) Pregnant women and children. – The Department of Health and Human Services shall provide coverage to pregnant women and to children according to the following schedule:

a. Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

b. Effective until January 1, 2006, infants under the age of one with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. Effective January 1, 2006, infants under the age of one with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

c. Effective until January 1, 2006, children aged one through five with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. Effective January 1, 2006, children aged one through five with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

d. Children aged six through 18 with family incomes equal to or less than the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

e. The Department of Health and Human Services shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children described in subdivisions (3) and (4) of this subsection, no resources test shall be applied.

(5) The Department of Health and Human Services shall provide Medicaid coverage for family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eight-five percent (185%) of the federal poverty level.

(6) ICF and ICF/MR Work Incentive Allowances. – The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR services, who are regularly engaged in work activities as part of their developmental plan, and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages	**Monthly Incentive Allowance**

$1.00 to $100.99	Up to $50.00
$101.00 to $200.99	$80.00
$201.00 to $300.99	$130.00
$301.00 and greater	$212.00

(7) Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.

(8) For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.

(9) When implementing the Supplemental Security Income (SSI) method for considering equity value of income producing property, the Department shall, to the maximum extent possible, employ procedures to mitigate the hardship to Medicaid enrollees occurring from application of the SSI method.

SECTION 10.11.(d) Services and Payment Bases. – Funds appropriated for Medicaid services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection. This subsection is divided into services that are mandated by federal law, and those that are optional under federal law. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

Services and payment bases – Mandatory

(1) Hospital inpatient.

(2) Hospital outpatient. – Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

(3) Nursing facilities. – Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare. The Division of Medical Assistance shall allow nursing facility providers sufficient time from the effective date of this act to certify additional Medicare beds if necessary. In determining the date that the requirements of this subdivision become effective, the Division of Medical Assistance shall consider the regulations governing certification of Medicare beds and the length of time required for this process to be completed.

(4) Physicians, certified nurse midwife services, nurse practitioners. – Fee schedules as development by the Department of Health and Human Services.

(5) Community Alternative Program, EPSDT Screens. – Payments in accordance with rate schedule developed by the Department of Health and Human Services.

(6) Home health and related services, durable medical equipment. – Payments according to reimbursement plans developed by the Department of Health and Human Services.

(7) Hearing aids. – Wholesale cost plus dispensing fee to provider.

(8) Rural health clinical services. – Provider-based, reasonable cost; non-provider-based, single–cost reimbursement rate per clinic visit.
(9) Family planning. – Negotiated rate for local health departments. For other providers see specific services, e.g. hospitals, physicians.
(10) Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.
(11) Ambulatory surgical centers.
(12) Private duty nursing, clinic services, prepaid health plans.
(13) Intermediate care facilities for the mentally retarded.
(14) Chiropractors, podiatrists, optometrists, dentists.
(15) Limitations on Dental Coverage. – Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.
(16) Medicare Buy-In. – Social Security Administration premium.
(17) Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.
(18) Optical supplies. – Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.
(19) Medicare crossover claims. – The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services.
(20) Physical therapy and speech therapy. – Services limited to EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services. Physical therapy (including occupational therapy) and speech therapy services are subject to prior approval and utilization review.
(21) Personal care services.
(22) Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.
(23) Hospice.
(24) Medically necessary prosthetics or orthotics. – In order to be eligible for reimbursement, providers must be Board certified. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.
(25) Health insurance premiums.
(26) Medical care/other remedial care. – Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates.
(27) Pregnancy-related services. – Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.
(28) Drugs. – Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent

with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

Limitations on quantity. – The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". In addition to the entities listed in subsection (a) of this section, the Department shall report to the Joint Legislative Commission on Governmental Operations on authorizations, limitations, and reviews established under this subparagraph, including limitations on monthly brand-name and generic prescriptions as well as restrictions on the total number of medications. The Department shall submit the report not later than May 1, 2006.

Dispensing of generic drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for atypical antipsychotic drugs and drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". An initial prescription order for an atypical antipsychotic drug or a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

Prior authorization. – The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of: (i) mental illness,

including, but not limited to, medications for schizophrenia, bipolar disorder, and major depressive disorder, or (ii) HIV/AIDS.

(29) Other mental health services. – Unless otherwise covered by this section, coverage is limited to:

a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and

b. For children eligible for EPSDT services provided by:

1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and

2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and licensed clinical supervisors. Medicaid-eligible adults may be self-referred.

d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or

health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

e. The Department of Health and Human Services shall not enroll licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addiction specialists, and licensed clinical supervisors until all of the following conditions have been met:

1. The fiscal impact of payments to these qualified providers has been projected;
2. Funding for any projected requirements in excess of budgeted Division of Medical Assistance funding has been identified from within State funds appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to support area mental health programs or county programs, or identified from other sources; and
3. Approval has been obtained from the Office of State Budget and Management to transfer these State or other source funds from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to the Division of Medical Assistance. Upon approval and implementation, the Department of Health and Human Services shall, on a quarterly basis, provide a status report to the Office of State Budget and Management and the Fiscal Research Division.

Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2 of this subdivision shall be established by the Division of Medical Assistance.

SECTION 10.11.(e) Limitations on payments. –

(1) Payment is limited to Medicaid-enrolled providers that purchase a performance bond in an amount not to exceed one hundred thousand dollars ($100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may waive or limit the requirements of this paragraph for one or more classes of Medicaid-enrolled providers based on the provider's dollar amount of monthly billings to Medicaid or the length of time the provider has been licensed in this State to provide services. In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

(2) Reimbursement is available and may be limited in accordance with federal EPSDT requirements to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children,

emergency rooms, and mental health services subject to independent utilization review are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Health and Human Services where the life of the patient would be threatened without such additional care.

SECTION 10.11.(f) Exceptions and limitations on services; authorization of co-payments and other services.

(1) Exceptions to Service Limitations, Eligibility Requirements, and Payments. – Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient. The Department of Health and Human Services may proceed with planning and development work on the Program of All-Inclusive Care for the Elderly.

(2) Co-Payment for Medicaid Services. – The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation and required by this subsection in order to achieve reductions in the budget in fiscal years 2005-2006 and 2006-2007.

(3) The Department of Health and Human Services shall provide Medicaid coverage for family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty level. Of the funds appropriated in this act to the Division of Medical Assistance, the sum of seven hundred fifty thousand dollars ($750,000) for the 2005-2006 fiscal year shall be used to provide the State-match for the family planning demonstration waiver approved by the federal government.

SECTION 10.11.(g) Rules, Reports, and Other Matters. –

(1) Rules. – The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

(2) Changes to Medicaid program; reports. – The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval. In addition to the entities listed in subsection (a)(4) of this section, the report shall be submitted to the Joint Legislative Health Care Oversight Committee."

~~**SECTION 10.11.(a)** Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject ot the language at the end of this subsection.~~

~~Services and payment bases:~~

~~(1) Hospital inpatient. Payment for hospital inpatient services will be prescribed in the State Plan as established by the Department of Health and Human Services.~~

~~(2) Hospital outpatient. Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.~~

~~(3) Nursing facilities. Payment for nursing facility services will be prescribed in the State Plan as established by the Department of Health and Human Services. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare. The Division of Medical Assistance shall allow nursing facility providers sufficient time from the effective date of this act to certify additional Medicare beds if necessary. In determining the date that the requirements of this subdivision become effective, the Division of Medical Assistance shall consider the regulations governing certification of Medicare beds and the length of time required for this process to be completed.~~

~~(4) Intermediate care facilities for the mentally retarded. As prescribed in the State Plan as established by the Department of Health and Human Services.~~

~~(5) Drugs. Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.~~

~~Limitations on quantity. The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand name~~

~~drug is medically necessary and has written on the prescription order the phrase "medically necessary". The Department shall report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on authorizations, limitations, and reviews established under this subparagraph, including limitations on monthly brand-name and generic prescriptions as well as restrictions on the total number of medications. The Department shall submit the report not later than May 1, 2006.~~

~~Dispensing of generic drugs. Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for atypical antipsychotic drugs and drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". An initial prescription order for an atypical antipsychotic drug or a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).~~

~~Prior authorization. The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of: (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, and major depressive disorder, or (ii) HIV/AIDS.~~

~~(6) Physicians, chiropractors, podiatrists, optometrists, dentists, certified nurse midwife services, nurse practitioners. Fee schedules as developed by the Department of Health and Human Services. Payments for dental services are subject to the provisions of subsection (g) of this section.~~

~~(7) Community Alternative Program, EPSDT screens. Payment to be made in accordance with the rate schedule developed by the Department of Health and Human Services.~~

~~(8) Home health and related services, private duty nursing, clinic services, prepaid health plans, durable medical equipment. Payment to be made according to reimbursement plans developed by the Department of Health and Human Services.~~

~~(9) Medicare Buy-In. Social Security Administration premium.~~

~~(10) Ambulance services. Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.~~

~~(11) Hearing aids. Wholesale cost plus a dispensing fee to the provider.~~

~~(12) Rural health clinic services. Provider-based, reasonable cost; nonprovider-based, single cost reimbursement rate per clinic visit.~~

~~(13) Family planning. Negotiated rate for local health departments. For other providers, see specific services, for instance, hospitals, physicians.~~

~~(14) Independent laboratory and X-ray services. Uniform fee schedules as developed by the Department of Health and Human Services.~~

~~(15) Optical supplies. Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.~~

~~(16) Ambulatory surgical centers. Payment as prescribed in the reimbursement plan established by the Department of Health and Human Services.~~

~~(17) Medicare crossover claims. By not later than October 1, 2005, the Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services.~~

~~(18) Physical therapy and speech therapy. Services limited to EPSDT eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services. Physical therapy (including occupational therapy) and speech therapy services are subject to prior approval and utilization review.~~

~~(19) Personal care services. Payment in accordance with the State Plan approved by the Department of Health and Human Services.~~

~~(20) Case management services. Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.~~

~~(21) Hospice. Services may be provided in accordance with the State Plan developed by the Department of Health and Human Services.~~

~~(22) Other mental health services. Unless otherwise covered by this section, coverage is limited to:~~

~~a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and~~

~~b. For children eligible for EPSDT services provided by:~~

~~1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional~~

~~counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and~~

~~2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.~~

~~c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, Medicaid-eligible adults may be self-referred.~~

~~d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.~~

~~e. The Department of Health and Human Services shall not enroll licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addiction specialists, and certified clinical supervisors until all of the following conditions have been met:~~

~~1. The fiscal impact of payments to these qualified providers has been projected;~~

~~2. Funding for any projected requirements in excess of budgeted Division of Medical Assistance funding has been identified from within State funds appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to support area mental health programs or county programs, or identified from other sources; and~~

~~3. Approval has been obtained from the Office of State Budget and Management to transfer these State or other source funds from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to the Division of Medical Assistance. Upon~~

~~approval and implementation, the Department of Health and Human Services shall, on a quarterly basis, provide a status report to the Office of State Budget and Management and the Fiscal Research Division.~~

~~Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2 of this subdivision shall be established by the Division of Medical Assistance.~~

~~(23) Medically necessary prosthetics or orthotics. Reimbursement in accordance with the State Plan approved by the Department of Health and Human Services, except that in order to be eligible for reimbursement, providers must be Board certified not later than July 1, 2005. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.~~

~~(24) Health insurance premiums. Payments to be made in accordance with the State Plan adopted by the Department of Health and Human Services consistent with federal regulations.~~

~~(25) Medical care/other remedial care. Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates. Services addressed by this subdivision are limited to those prescribed in the State Plan as established by the Department of Health and Human Services.~~

~~(26) Pregnancy-related services. Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.~~

~~Services and payment bases may be changed with the approval of the Director of the Budget.~~

~~Payment is limited to Medicaid-enrolled providers that purchase a performance bond in an amount not to exceed one hundred thousand dollars ($100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may waive or limit the requirements of this paragraph for one or more classes of Medicaid-enrolled providers based on the provider's dollar amount of monthly billings to Medicaid or the length of time the provider has been licensed in this State to provide services. In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.~~

~~Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, emergency rooms, and mental health services subject to independent utilization review are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Health and Human Services where the life of the patient would be threatened without such additional care.~~

~~**SECTION 10.11.(b)** Allocation of Nonfederal Cost of Medicaid. The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section. In addition, the State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.~~

~~**SECTION 10.11.(c)** Co-Payment for Medicaid Services. The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation and required by this subsection in order to achieve reductions in the budget in fiscal years 2005-2006 and 2006-2007.~~

~~**SECTION 10.11.(d)** Medicaid and Work First Family Assistance, Income Eligibility Standards. The maximum net family annual income eligibility standards for Medicaid and Work First Family Assistance and the Standard of Need for Work First Family Assistance shall be as follows:~~

	Categorically Needy		Medically Needy	
	WFFA*			
Family Size	Standard of Need		Families and Children Income Level	AA, AB, AD*
1	$4,344		$2,172	$2,900
2	5,664		2,832	3,800
3	6,528		3,264	4,400
4	7,128		3,564	4,800
5	7,776		3,888	5,200
6	8,376		4,188	5,600
7	8,952		4,476	6,000
8	9,256		4,680	6,300

~~*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).~~

~~The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need.~~

~~These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.~~

~~**SECTION 10.11.(e)** The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to all elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines, as revised each April 1. This subsection expires December 31, 2005.~~

~~**SECTION 10.11.(f)** ICF and ICF/MR Work Incentive Allowances. The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:~~

Monthly Net Wages	Monthly Incentive Allowance
$1.00 to $100.99	Up to $50.00
$101.00 to $200.99	$80.00
$201.00 to $300.99	$130.00
$301.00 and greater	$212.00.

~~**SECTION 10.11.(g)** Dental Coverage Limits. Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.~~

~~**SECTION 10.11.(h)** Exceptions to Service Limitations, Eligibility Requirements, and Payments. Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient. The Department of Health and Human Services may proceed with planning and development work on the Program of All-Inclusive Care for the Elderly.~~

~~**SECTION 10.11.(i)** Volume Purchase Plans and Single Source Procurement. The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other contracting processes in order to improve cost containment.~~

~~**SECTION 10.11.(j)** Cost Containment Programs. The Department of Health and Human Services, Division of Medical Assistance, may undertake cost containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.~~

~~**SECTION 10.11.(k)** For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.~~

~~**SECTION 10.11.(l)** The Department of Health and Human Services shall provide Medicaid to 19-, 20-, and 21-year-olds in accordance with federal rules and regulations.~~

~~**SECTION 10.11.(m)** The Department of Health and Human Services shall provide coverage to pregnant women and to children according to the following schedule:~~

~~(1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.~~

~~(2) Effective until January 1, 2006, infants under the age of one with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. Effective January 1, 2006, infants under the age of one with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.~~

~~(3) Effective until January 1, 2006, children aged one through five with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. Effective January 1, 2006, children aged one through five with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.~~

~~(4) Children aged six through 18 with family incomes equal to or less than the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.~~

~~(5) The Department of Health and Human Services shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.~~

~~Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children described in subdivisions (3) and (4) of this subsection, no resources test shall be applied.~~

~~**SECTION 10.11.(n)** Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.~~

~~**SECTION 10.11.(o)** The Division of Medical Assistance, Department of Health and Human Services, may provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.~~

~~**SECTION 10.11.(p)** If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed the currently allocated funds for the new contract for the fiscal agent for the Medicaid Management Information System.~~

~~**SECTION 10.11.(q)** The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.~~

~~**SECTION 10.11.(r)** The Department shall report to the Fiscal Research Division of the Legislative Services Office and to the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services or the Joint Legislative Health Care Oversight Committee on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval.~~

~~**SECTION 10.11.(s)** The Department of Health and Human Services shall provide Medicaid coverage for family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty level. Of the funds appropriated in this act to the Division of Medical Assistance, the sum of seven hundred fifty thousand dollars ($750,000) for the 2005-2006 fiscal year shall be used to provide the State match for the family planning demonstration waiver approved by the federal government.~~

~~**SECTION 10.11.(t)** For the purposes of determining eligibility for Medical Assistance, the Department of Health and Human Services may apply federal transfer of assets policies, as described in Title XIX, section 1917(c) of the Social Security Act, including the attachment of liens, to (i) life estates purchased by or on behalf of the recipient, other than life estates excluded from countable resources under this section,~~

and (ii) to real property excluded as "income producing", tenancy in common, or as nonhomesite property made "income producing" under Title XIX, section 1902(r)(2) of the Social Security Act. The transfer of assets policy shall apply only to an institutionalized individual or the individual's spouse as defined in Title XIX, section 1917(c) of the Social Security Act. The Department shall exclude from countable resources any life estate in real property that is in the recipient's home, is measured by the recipient's life, and is the result of the transfer of a remainder interest.

Federal transfer of assets policies applied to "income producing" real property under Title XIX, section 1902(r)(2) of the Social Security Act shall become effective not earlier than October 1, 2001. Federal transfer of assets policies and attachment of liens applied to real property excluded as tenancy in common, or as nonhomesite property made "income producing" in accordance with this subsection shall become effective not earlier than November 1, 2002. Federal transfer of assets policies applied to life estates in accordance with this subsection shall become effective not earlier than October 1, 2005.

SECTION 10.11.(u) When implementing the Supplemental Security Income (SSI) method for considering equity value of income producing property, the Department shall, to the maximum extent possible, employ procedures to mitigate the hardship to Medicaid enrollees occurring from application of the Supplemental Security Income (SSI) method.

SECTION 10.11.(v) Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars ($3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars ($3,000,000).

SECTION 10.11.(w) The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

(1) During the development of new medical coverage policy or amendment to existing medical coverage policy, consult with and seek the advice of the Physician Advisory Group of the North Carolina Medical Society and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy.

(2) At least 45 days prior to the adoption of new or amended medical coverage policy, the Department shall:

a. Publish the proposed new or amended medical coverage policy on the Department's Web site;

b. Notify all Medicaid providers of the proposed, new, or amended policy; and

c. Upon request, provide persons copies of the proposed medical coverage policy.

~~(3) During the 45-day period immediately following publication of the proposed new or amended medical coverage policy, accept oral and written comments on the proposed new or amended policy.~~

~~(4) If, following the comment period, the proposed new or amended medical coverage policy is modified, then the Department shall, at least 15 days prior to its adoption:~~

~~a. Notify all Medicaid providers of the proposed policy;~~

~~b. Upon request, provide persons notice of amendments to the proposed policy; and~~

~~c. Accept additional oral or written comments during this 15-day period.~~

~~**SECTION 10.11.(x)** For the purposes of investigating and reducing client fraud and abuse, the Department of Health and Human Services, Division of Medical Assistance, shall, unless prohibited by federal law, include in the Medicaid enrollment process the requirement that the applicant for Medicaid consent to or authorize in writing the release of the applicant's medical records for the three years immediately preceding the application for Medicaid benefits. The Department shall obtain and use information from the applicant's medical records in a manner and form that complies with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), P.L. 104-191, as amended, and that protects the privacy of the information as required by other applicable federal or State law. In addition to fraud and abuse detection, the Department may require the applicant's consent for other purposes permitted by HIPAA and required or authorized by other applicable federal or State law.~~

~~**SECTION 10.11.(y)** The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall provide an opportunity for interested advocacy organizations to comment on restrictions imposed by the Department of Health and Human Services, Division of Medical Assistance, on the medications prescribed for Medicaid recipients, as authorized under subsection (a)(5) of this section. The Committee may report its findings or recommendations based on comments received to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before April 30, 2006.~~"

PROCEDURES FOR CHANGES TO DHHS MEDICAL POLICY

SECTION 10.4. Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-54.2. Procedures for changing medical policy.**

The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

(1) During the development of new medical coverage policy or amendment to existing medical coverage policy, consult with and seek the advice of the Physician Advisory Group of the North Carolina Medical Society and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy.

(2) At least 45 days prior to the adoption of new or amended medical coverage policy, the Department shall:

a. Publish the proposed new or amended medical coverage policy on the Department's Web site;

b. Notify all Medicaid providers of the proposed, new, or amended policy; and

c. Upon request, provide persons copies of the proposed medical coverage policy.

(3) During the 45-day period immediately following publication of the proposed new or amended medical coverage policy, accept oral and written comments on the proposed new or amended policy.

(4) If, following the comment period, the proposed new or amended medical coverage policy is modified, then the Department shall, at least 15 days prior to its adoption:

a. Notify all Medicaid providers of the proposed policy;

b. Upon request, provide persons notice of amendments to the proposed policy; and

c. Accept additional oral or written comments during this 15-day period."

TRANSFER OF ASSETS REWRITE

SECTION 10.5.(a) G.S. 108A-58 is repealed.

SECTION 10.5.(b) Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-58.1. Ineligibility for medical assistance based on transferring assets for less than fair market value.**

(a) General rule. – Except as otherwise provided herein, an individual who is otherwise eligible to receive medical assistance under this Part is ineligible for Medicaid coverage and payment for the services specified in subsection (d) during the period specified in subsection (c) if the individual or the individual's spouse transfers an asset for less than fair market value on or after the "lookback date" specified in subsection (b).

(b) Lookback date. –

(1) Except as otherwise provided herein, the lookback date is the date specified in 42 U.S.C. § 1396p(c)(1)(B).

(2) Notwithstanding subdivision (1), the lookback date with respect to the medical services specified in subdivision (d)(2) is the date specified in 42 U.S.C. § 1396p(c)(1)(B) or February 1, 2003, whichever is later.

(c) Penalty period. – The penalty period for the transfer of assets for less than fair market value is the period specified in 42 U.S.C. § 1396p(c)(1)(D), (E), and (H).

(d) Medical services. –

(1) In the case of an institutionalized individual, the transfer of assets penalty applies with respect to nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and to home or community-based services furnished under the State's Community Alternatives Program waiver pursuant to 42 U.S.C. § 1396n(c) or (d).

(2) In the case of a noninstitutionalized individual, the transfer of assets penalty applies with respect to home health services and personal care services as defined in 42 U.S.C. § 1396d(a)(7) and (24) and, to the extent permitted by federal law, such other long-term care services specified by rules adopted by the Department of Health and Human Services pursuant to subsection (k) of this section.

(e) Assets. – Assets are the income and resources of an individual or the individual's spouse (including the individual's or spouse's home) as defined in 42 U.S.C. § 1396p(h) and 42 U.S.C. § 1396p(c)(1)(G), (I), and (J).

(f) Fair market value and uncompensated value. –

(1) The fair market value of an asset is the value (minus any valid and legally enforceable liens, mortgages, and encumbrances against the asset) that would have been received if the asset had been sold for good and valuable consideration at the prevailing market price at the time the asset was transferred. In the case of real or personal property that is taxable under Subchapter II of Chapter 105 of the General

Statutes, there is a rebuttable presumption that the fair market value of the property is its most recent value as ascertained under Subchapter II of Chapter 105 of the General Statutes (minus any valid and legally enforceable liens, mortgages, and encumbrances against the property).

(2) The uncompensated value of an asset is its fair market value minus the amount of good and valuable consideration received in exchange for the asset's transfer.

(g) Individual. – An individual is a person who applies for or is receiving medical assistance under this Part regardless of whether the person was, at the time an asset was transferred, a Medicaid applicant or recipient. The term "individual" also includes an individual's legal representative, anyone acting at the individual's direction or request, and any person, agency, or court acting lawfully on behalf of the individual.

(h) Institutionalized and noninstitutionalized individuals. –

(1) An institutionalized individual is an individual who meets the criteria set forth in 42 U.S.C. § 1396p(h)(3), regardless of whether the individual was institutionalized at the time an asset was transferred.

(2) A noninstitutionalized individual is any individual who (i) is not an institutionalized individual, (ii) is an aged, blind, or disabled person who is categorically or medically needy pursuant to 42 C.F.R. § 435. § 120 or a qualified Medicare beneficiary as defined in 42 U.S.C. § 1396d(p)(1), and (3) is not eligible for medical assistance under this Part based on his or her eligibility for an optional State supplement pursuant to 42 C.F.R. § 435.232.

(i) Exceptions. –

(1) This section does not apply if an individual establishes by the greater weight of the evidence that the transfer was exclusively for some purpose other than establishing or retaining eligibility for medical assistance under this Part.

(2) This section does not apply to any transfer specified in 42 U.S.C. § 1396p(c)(2)(A), (B), (C)(i), or (C)(iii).

(j) Hardship waiver. – The Department of Health and Human Services shall waive a transfer of assets penalty that has been imposed or is imposable under this section if the Department determines that imposition of the penalty would create an undue hardship.

(k) Rules and compliance with federal law.–

(1) This section shall be interpreted and administered consistently with governing federal law, including 42 U.S.C. § 1396p(c).

(2) The Department of Health and Human Services shall determine and publish at least annually the average monthly cost of nursing facility services for private patients that will be used in determining the length of a penalty period under this section.

(3) The Department of Health and Human Services shall provide for a hardship waiver process in accordance with 42 U.S.C. § 1396p(c)(2)(D).

(4) The Department of Health and Human Services may adopt administrative rules that are necessary and appropriate to implement this section or the requirements of 42 U.S.C. § 1396p(c) or other federal laws governing the transfer of assets and Medicaid eligibility."

SECTION 10.5.(c) This section is effective when it becomes law. This section does not affect the validity of any Medicaid transfer of assets penalty that was validly imposed before the date this act becomes law under prior federal or state law or rules.

MEDICAID DUALLY ELIGIBLE TO ENROLL IN MEDICARE PARTS A,B,C, D

SECTION 10.6. G.S. 108A-55.1 reads as rewritten:

"**§ 108A-55.1. Medicare enrollment required.**

The Department shall require State Medical Assistance Program recipients who qualify for Medicare to enroll in Medicare, in accordance with Title XIX of the Social Security Act, in order to pay medical expenditures that qualify for payment under Medicare ~~Part B.~~ Parts A, B, C, and D.

Failure to enroll in Medicare shall result in nonpayment of these expenditures under the State Medical Assistance Program. A provider may seek payment for services from Medicaid enrollees who are eligible for but not enrolled in Medicare ~~Part B~~ Parts A, B, C, and D."

MEDICAID RESERVE FUND TRANSFER

SECTION 10.7.(a) Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, the sum of fifty million dollars ($50,000,000) for the 2006-2007 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143-23.2(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act.

SECTION 10.7.(b) Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, the sum of five million four thousand five hundred four dollars ($5,004,504) for the 2006-2007 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for the implementation of the Medicaid Management Information System (MMIS).

REQUIRED DATA SHARING BY PRIVATE HEALTH INSURERS

SECTION 10.8. Part 1 of Article 50 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-50-46. Insurers to provide certain information to Department of Health and Human Services.**

(a) As used in this section, the terms:

(1) 'Department' means the Department of Health and Human Services.

(2) 'Division' means the Division of Medical Assistance of the Department of Health and Human Services.

(3) 'Health insurer' includes self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, [29 USC Section 1167(1)]), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service as a condition of doing business in the State.

(4) 'Medical assistance' means medical assistance benefits provided under the State Medical Assistance Plan.

(b) Notwithstanding any other provision of law, every insurer issuing a health benefit plan shall provide, in a timely manner and at no cost, to the Department of Health and Human Services, upon its request, information, including automated data matches conducted under the direction of the Department of Health and Human Services, Division of Medical Assistance, as necessary to (i) identify individuals covered under the insurer's health benefit plans who are also recipients of medical assistance; (ii) determine the period during which the individual or the individual's spouses or the individual's dependents may be or may have been covered by the health benefit plan; and (iii) determine the nature of the coverage. To facilitate the Division in obtaining this and other related information, every insurer shall:

(1) Cooperate with the Division to determine whether a named individual who is a recipient of medical assistance may be covered under the

insurer's health benefit plan and eligible to receive benefits under the health benefit plan for services provided under the State Medical Assistance Plan.

(2) Accept the Division's authorization for the provision of medical services on behalf of the recipient of medical assistance as the insurer's authorization for the provision of the services.

(3) Respond to the request for information within 30 working days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of medical assistance who is covered by the insurer's health benefit plan.

(4) Accept the Division's right of recovery and the assignment to the Division of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State Medical Assistance Plan.

(5) Respond to any inquiry by the Division of Medical Assistance regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service.

(6) Agree not to deny a claim submitted by the Division of Medical Assistance solely on the basis of the date of submission of the claim, the type of format of the claim form, or a failure to present property documentation at the point-of-sale that is the basis of the claim, if:

a. The claim is submitted by the Division within the three-year period beginning on the date on which the item or service was furnished; and

b. Any action by the Division to enforce its rights with respect to such claim is commenced within six years of the Division's submission of the claim.

(c) An insurer that complies with this section shall not be liable on that account in any civil or criminal actions or proceedings brought by an individual covered under the insurer's health benefit plan or the individual's beneficiaries."

TICKET TO WORK EFFECTIVE DATE CHANGE

SECTION 10.9.(a) Section 10.18(c) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.18.(c)** Subsection (b) of this section becomes effective July 1, 2006. Subsection (a) of this section becomes effective July 1, ~~2007, or within 30 days after the date on which the MMIS becomes operational, as determined by the Department of Health and Human Services, whichever occurs later.~~2007. Client enrollment shall begin not later than six months from the date subsection (a) becomes effective. The remainder of this section is effective when it becomes law."

SECTION 10.9.(b) The Department of Health and Human Services shall study and develop a plan for the implementation of the Ticket to Work Program. The Department shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2007, on the results of its study. The report shall include what system changes need to be made to implement the Ticket to Work Program, how soon the changes can be made, and an analysis of the five-year fiscal impact of the Program.

PUBLIC-PRIVATE LONG TERM CARE PARTNERSHIP PROGRAM

SECTION 10.10. Pursuant to authority under Section 1917(b) of the Social Security Act (42 USC 1396p(c)), as amended by Public Law 109-171 effective January 1, 2007, there is established in the Department of Health and Human Services the North Carolina Long-Term Care Partnership Program. The purpose of the Program is to reduce future Medicaid costs for long-term care by delaying or eliminating dependence

on Medicaid. The Program shall be administered by the Department of Health and Human Services with the assistance of the Commissioner of Insurance. The Department shall structure and administer the Program in accordance with applicable federal law and guidelines for qualified State long-term care partnerships. The Program, including the treatment of assets for Medicaid eligibility and estate recovery, notwithstanding statutory provisions on treatment of assets and estate recovery to the contrary, shall offer incentives to individuals to insure against the substantial costs of providing for their long-term care needs. The Long-Term Care Partnership Program becomes effective on the effective date of the approved State Plan amendment.

STUDY MEDICAID PROVIDER RATE INCREASES

SECTION 10.11.(a) The Secretary of the Department of Health and Human Services shall study and develop a proposal for an equitable standard for providing inflationary increases and other cost-related increases to service providers in the Medicaid program. The Department shall seek the assistance of external consultants and other appropriate financial experts and affected parties to validate any methodologies used in the development of the standard.

SECTION 10.11.(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Medical Assistance, the sum of one hundred thousand dollars ($100,000) for the 2006-2007 fiscal year shall be used to support the study. Not later than March 1, 2007, the Department shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the findings and recommendations of the study.

INCREASE HEALTH CARE ACCESS FOR UNINSURED PERSONS

SECTION 10.12.(a) The Secretary of the Department of Health and Human Services shall develop a plan to expand health care access for uninsured North Carolinians through the use of public/private partnerships, federal flexibility and resources, and promotion of charity care by health care providers. The goals of the plan are to:

(1) Aid small businesses that want to provide health care coverage.
(2) Expand health care coverage for the working uninsured persons.
(3) Secure all available federal funds to support the program.
(4) Promote charity care by health care providers.

SECTION 10.12.(b) In developing the plan, the Secretary shall:

(1) Consider findings and recommendations of previous studies on increased access to health care and covering the uninsured to determine their feasibility.
(2) Draw on the experience of other states that have successfully increased access to health care and covered the uninsured.
(3) Determine waivers necessary to secure federal funding available through 1115 Demonstration Waivers and other federal waivers to cover the uninsured.
(4) Explore options such as those available through the Deficit Reduction Act of 2005 (DEFRA) to adjust Medicaid eligibility and benefits to cover the uninsured.
(5) Consider the use of existing funding that might be used to leverage additional federal matching funds including certified public expenditures (CPE), and appropriate federal Disproportionate Share Hospital Program (DSH) funds.
(6) Pursue an agreement with the Centers for Medicare and Medicaid Services (CMS) to develop a methodology for investing Medicare savings realized from the expansion of the scope of Community Care of North Carolina Program to help fund the plan; and

(7) Determine in conjunction with the Office of State Budget and Management the fiscal impact of the plan for a five-year period.

SECTION 10.12.(c) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Medical Assistance, the sum of two hundred thousand dollars ($200,000) for the 2006-2007 fiscal year shall be used to support the development of the plan. The proposed plan shall be submitted to the 2007 General Assembly not later than March 1, 2007.

HEALTH INFORMATION SYSTEMS (HIS) FUNDS

SECTION 10.13.(a) The sum of nine million eight hundred thirty-five thousand seven hundred ninety-five dollars ($9,835,795) is appropriated from Budget Code 24430, Fund Code 2117, to the Department of Health and Human Services, Division of Public Health, for the 2006-2007 fiscal year. These funds shall be used for the development and implementation of the Health Information Systems (HIS), an initiative that will provide an automated means of capturing, monitoring, reporting, and billing services provided in local health departments, CDSAs, and the State Public Health Lab. The HIS will allow for interfaces to local health departments' own vendor systems and is intended to replace the outdated Health Services Information System. Allocation of these funds is contingent upon full compliance with the reporting requirements of Section 10.59A.(b) of S.L. 2005-276 and the identification of total estimated costs and future funding sources.

SECTION 10.13.(b) The Department of Health and Human Services, Division of Public Health, shall report on the use of these funds to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2007.

REPEAL VISION CARE PROGRAM

SECTION 10.14. Section 10.59F of S.L. 2005-276 (as amended by Section 20 of S.L. 2005-345), G.S. 130A-440.1, and Part 34 of Article 3 of Chapter 143B of the General Statutes are repealed.

EARLY INTERVENTION SERVICES REPORT

SECTION 10.15. The Department of Health and Human Services, Division of Public Health, shall report on Early Intervention services. The report shall include the following information for all children, ages birth to three years, entering the Early Intervention system as of July 1, 2006, through December 31, 2006:

(1) Children served: the number of children referred and the source of referral, the number of children receiving initial evaluations, the number of children determined eligible, the number of children enrolled, and the number of IFS Plans developed.

(2) Services provided: the number and types of evaluation services, treatment services, and other services provided and whether the service was provided by an employee of a Children's Developmental Services Agency or a private provider.

(3) Sliding scale participation: the percentage of enrolled children whose family income falls into each of the following categories: at or below 200% of the federal poverty level, between 250% and 300% of the federal poverty level, between 350% and 400% of the federal poverty level, and over 400% of the federal poverty level. These percentages shall be reported based on gross income and net income after allowable deductions.

The Division of Public Health shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of

Representative Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than February 1, 2007.

COMMUNITY HEALTH CENTER CHANGES

SECTION 10.16. Section 10.9(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.9.(a)** Of the funds appropriated in this act for Community Health Grants, the sum of two million dollars ($2,000,000) in recurring ~~funds for the 2005-2006 fiscal year, and the sum of two million dollars ($2,000,000) in recurring~~ funds for the 2006-2007 fiscal year shall be used for federally qualified health centers, for those health centers that meet the criteria for federally qualified health centers, and for State-designated rural health centers and public health departments and other clinics to:

(1) Increase access to preventative and primary care services by uninsured or medically indigent patients in existing or new health center locations;

(2) Establish community health center services in counties where no such services exist;

(3) Create new services or augment existing services provided to uninsured or medically indigent patients, including primary care and preventative medical services, dental services, pharmacy, and behavioral health; and

(4) Increase capacity necessary to serve the uninsured by enhancing or replacing facilities, equipment, or technologies.

Grant funds may not be used to enhance or increase compensation or other benefits of personnel, administrators, directors, consultants, or any other parties. Grant funds may not be used to supplant federal funds traditionally received by federally qualified community health centers and may not be used to finance or satisfy any existing debt. The Department of Health and Human Services shall distribute funds on the basis of the availability of other funds for the agency, and also on the basis of incidence of poverty or percentage of indigent clients served. Grant applicants must provide after-hours access in order to qualify for grant funds. The Department shall give preference to those grant applicants demonstrating collaboration with the applicant's community hospital."

EDUCATION ON PREVENTION OF PRETERM BIRTHS

SECTION 10.17. Of the funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, the sum of one hundred fifty thousand dollars ($150,000) for the 2006-2007 fiscal year shall be used to provide education to women on the benefits of progesterone for those who have had preterm births and to purchase medication for eligible minority and low-income women until the medication becomes readily available through the Medicaid Program. The Division of Public Health shall evaluate the impact of the use of these funds and shall share the outcomes of the evaluation with the Division of Medical Assistance, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE

SECTION 10.18. Of funds appropriated in this act to the Department of Health and Human Services for the 2006-2007 fiscal year, the sum of two million dollars ($2,000,000) shall be allocated for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) to provide grants-in-aid to local public health departments, American Indian tribes, and faith-based and community-based organizations to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to white persons. These grants

shall focus on the use of preventive measures to support health lifestyles. The areas of focus on health status shall be infant mortality, HIV-AIDS and sexually transmitted infections, cancer, diabetes, and homicides and motor vehicle deaths. These funds shall also be used to support one FTE in the Department of Health and Human Services to monitor, track, and evaluate grantees' progress in meeting performance-based standards and outcomes established by the Department.

CLARIFICATION OF CERTAIN AUDIT REQUIREMENTS

SECTION 10.19. G.S. 143B-139.4.(b) reads as rewritten:

"(b) A private, nonprofit organization that receives employee assistance or other appropriate services in accordance with subsection (a) of this section, shall document all contributions received, including employee time, supplies, materials, equipment, and physical space. The documentation shall also provide an estimated value of all contributions received as well as any compensation paid to or bonuses received by State employees. This documentation shall be submitted annually to the Secretary of the Department of Health and Human Services in a format approved by the Secretary. Nonprofit organizations with less than five hundred thousand dollars ($500,000) in annual income shall submit an affidavit from the chief officer of the organization providing and attesting to the financial condition of the organization and the expenditure of funds or use of State employee services or other State services. The board of directors of each private, nonprofit organization with an annual income of five hundred thousand dollars ($500,000) or more shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an annual audit of the financial accounts of the organization. The board of directors shall transmit to the Secretary of the Department a copy of the annual financial audit report of the private nonprofit organization. Nothing in this subsection shall be construed to relieve the private, nonprofit organization from other applicable reporting requirements established by law."

PRIVATE WELL WATER PROTECTION

SECTION 10.20.(a) G.S. 130A-5 is amended by adding the following new subdivision to read:

"**§ 130A-5. Duties of the Secretary.**

The Secretary shall have the authority:

...

(16) To charge a fee for analyzing Private Well Water samples sent to the State Laboratory of Public Health by local health departments. The fee shall be computed annually by the Director of the State Laboratory of Public Health by analyzing the previous year's testing at the State Laboratory of Public Health, and applying the amount of the total cost of the Private Well Water testing, minus State appropriations that support this effort. The fee amount shall be effective during the current fiscal year. The fee shall be in addition to the charge for the Private Well Water panel test kit."

SECTION 10.20.(b) Effective July 1, 2006, the fee for analyzing Private Well Water samples sent to the State Laboratory of Public Health by local health departments shall be as determined by the Director of the State Laboratory pursuant to G.S. 130A-5(16).

AIDS DRUG ASSISTANCE PROGRAM

SECTION 10.21. Section 10.59(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.59.(a)** ~~For the 2005-2006 fiscal year and for the 2006-2007 fiscal year, HIV-positive individuals with incomes at or below one hundred twenty-five percent (125%) of the federal poverty level are eligible for participation in ADAP. Eligibility for participation in ADAP during the 2005-2007 fiscal biennium shall not be~~

~~extended to individuals with incomes above one hundred twenty-five percent (125%) of the federal poverty level.~~For the 2006-2007 fiscal year, the Department may adjust the financial eligibility criterion of the ADAP Program up to an amount not exceeding two hundred fifty percent (250%) of the federal poverty level in order to serve as many eligible North Carolinians living with HIV disease as possible within existing resources plus any new federal resources. If the Department raises the eligibility limit above one hundred twenty-five percent (125%) of the federal poverty level and a waiting list develops as a result, the Department shall give priority on the waiting list to those individuals at or below one hundred twenty-five percent (125%) of the federal poverty level."

TECHNICAL CORRECTION TO LICENSURE FEE LIMITS

SECTION 10.22. G.S. 131E-267 reads as rewritten:

"**§ 131E-267. Fees for departmental review of health care facility construction projects.**

The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis, as follows, and shall not exceed ~~twelve thousand five hundred dollars ($12,500)~~twenty-five thousand dollars ($25,000) for any single project:

Institutional Project	**Project Fee**
Hospitals	$ 300.00 plus $0.20/square foot of project space
Nursing Homes	$ 250.00 plus $0.16/square foot of project space
Ambulatory Surgical Facility	$ 200.00 plus $0.16/square foot of project space
Psychiatric Hospital	$ 200.00 plus $0.16/square foot of project space
Adult Care Home	
7 or more beds	$ 175.00 plus $0.10/square foot of project space

Residential Project	**Project Fee**
Family Care Homes	$ 175.00 flat fee
ICF/MR Group Homes	$ 275.00 flat fee
Group Homes: 1-3 beds	$ 100.00 flat fee
Group Homes: 4-6 beds	$ 175.00 flat fee
Group Homes: 7-9 beds	$ 225.00 flat fee
Other residential:	
More than 9 beds	$ 225.00 plus $0.075/square foot of project space."

CLARIFICATION OF FEES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICE FACILITIES

SECTION 10.23. G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter ~~that have licensed beds~~ a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per-Bed Fee
Facilities (non ICF/MR):	0 beds	$175.00	$0
~~Facilities (non-ICF/MR):~~			
	~~6 of fewer~~		
	1 to 6 beds	$250.00	$0
	More than 6 beds	$350.00	$12.50
ICF/MR Only:	~~6 or fewer~~		
	1 to 6 beds	$650.00	$0
	More than 6 beds	$650.00	$12.50"

TRANSFER ADVOCACY AND CUSTOMER SERVICE SECTION TO OFFICE OF THE SECRETARY

SECTION 10.24. The Advocacy and Customer Service Section of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services is transferred to the Office of the Secretary of the Department of Health and Human Services. The transfer has the elements of a Type I transfer as defined in G.S. 143A-6. In addition to its other responsibilities, the Advocacy and Customer Service Section shall assume and carry out the requirements of the Consumer Advocacy Program as established under Article 1A of Chapter 122C of the General Statutes.

AUTHORIZE LOCAL MANAGEMENT ENTITIES TO TRANSFER FUNDS BETWEEN AGE AND DISABILITY CATEGORIES

SECTION 10.25.(a) Notwithstanding G.S. 143-23, an area authority or a county program may transfer from one age or disability category to a different age or disability category up to fifteen percent (15%) of the funds initially allocated to the age or disability category from which funds are being transferred. Prior to the transfer, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall verify that the transfer meets applicable federal requirements. Area authorities and county programs shall:

(1) Publicly document that they have addressed the service needs of the category from which the funds are being transferred before any transfer may occur, and

(2) Submit the required documentation to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Fiscal Research Division within 15 days of making the transfer.

SECTION 10.25.(b) This section expires July 1, 2007.

AREA AUTHORITY AND COUNTY PROGRAM CRISIS REGIONS

SECTION 10.26.(a) Using funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and allocated to area authorities and county programs for this purpose, area authorities and county programs shall organize themselves into no more than 21 crisis regions based upon the existing Geriatric Specialty team configurations or other approved regions. These funds shall be allocated to each area authority or county programs on a per capita basis. The funds may be used for operational start-up, capital, or subsidies related to developing a continuum of crisis services. No more than three percent (3%) may be spent for administrative costs. The area authorities and county program within a crisis region shall work together to identify gaps in their ability to provide a continuum of crisis services for all consumers and use the funds allocated to them to develop and implement a plan to address those needs. At a minimum, the plan must address the development over time of the following components: 24-hour crisis telephone lines, walk-in crisis services, mobile crisis outreach, crisis respite/residential services, crisis stabilization units, 23-hour beds, facility-based crisis, in-patient crisis and transportation. Options for voluntary admissions to a secured facility must include at least one service appropriate to address the mental health, developmental disability, and substance abuse needs of adults, and the mental health, developmental disability, and substance abuse needs of children. Options for involuntary commitment to a secured facility must include at least one option in addition to admission to a State facility.

If all area authorities and county programs in a crisis region determine that a facility-based crisis center is needed and sustainable on a long-term basis, the crisis region shall attempt to secure those services through a community hospital or other community facility first. If all the area authorities and county programs in the crisis region determine the region's crisis needs are being met, the area authorities and county programs may use the funds to meet local crisis service needs.

SECTION 10.26.(b) Of the funds appropriated in this act for consultant services to aid local management entities and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of two hundred twenty-five thousand dollars ($225,000) shall be used for consulting services engaged pursuant to this subsection. Each area authority and county program and each crisis region shall utilize the technical assistance of a consultant under contract with the Division to develop and implement its crisis services plan. The consultant shall assist area authorities and county programs and crisis regions to identify local and regional gaps in crisis services, identify options for providing services, implement new services, and maintain transparency and accountability for the use of funds. The crisis region or area authorities and county programs shall submit their crisis services plan to the consultant and to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Division) for review and public comment. The crisis regions and area authorities and county programs shall consider the comments prior to submitting a final plan for implementation. Upon submission of a final plan to DHHS, each crisis region, area authority, and county program will receive implementation funds. Funds not expended during the 2006-2007 fiscal year shall not revert.

Area authorities and county programs and crisis regions shall report monthly to the consultant and to the Division regarding the use of the funds, whether there has been a reduction in the use of State psychiatric hospitals for acute admissions, and remaining gaps in local and regional crisis services. The consultant shall report regularly to the General Assembly, the Fiscal Research Division, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services regarding each crisis region's and area authorities' and county programs' proposed and actual use of the funds.

EXTEND SUNSET FOR FIRST COMMITMENT PILOT PROGRAM

SECTION 10.27. S.L. 2003-178 reads as rewritten:

"**SECTION 1.** The Secretary of Health and Human Services may, upon request of a phase-one local management entity, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

(1) The Secretary has received a request from a phase-one local management entity to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the local management entity shall be submitted as part of the entity's local business plan and shall specifically describe:

a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

b. How the waiver will enable the local management entity to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

(2) The Secretary shall review the request and may approve it upon finding that:

a. The request meets the requirements of this section.

b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services on or before July 1, 2006.

(4) The waiver granted by the Secretary under this section shall be in effect ~~for a period not to exceed three years, or the period for which the requesting local management entity's business plan is approved, whichever is shorter.~~until October 1, 2007.

(5) The Secretary may grant a waiver under this section to up to five local management entities that have been designated as phase-one entities as of July 1, 2003.

(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.

(8) The local management entity shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary.

SECTION 2. This act becomes effective July 1, 2003, and expires ~~July 1, 2006.~~October 1, 2007."

CHANGES TO THE STATE PLAN FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES

SECTION 10.28.(a) G.S. 122C-102 reads as rewritten:

"§ 122C-102. State Plan for Mental Health, Developmental Disabilities, and Substance Abuse ~~Services.~~Services; system performance measures.

(a) Purpose of State Plan. – The Department shall develop and implement a State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services. The purpose of the State Plan is to provide a strategic template regarding how State and local resources shall be organized and used to provide services. The State Plan shall be issued every three years beginning July 1, 2007. It shall identify specific goals to be achieved by the Department, area authorities, and county programs over a three-year period of time and benchmarks for determining whether progress is being made towards those goals. It shall also identify data that will be used to measure progress towards the specified goals. In order to increase the ability of the State, area authorities, county programs, private providers, and consumers to successfully implement the goals of the State Plan, the Department shall not adopt or implement policies that are inconsistent with the State Plan without first consulting with the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(b) Content of State Plan. – The State Plan shall include the following:

(1) Vision and mission of the State Mental Health, Developmental Disabilities, and Substance Abuse Services system.

~~(2) Organizational structure of the Department and the divisions of the Department responsible for managing and monitoring mental health, developmental disabilities, and substance abuse services.~~

(3) Protection of client rights and consumer involvement in planning and management of system services.

(4) Provision of services to targeted populations, including criteria for identifying targeted populations.

(5) Compliance with federal mandates in establishing service priorities in mental health, developmental disabilities, and substance abuse.

(6) Description of the core services that are available to all individuals in order to improve consumer access to mental health, developmental disabilities, and substance abuse services at the local level.

(7) Service standards for the mental health, developmental disabilities, and substance abuse services system.

(8) Implementation of the uniform portal process.

(9) Strategies and schedules for implementing the service plan, including consultation on Medicaid policy with area and county programs, qualified providers, and others as designated by the Secretary, intersystem collaboration, promotion of best practices, technical assistance, outcome-based monitoring, and evaluation.

(10) A plan for coordination of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services with the Medicaid State Plan, and NC Health Choice.

(11) A business plan to demonstrate efficient and effective resource management of the mental health, developmental disabilities, and substance abuse services system, including strategies for accountability for non-Medicaid and Medicaid services.

(12) Strategies and schedules for implementing a phased in plan to eliminate disparities in the allocation of State funding across county programs and area authorities by January 1, 2007, including methods to identify service gaps and to ensure equitable use of State funds to fill those gaps among all counties.

(c) State Performance Measures. – The State Plan shall also include a mechanism for measuring the State's progress towards increased performance on the following matters: access to services, consumer-focused outcomes, individualized planning and supports, promotion of best practices, quality management systems, system efficiency and effectiveness, and prevention and early intervention. Beginning October 1, 2006,

and every six months thereafter, the Secretary shall report to the General Assembly and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on the State's progress in these performance areas."

SECTION 10.28.(b) The North Carolina Department of Health and Human Services (DHHS) shall review all State Plans for Mental Health, Developmental Disabilities, and Substance Abuse Services, implemented after July 1, 2001, and before the effective date of this act and produce a single document that contains a cumulative statement of all still applicable provisions of those Plans. This cumulative document shall constitute the State Plan until July 1, 2007.

DHHS and the Secretary shall also identify those provisions in G.S. 122C-112.1, prior State Plans, and directives or communications by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services that must be adopted as administrative rules in order to be enforceable and undertake to adopt those rules.

SECTION 10.28.(c) Independent consultants hired by the Department from funds appropriated in this act for this purpose shall undertake the following tasks:

(1) Assist DHHS with the strategic planning necessary to develop the revised State Plan as required under G.S. 122C-102. The State Plan shall be coordinated with local and regional crisis service plans by area authorities and county programs.

(2) Study and make recommendations to increase the capacity of DHHS to implement system reform successfully and in a manner that maintains strong management functions by area authorities and county programs at the local level.

(3) Assist the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to work with area authorities and county programs to:

a. Develop and implement five to ten critical performance indicators to be used to hold area authorities and county programs accountable for managing the mental health, developmental disabilities, and substance abuse services system. The performance system indicators shall be implemented no later than six months after the consultant's contract is awarded and in no event later than July 1, 2007.

b. Standardize the utilization management functions for Medicaid and non-Medicaid services and for the review and approval of person-centered plans.

c. Develop area authorities' and county programs' expertise to assume utilization management for Medicaid services. The goal shall be to have a portion of the area authorities and county programs assume that function beginning July 1, 2007, and the remainder to assume the function no later than July 1, 2009.

d. Implement other uniform procedures for the management functions of area authorities and county programs.

(4) Provide technical assistance and oversight to private service providers, area authorities, and county programs to ensure that best practices and new services are being delivered with fidelity to the service definition model.

(5) Provide ongoing and focused technical assistance to area authorities and county programs in the implementation of their administrative and management functions and the establishment and operation of community-based programs. The Secretary shall include in the State Plan a mechanism for monitoring the Department's success in

implementing this duty and the progress of area authorities and county programs in achieving these functions.

(6) Assist the Division with implementing standard forms, contracts, processes, and procedures to be used by all area authorities and county programs with other public and private service providers. These processes and procedures shall include standardized denial codes and a standard policy regarding the coordination of benefits. The independent consultant shall consult with area authorities and county programs regarding the development of these forms, contracts, processes, and procedures. Any document or process developed under this subdivision shall place an obligation upon providers to transmit to area authorities and county programs timely client information and outcome data. The independent consultant shall also recommend language regarding what constitutes a clean claim for purposes of billing. When implementing this subdivision, the independent consultant shall balance the need for area authorities and county programs to exercise discretion in the discharge of their management responsibilities with the need of private service providers for a uniform system of doing business with public entities. The independent consultant shall also (i) identify other areas of standardization that may be implemented without undermining the authority of area authorities and county programs, and (ii) identify and eliminate processes and procedures that are duplicative or result in unnecessary paperwork.

FACILITY LICENSURE REQUIREMENTS FOR OUTPATIENT SUBSTANCE ABUSE SERVICES CONSISTENT WITH FACILITY LICENSURE REQUIREMENTS FOR OUTPATIENT MENTAL HEALTH AND DEVELOPMENTAL DISABILITY SERVICES

SECTION 10.29. G.S. 122C-3(14) reads as rewritten:

"**§ 122C-3. Definitions.**

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

...

(14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:

a. An "area facility", which is a facility that is operated by or under contract with the area authority or county program. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A "licensable facility", which is a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. ~~When the services offered are provided to individuals who are mentally ill or developmentally disabled, these~~ These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. ~~When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient~~

~~services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more.~~ Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;

e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;

f. A "State facility", which is a facility that is operated by the Secretary;

g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers."

INDEDPENDENT- AND SUPPORTIVE-LIVING APARTMENTS INITIATIVE

SECTION 10.30. The independent and supportive living apartments for persons with disabilities constructed from funds appropriated in this act for that purpose shall be affordable to persons with incomes at the Supplemental Security Income (SSI) level. If the North Carolina Housing Finance Agency is able to finance the apartments for less than the amount appropriated under this section, any remaining funds, as well as any interest earned on the amount appropriated, may be used to finance additional apartments, group homes, and transitional housing for individuals with disabilities.

LME FINANCIAL REPORTS TO COUNTY REVIEWED BY COUNTY FINANCE OFFICERS

SECTION 10.31.(a) G.S. 122C-117(c) reads as rewritten:

"(c) Within 30 days of the end of each quarter of the fiscal year, the area director and finance officer of the area authority shall provide to each member of the board of county commissioners the quarterly report of the area authority. The quarterly report shall also be presented to the county finance officer for review and comment. The clerk to the board of commissioners shall notify the area director and finance officer if it has not received the quarterly report required by this subsection.This information shall be presented in a format prescribed by the county. At least twice a year, this information shall be presented in person and shall be read into the minutes of the meeting at which it is presented. In addition, the area director or finance officer of the area authority shall provide to the board of county commissioners ad hoc reports as requested by the board of county commissioners."

SECTION 10.31.(b) Article 23 of Chapter 153A of the General Statutes is amended by adding the following new section to read:

"**§ 153A-453. Quarterly reports of Mental Health, Developmental Disabilities, and Substance Abuse Services area authority or county program.**

Quarterly reports by the area director and finance officer of Mental Health, Developmental Disabilities, and Substance Abuse Services area authorities or county programs shall be submitted to the county finance officer as provided under G.S. 122C-117(c)."

LOCAL MANAGEMENT ENTITY ADMINISTRATIVE FUNCTIONS

SECTION 10.32. The Department of Health and Human Services shall recalculate local management entity (LME) systems management allocations for fiscal year 2006-2007 to include funds for each LME to implement 24-hour, seven days a week screening, triage, and referral, and the review and approval of all person-centered plans. The Department shall allocate funds appropriated in this act for this purpose to LMEs to implement the functions described in this section.

PORTION OF PROCEEDS FROM ALCOHOL EXCISE TAX DEPOSITED TO TRUST FUND FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES AND BRIDGE FUNDING NEEDS

SECTION 10.33.(a) Part 4 of Article 2C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-113.82A. Distribution to the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs.**

After setting aside funds for the distributions required by G.S. 105-113.81A and G.S. 105-113.82, the Secretary shall on a monthly basis distribute to the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs, established under G.S. 143-15.3D, five percent (5%) of the net proceeds of the amount of excise taxes collected under this Article on malt beverages, unfortified wine, fortified wine, and spirituous liquor."

SECTION 10.33.(b) This section becomes effective July 1, 2006, and applies to taxes collected on or after that date.

CHILD CARE ALLOCATION FORMULA

SECTION 10.34. Section 10.61(c) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.61.(c)** Notwithstanding subsection (a) of this section, the Department of Health and Human Services shall allocate up to twenty-two million dollars ($22,000,000) in federal block grant funds and State funds appropriated for fiscal years ~~2004-2005~~2005-2006 and ~~2005-2006~~2006-2007 for child care services. These funds shall be allocated to prevent termination of child care services."

CHILD CARE SUBSIDY RATES

SECTION 10.35. Section 10.62(e) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.62.(e)** A market rate shall be calculated for child care centers and homes at each rated license level for each county and for each age group or age category of enrollees and shall be representative of fees charged to ~~unsubsidized privately paying~~ parents for each age group of enrollees within the county. The Division of Child Development shall also calculate a statewide rate and regional market rates for each rated license level for each age category."

PART XI. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CONSERVATION RESERVE ENHANCEMENT PROGRAM

SECTION 11.1. Funds appropriated to the Department of Environment and Natural Resources for the 2006-2007 fiscal year for the Division of Soil and Water Conservation for the Conservation Reserve Enhancement Program for acquiring conservation easements and leases or for contracts under the Program shall not revert, but shall remain available for these purposes.

AQUARIUM FUNDS

SECTION 11.2. Of the funds appropriated in this act to the Department of Environment and Natural Resources, the sum of two million five hundred thousand

dollars ($2,500,000) for the 2006-2007 fiscal year shall be for the Division of Aquariums for the operations of the Division of Aquariums of the Department of Environment and Natural Resources. These funds are in addition to the funding the Division of Aquariums receives from departmental receipts, and the Department of Environment and Natural Resources may use these funds to shift funding for operations of the Division from receipt-support to General Fund support.

GRASSROOTS SCIENCE PROGRAM

SECTION 11.3. Section 12.5 of S.L. 2005-276, as amended by Section 23 of S.L. 2005-345, reads as rewritten:

"**SECTION 12.5.(a)** Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Grassroots Science Program, the sum of three million one hundred ninety-seven thousand seven hundred sixty-two dollars ($3,197,762) for the 2005-2006 fiscal year and the sum of three million eight hundred sixty-three thousand seven hundred dollars ($3,863,700) for the 2006-2007 fiscal year is allocated as grants-in-aid ~~for each fiscal year~~ as follows:

	2005-2006	2006-2007
Aurora Fossil Museum	$59,057	$62,593
Cape Fear Museum	$161,007	$195,926
Carolina Raptor Center	$112,174	$126,878
Catawba Science Center	$133,429	$181,452
The Children's Museum of Iredell County		$65,424
Colburn ~~Gem and Mineral Museum, Inc.~~Earth Science Museum, Inc.	$74,545	$82,856
Discovery Place	$662,865	$845,882
Eastern NC Regional Science Center	$50,000	$51,094
~~Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.~~	~~$50,000~~	
Fascinate-U	$80,742	$92,389
Granville County Museum Commission, Inc.–Harris Gallery	$56,422	$58,079
Greensboro Children's Museum	$135,076	$142,558
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	$134,499	$194,079
Highlands Nature Center	$79,268	$83,826
Imagination Station	$86,034	$95,505
Kidsenses	$50,000	$92,676
Museum of Coastal Carolina	$74,192	$80,207
The Natural Science Center of ~~Greensboro~~Greensboro, Inc.	$186,354	$218,069
North Carolina Museum of Life and Science	$379,826	$432,752
Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.	$50,000	$50,117
Rocky Mount Children's Museum	$72,254	$74,928
Schiele Museum of Natural History and Planetarium, Inc.	$229,547	$264,353
Sci Works Science Center and Environmental Park of Forsyth County	$146,499	$177,886
Western North Carolina Nature Center	$112,879	$123,079
Wilmington Children's Museum	$71,093	$71,093
Total	$3,197,762	$3,863,700

SECTION 12.5.(b) No later than March 1, 2006, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The operating budget for the 2004-2005 fiscal year.
(2) The operating budget for the 2005-2006 fiscal year.
(3) The total attendance at the museum during the 2005 calendar year.

SECTION 12.5.(c) No later than March 1, 2007, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The operating budget for the 2005-2006 fiscal year.
(2) The operating budget for the 2006-2007 fiscal year.
(3) The total attendance at the museum during the 2006 calendar year."

MORATORIUM IMPOSED ON NEW LANDFILLS

SECTION 11.4.(a) Definitions. – The definitions set forth in G.S. 130A-290 apply throughout this section.

SECTION 11.4.(b) Moratorium Established. – There is hereby established a moratorium on consideration of applications for a permit and on the issuance of permits for new landfills in the State. The purposes of this moratorium are to allow the State to study solid waste disposal issues in order to protect public health and the environment. The Department of Environment and Natural Resources shall not consider a permit application nor issue a permit for a new landfill for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste for a period beginning on 1 July 2006 and ending on 1 January 2008.

SECTION 11.4.(c) Exceptions. – The moratorium established by subsection (b) of this section shall not prohibit consideration of an application for or issuance of:

(1) A modification of a permit for an existing permitted landfill.
(2) A permit to expand an existing permitted landfill if the proposed facility boundary will provide no more than five years of disposal capacity.
(3) A modification of a permit to reflect a transfer of ownership of an existing permitted landfill.
(4) A modification of a permit to provide for a substantial change to the waste stream described in a permit in effect as of 1 May 2006 for an existing landfill.
(5) A permit for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.
(6) A permit for a sanitary landfill determined to be necessary by the Secretary in order to respond to an imminent hazard to public health or a natural disaster.

SECTION 11.4.(d) Study. – The Environmental Review Commission, with the assistance of the Division of Waste Management of the Department of Environment and Natural Resources, shall study issues related to solid waste. The Commission shall specifically study measures concerning:

(1) Financial responsibility requirements for solid waste landfills, including the application of requirements to limited liability companies and other business entity structures of applicants seeking solid waste landfill permits.
(2) Application of franchise requirements and local government approval for solid waste landfill permits, including adequacy of public notice and comment, community studies, and site designations prior to local government approval.

(3) Siting, design, and operational requirements for landfills for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste that are proposed in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas.
(4) Traffic considerations for proposed landfills.
(5) Regulatory oversight and staffing for permitting and compliance of solid waste landfills, and inspection of waste containers on barges, railways, and trucks.
(6) Compliance with statutory prohibitions on disposal of certain types of solid waste and measures to prevent disposal of hazardous waste in solid waste and construction and demolition landfills.
(7) Ways to reduce the amount of solid waste disposed of within North Carolina landfills, including statewide tipping fees, bans on the disposal of certain types of waste in landfills, more aggressive recycling requirements, and enhanced regulatory requirements for landfills and other solid waste management facilities.

SECTION 11.4.(e) Subcommittee. – In order to facilitate the conduct of this study, the Cochairs of the Environmental Review Commission may establish a subcommittee of the Commission. The subcommittee of the Commission may include nonlegislative members who have special knowledge, interest, or expertise in various aspects of solid waste management, appointed in consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 11.4.(f) Report. – The Commission shall report its findings, together with any recommended legislation, to the 2007 Regular Session of the 2007 General Assembly upon its convening.

SECTION 11.4.(g) This section is effective when this act becomes law.

PART XII. DEPARTMENT OF COMMERCE

EMPLOYMENT SECURITY FUNDS

SECTION 12.1. Section 13.4 of S.L. 2005-276 reads as rewritten:

"**SECTION 13.4.(a)** Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve shall not exceed the total administrative costs paid in fiscal year ~~2004-2005.~~2005-2006.

SECTION 13.4.(b) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of six million three hundred thousand dollars ($6,300,000) for the ~~2005-2006~~2006-2007 fiscal year to be used for the following purposes:

(1) Six million dollars ($6,000,000) for the operation and support of local offices.
(2) Two hundred thousand dollars ($200,000) for the State Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs.
(3) One hundred thousand dollars ($100,000) to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs."

ONE NORTH CAROLINA FUND

SECTION 12.2. Section 13.6(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 13.6.(a)** Of the funds appropriated in this act to the One North Carolina Fund, the Department of Commerce may use up to three hundred thousand dollars ($300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs in the ~~2005-2006~~2006-2007 fiscal year."

EXTEND E-NC AUTHORITY SUNSET/E-NC AUTHORITY FUNDS AND REPORTING REQUIREMENTS

SECTION 12.3.(a) Section 4 of S.L. 2003-425 reads as rewritten:

"**SECTION 4.** Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. The e-NC Authority created in this act is dissolved effective ~~December 31, 2006.~~ December 31, 2008. This act is repealed effective ~~December 31, 2006.~~December 31, 2008. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective ~~December 31, 2006.~~ December 31, 2008."

SECTION 12.3.(b) Section 13.12 of S.L. 2005-276 reads as rewritten:

"**SECTION 13.12.(a)** Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of twenty million dollars ($20,000,000) for the 2005-2006 fiscal year and the sum of ~~twenty million dollars ($20,000,000)~~nineteen million five hundred thousand dollars ($19,500,000) for the 2006-2007 fiscal year shall be allocated as follows:

(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fifteen million dollars ($15,000,000) of the funds appropriated in this act for each year of the biennium must be used to provide grants under this Program.

(2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

(3) To provide economic development research and demonstration grants.

...

SECTION 13.12.(f) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., and allocated in subsection (a) of this section, the sum of five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year ~~and the sum of five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year~~ shall be allocated to the e-NC Authority.

The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

The e-NC Authority shall report to the 2006 General Assembly on the following:

(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access the high-speed Internet.

(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in

these communities and to use the Internet to enhance the productivity of their businesses.

The e-NC Authority shall, by January 31, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities."

SECTION 12.3.(c) Of the funds appropriated in this act to the Department of Commerce, the sum of five hundred thousand dollars ($500,000) shall be allocated to the e-NC Authority.

The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

The e-NC Authority shall report to the 2007 General Assembly on the following:

(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access high-speed Internet.

(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

The e-NC Authority shall, by September 30, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities.

COUNCIL OF GOVERNMENT FUNDS/ELECTRONIC TRANSFER

SECTION 12.4. Section 13.2(c) of S.L. 2005-276 reads as rewritten:

"**SECTION 13.2.(c)** Funds appropriated by this section shall be paid by electronic transfer in two equal installments, the first no later than ~~September 1, 2005,~~September 1, 2006, and the second subsequent to acceptable submission of the annual report due to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by ~~January 15, 2006,~~January 15, 2007, as specified in subdivision (e)(2) of this section."

ADVANCED VEHICLE RESEARCH CENTER REPORTING REQUIREMENTS/FUNDS SHALL NOT REVERT

SECTION 12.5.(a) Section 13.8A(d) of S.L. 2005-276 reads as rewritten:

"**SECTION 13.8A.(d)** By ~~December 31, 2005,~~December 31, 2006, and ~~April 30, 2006,~~April 30, 2007, the Center shall report to the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division the following information: (i) fiscal year ~~2005-2006~~2006-2007 projects, objectives, and accomplishments; and (ii) fiscal year ~~2005-2006~~2006-2007 itemized expenditures and fund sources. The ~~April 30, 2006,~~April 30, 2007, report shall also contain the following: (i) fiscal year ~~2006-2007~~2007-2008 planned projects, objectives, and accomplishments; and (ii) fiscal year ~~2006-2007~~2007-2008 estimated expenditures and fund sources."

SECTION 12.5.(b) Funds appropriated to the Advanced Vehicle Research Center Reserve for the 2005-2006 fiscal year for the Advanced Vehicle Research Center of North Carolina, Inc., that are unexpended and unencumbered as of June 30, 2006, shall not revert to the General Fund on June 30, 2006, but shall remain available in the Reserve.

SECTION 12.5.(c) Subsection (b) of this section becomes effective June 30, 2006.

WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS

SECTION 12.6. Section 13.1 of S.L. 2005-276 reads as rewritten:

"**SECTION 13.1.(a)** Funds appropriated to the Department of Commerce for the ~~2004-2005~~2005-2006 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of ~~June 30, 2005,~~June 30, 2006, shall not revert to the General Fund on ~~June 30, 2005,~~June 30, 2006, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes.

SECTION 13.1.(b) Funds appropriated to the Department of Commerce for the ~~2004-2005~~2005-2006 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of ~~June 30, 2005,~~June 30, 2006, shall not revert to the General Fund on ~~June 30, 2005.~~June 30, 2006.

SECTION 13.1.(c) This section becomes effective ~~June 30, 2005.~~June 30, 2006."

DEPARTMENT OF COMMERCE/REPORT ON AGRIBUSINESS FUNDS

SECTION 12.7.(a) The Department of Commerce (Department) shall report on all funds available for companies or organizations designed to promote agribusiness in North Carolina. The report shall include the following: (i) information on all Department economic incentive funds, including Commerce State Aid funds; and (ii) information on the number of agribusinesses and organizations that applied for State funds through the Department or other organizations, including the number of requests for funds, the amount of funds requested, and whether the requests were awarded or denied.

SECTION 12.7.(b) In the report, the Department shall make recommendations for the development of economic incentive programs designed specifically for agribusinesses. The report shall include a plan to implement the programs recommended and the estimated cost of the programs. In determining the estimated cost of the programs, the Department shall consider and include all sources of funding, including federal, State, local, and grant funds.

SECTION 12.7.(c) The Department shall collaborate with the Department of Agriculture and Consumer Services, the Rural Economic Development Center, Inc., and the University System, in preparing the report.

SECTION 12.7.(d) The Department shall submit the report to the House Appropriations Committee on Environment, Health, and Natural Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than May 1, 2007.

PART XIII. DEPARTMENT OF LABOR

REPEAL FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS

SECTION 13.1. G.S. 74-24.16(d) is repealed.

PART XIV. JUDICIAL DEPARTMENT

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 14.1. Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2006, for the purchase or repair of office or information technology equipment during the 2006-2007 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

GRANT FUNDS

SECTION 14.2. The Judicial Department may use up to the sum of one million two hundred fifty thousand dollars ($1,250,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

PROVIDE ADDITIONAL ASSISTANT DISTRICT ATTORNEYS

SECTION 14.3.(a) G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	~~10~~ 11
2	Beaufort, Hyde, Martin, Tyrrell, Washington	~~6~~ 7
3A	Pitt	~~9~~ 11
3B	Carteret, Craven, Pamlico	~~10~~ 11
4	Duplin, Jones, Onslow, Sampson	~~14~~ 16
5	New Hanover, Pender	~~14~~ 16
6A	Halifax	4 5
6B	Bertie, Hertford, Northampton	4 5
7	Edgecombe, Nash, Wilson	~~16~~ 18
8	Greene, Lenoir, Wayne	~~11~~ 13
9	Franklin, Granville, Vance, Warren	~~11~~ 12
9A	Person, Caswell	4 5
10	Wake	~~31~~ 38
11	Harnett, Johnston, Lee	~~14~~ 16
12	Cumberland	~~18~~ 21
13	Bladen, Brunswick, Columbus	~~11~~ 12
14	Durham	~~13~~ 15
15A	Alamance	~~8~~ 10
15B	Orange, Chatham	~~7~~ 9
16A	Scotland, Hoke	~~5~~ 6
16B	Robeson	~~10~~ 13
17A	Rockingham	~~5~~ 6
17B	Stokes, Surry	~~5~~ 7
18	Guilford	~~27~~ 30
19A	Cabarrus	~~6~~ 8
19B	Montgomery, Moore, Randolph	~~11~~ 12
19C	Rowan	~~5~~ 7
20A	Anson, Richmond, Stanly	~~8~~ 10
20B	Union	~~7~~ 8
21	Forsyth	~~17~~ 20
22	Alexander, Davidson, Davie,	~~16~~ 20

	Iredell	
23	Alleghany, Ashe, Wilkes, Yadkin	~~5~~ 7
24	Avery, Madison, Mitchell, Watauga, Yancey	4 6
25	Burke, Caldwell, Catawba	~~15~~ 18
26	Mecklenburg	~~36~~ 49
27A	Gaston	~~12~~ 14
27B	Cleveland, Lincoln	~~9~~ 10
28	Buncombe	~~11~~ 13
29A	McDowell, Rutherford	~~5~~ 6
29B	Henderson, Polk, Transylvania	~~6~~ 7
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	~~9~~ 11

SECTION 14.3.(b) This section becomes effective January 1, 2007.

ADDITIONAL DISTRICT COURT JUDGESHIPS

SECTION 14.4.(a) G.S. 7A-133(a) reads as rewritten:

"(a) Each district court district shall have the numbers of judges as set forth in the following table:

District	Judges	County
1	5	Camden
		Chowan
		Currituck
		Dare
		Gates
		Pasquotank
		Perquimans
2	4	Martin
		Beaufort
		Tyrrell
		Hyde
		Washington
3A	~~5~~ 6	Pitt
3B	~~5~~ 6	Craven
		Pamlico
		Carteret
4	8	Sampson
		Duplin
		Jones
		Onslow
5	8	New Hanover
		Pender
6A	~~2~~ 3	Halifax
6B	3	Northampton
		Bertie
		Hertford
7	7	Nash
		Edgecombe
		Wilson
8	6	Wayne
		Greene
		Lenoir

9	4	Granville (part of Vance see subsection (b)) Franklin
9A	2	Person Caswell
9B	2	Warren (part of Vance see subsection (b))
10	~~15~~ 17	Wake
11	8	Harnett Johnston Lee
12	9	Cumberland
13	6	Bladen Brunswick Columbus
14	~~6~~ 7	Durham
15A	4	Alamance
15B	4 5	Orange Chatham
16A	3	Scotland Hoke
16B	5	Robeson
17A	2	Rockingham
17B	4	Stokes Surry
18	~~12~~ 13	Guilford
19A	4	Cabarrus
19B	~~6~~ 7	Montgomery Moore Randolph
19C	4 5	Rowan
20A	4	Stanly Anson Richmond
20B	3	Union
21	9	Forsyth
22	9	Alexander Davidson Davie Iredell
23	4	Alleghany Ashe Wilkes Yadkin
24	4	Avery Madison Mitchell Watauga Yancey
25	~~8~~ 9	Burke Caldwell Catawba
26	~~17~~ 18	Mecklenburg

27A	~~6~~ 7	Gaston
27B	4 ~~5~~	Cleveland
		Lincoln
28	~~6~~ 7	Buncombe
29A	3	McDowell
		Rutherford
29B	4	Henderson
		Polk
		Transylvania
30	~~5~~ 6	Cherokee
		Clay
		Graham
		Haywood
		Jackson
		Macon
		Swain."

SECTION 14.4.(b) The Governor shall appoint the additional district court judges for Districts 3A, 3B, 6A, 10, 14, 15B, 18, 19B, 19C, 25, 26, 27A, 27B, 28, and 30 authorized by this act, and those judges' successors shall be elected in the 2008 election for four-year terms commencing on January 1, 2009.

SECTION 14.4.(c) This section becomes effective January 15, 2007, except as to any district court district subject to Section 5 of the Voting Rights Act of 1965, it becomes effective January 15, 2007 or the date upon which subsection (a) of this section is approved under Section 5 of the Voting Rights Act of 1965, whichever is later.

PROVIDE ADDITIONAL MAGISTRATES/ELIMINATE MAXIMUM ALLOCATION OF MAGISTRATES

SECTION 14.5. G.S. 7A-133(c) reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates Min.	~~Max.~~	Additional Seats of Court
Camden	1	~~3~~	
Chowan	2	~~3~~	
Currituck	1	4	
Dare	3	~~8~~	
Gates	2	~~3~~	
Pasquotank	3	~~5~~	
Perquimans	2	4	
Martin	4	~~8~~	
Beaufort	4	~~8~~	
Tyrrell	1	~~3~~	
Hyde	2	4	
Washington	3	4	
Pitt	10	~~12~~	Farmville
			Ayden
Craven	7	~~10~~	Havelock
Pamlico	2	4	
Carteret	~~5~~ 6	~~8~~	
Sampson	6	~~8~~	
Duplin	8	~~11~~	
Jones	2	~~3~~	
Onslow	8	~~14~~	

New Hanover	6	~~11~~	
Pender	4	~~6~~	
Halifax	9	~~14~~	Roanoke Rapids, Scotland Neck
Northampton	5	~~7~~	
Bertie	4	~~6~~	
Hertford	5	~~7~~	
Nash	7	~~10~~	Rocky Mount
Edgecombe	4	~~7~~	Rocky Mount
Wilson	4	~~7~~	
Wayne	5	~~12~~	Mount Olive
Greene	~~2~~ 3	4	
Lenoir	4	~~10~~	La Grange
Granville	3	~~7~~	
Vance	3	~~6~~	
Warren	3	~~5~~	
Franklin	3	~~7~~	
Person	3	4	
Caswell	2	~~5~~	
Wake	12	~~21~~	Apex, Wendell, Fuquay-Varina, Wake Forest
Harnett	7	~~11~~	Dunn
Johnston	10	~~12~~	Benson, Clayton, Selma
Lee	4	~~6~~	
Cumberland	10	~~19~~	
Bladen	4	~~6~~	
Brunswick	4	~~9~~	
Columbus	6	~~10~~	Tabor City
Durham	8	~~13~~	
Alamance	~~7~~ 8	~~11~~	Burlington
Orange	4	~~11~~	Chapel Hill
Chatham	3	~~9~~	Siler City
Scotland	3	~~5~~	
Hoke	4	~~5~~	
Robeson	~~8~~ 9	~~16~~	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
Rockingham	4	~~9~~	Reidsville, Eden, Madison
Stokes	2	~~5~~	
Surry	5	~~9~~	Mt. Airy
Guilford	20	~~27~~	High Point
Cabarrus	5	~~9~~	Kannapolis
Montgomery	~~2~~ 3	4	
Randolph	5	~~10~~	Liberty

Rowan	5	~~10~~	
Stanly	5	~~6~~	
Union	4	~~7~~	
Anson	4	~~6~~	
Richmond	5	~~6~~	Hamlet
Moore	5	~~8~~	Southern Pines
Forsyth	3	~~15~~	Kernersville
Alexander	2	4	
Davidson	7	~~10~~	Thomasville
Davie	2	4	
Iredell	4	~~9~~	Mooresville
Alleghany	1	~~2~~	
Ashe	3	4	
Wilkes	4	~~6~~	
Yadkin	3	~~5~~	
Avery	3	~~5~~	
Madison	4	~~5~~	
Mitchell	3	4	
Watauga	4	~~6~~	
Yancey	2	4	
Burke	4	~~7~~	
Caldwell	4	~~7~~	
Catawba	6	~~10~~	Hickory
Mecklenburg	15	~~28~~	
Gaston	~~11~~ 12	~~22~~	
Cleveland	5	~~8~~	
Lincoln	4	~~7~~	
Buncombe	6	~~15~~	
Henderson	4	~~7~~	
McDowell	3	~~6~~	
Polk	3	4	
Rutherford	6	~~8~~	
Transylvania	2	4	
Cherokee	3	4	
Clay	1	~~2~~	
Graham	2	~~3~~	
Haywood	5	~~7~~	Canton
Jackson	3	~~5~~	
Macon	3	~~5~~	
Swain	2	4."	

INCREASE THE PORTION OF THE GENERAL COURT OF JUSTICE COURT FEE USED FOR LEGAL SERVICES PROGRAMS

SECTION 14.6.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(4) For support of the General Court of Justice, the sum of eighty-five dollars and fifty cents ($85.50) in the district court, including cases before a magistrate, and the sum of ninety-two dollars and fifty cents ($92.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of ~~one dollar and five cents ($1.05)~~ two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five

cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 14.6.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice, the sum of seventy-nine dollars ($79.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional two hundred dollars ($200.00) shall be paid upon its assignment, and the sum of sixty-four dollars ($64.00) in the district court except that if the case is assigned to a magistrate the sum shall be fifty-three dollars ($53.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~one dollar and five cents ($1.05)~~ two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 14.6.(c) G.S. 7A-306(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice the sum of forty dollars ($40.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~one dollar and five cents ($1.05)~~ two dollars and five cents ($2.05) of each forty-dollar ($40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 14.6.(d) G.S. 7A-307(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice, the sum of forty dollars ($40.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~one dollar and five cents ($1.05)~~ two dollars and five cents ($2.05) of each forty-dollar ($40.00) General Court of Justice fee

collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 14.6.(e) This section becomes effective July 1, 2006, and applies to fees assessed or collected on or after that date.

COLLECTION OF OFFENDER FINES AND FEES ASSESSED BY THE GENERAL COURT OF JUSTICE

SECTION 14.7. Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-321. Collection of offender fines and fees assessed by the court.**

(a) The Judicial Department may, in lieu of payment by cash or check, accept payment by credit card, charge card, or debit card for the fines and fees owed to the Court by offenders. The Department may pay any negotiated discount, processing fee, transaction fee, or other charge imposed by a credit card, charge card, or debit card company, or by a third-party merchant bank, as a condition of contracting for the Department's acceptance of electronic payment. The Department may impose the fee or charge as a surcharge on the amount paid by the offender using electronic payment.

(b) In attempting to collect the fines and fees owed by offenders to the Judicial Department, the Department may:

(1) Refer an offender who owes the court for fines and fees to a reputable credit counseling agency for the purpose of assisting the offender in restructuring the debt, with the Department designated as the lead or primary creditor.

(2) Assess additional collection fees if an amount due remains unpaid after the time period allotted by the Department.

(3) Assign debt, in the form of fines and fees owed to the Department, to a collection agency after internal collection efforts have failed.

(4) Report the delinquency to agencies that assemble or evaluate credit information.

(5) Intercept tax refunds under Chapter 105A of the General Statutes, the Setoff Debt Collection Act."

JURY FEE WAIVER PROGRAM

SECTION 14.8.(a) G.S. 7A-312 reads as rewritten:

"**§ 7A-312. Uniform fees for jurors; meals.**

(a) A juror in the General Court of Justice including a petit juror, or a coroner's juror, but excluding a grand juror, shall receive twelve dollars ($12.00) per day, except that if any person serves as a juror for more than five days in any 24-month period, the juror shall receive thirty dollars ($30.00) per day for each day of service in excess of five days. A grand juror shall receive twelve dollars ($12.00) per day. However, any juror may waive payment of the per diem fees provided for in this section. A juror waiving the fee may designate that the fee be used for any of various services provided in that district, as designated by the senior resident superior court judge in accordance with the provisions of subsection (b) of this section. A juror required to remain overnight at the site of the trial shall be furnished adequate accommodations and subsistence. If required by the presiding judge to remain in a body during the trial of a case, meals shall be furnished the jurors during the period of sequestration. Jurors from out of the county summoned to sit on a special venire shall receive mileage at the same rate as State employees.

(b) The senior resident superior court judge in each district may provide jurors with a choice of various services in that district to which they may designate their waived juror fees. The services designated by the senior resident superior court judge shall be human services provided either by a government agency or a charitable nonprofit corporation and may include drug treatment court client services, courthouse self-help centers, and courthouse child care centers. The choice may also include the

Crime Victims Compensation Fund and designation to a fund for the establishment of a service not yet available in that district to be provided by a governmental agency or a charitable nonprofit corporation. If the senior resident superior court judge elects not to provide jurors with a choice of human services to designate their waived fees to, or if jurors elect not to designate the fees to a particular service, the waived fees shall represent cost savings to the Judicial Department."

SECTION 14.8.(b) This section becomes effective July 1, 2006, and applies to jury service that begins on or after that date.

ESTABLISH INTERMEDIATE DEFERRED PROSECUTION FOR THE DRUG TREATMENT COURT PROGRAM

SECTION 14.9.(a) Section 14.22 of S.L. 2005-276 is repealed.

SECTION 14.9.(b) G.S. 15A-1341(a2) reads as rewritten:

"(a2) Deferred Prosecution for Purpose of Drug Treatment Court Program. – A defendant eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes may be placed on probation if the court finds that prosecution has been deferred by the prosecutor, with the approval of the court, pursuant to a written agreement with the defendant, for the purpose of allowing the defendant to participate in and successfully complete the Drug Treatment Court Program. A defendant who would be eligible for deferred prosecution but for a prior criminal conviction may participate in the Drug Treatment Court Program by executing a local drug treatment court contract, by being placed on supervised probation, and by submitting to any of the following additional conditions the court may require:

(1) Special probation as defined in G.S. 15A-1351(a);
(2) Assignment to a residential program;
(3) House arrest with electronic monitoring;
(4) Intensive probation; or
(5) Assignment to a day-reporting center."

SECTION 14.9.(c) G.S. 7A-796 reads as rewritten:

"**§ 7A-796. Local drug treatment court management committee.**

Each judicial district choosing to establish a drug treatment court shall form a local drug treatment court management committee, which shall be comprised to assure representation appropriate to the type or types of drug treatment court operations to be conducted in the district and shall consist of persons appointed by the senior resident superior court judge with the concurrence of the chief district court judge and the district attorney for that district, chosen from the following list:

(1) A judge of the superior court;
(2) A judge of the district court;
(3) A district attorney or assistant district attorney;
(4) A public defender or assistant public defender in judicial districts served by a public defender;
(5) An attorney representing a county department of social services within the district;
(6) A representative of the guardian ad litem;
(7) A member of the private criminal defense bar;
(8) A member of the private bar who represents respondents in department of social services juvenile matters;
(9) A clerk of superior court;
(10) The trial court administrator in judicial districts served by a trial court administrator;
(11) The director or member of the child welfare services division of a county department of social services within the district;
(12) The chief juvenile court counselor for the district;
(13) A probation officer;
(14) A local law enforcement officer;

(15) A representative of the local school administrative unit;
(16) A representative of the local community college;
(17) A representative of the treatment providers;
(18) A representative of the area mental health program;
(19) The local program director provided for in G.S. 7A-798; and
(20) Any other persons selected by the local management committee.

The local drug treatment court management committee shall develop local guidelines and ~~procedures, not inconsistent with the State guidelines,~~ procedures that are necessary for the operation and evaluation of the local drug treatment ~~court.~~ courts in accordance with the National Drug Court Institute's "Ten Key Components" for drug treatment courts and in consultation with the Director of the Administrative Office of the Courts and the Drug Treatment Court Advisory Committee.

The senior resident superior court judge and the chief district court judge shall have hiring and appointment authority over drug treatment court personnel and over policy issues, and they shall consult with the local management committee concerning the local drug treatment court policies and procedures."

SECTION 14.9.(d) G.S. 7A-797 reads as rewritten:

"**§ 7A-797. Eligible population; drug treatment court ~~procedures.~~ procedures; funding.**

(a) The Director of the Administrative Office of the Courts, in conjunction with the State Drug Treatment Court Advisory ~~Committee,~~ Committee and local drug treatment court management committees, shall develop criteria for eligibility and other procedural and substantive guidelines for drug treatment court ~~operation.~~operation in accordance with the National Drug Court Institute's "Ten Key Components" for drug treatment courts.

(b) The amount of the allocation received in each judicial district for administration, case management, and treatment shall be proportionate to the percentage of clients served throughout the State unless agreement can be otherwise reached. The senior resident superior court judge, chief district court judge, and district attorney in consultation with the local management committee shall determine the appropriate distribution of the allocation received. Limitations imposed by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services on other public funds spent for substance abuse treatment shall not apply to treatment provided for Drug Treatment Court Programs."

PERMANENCY MEDIATION

SECTION 14.10.(a) Article 2 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-202. Permanency Mediation.**

(a) The Administrative Office of the Courts shall establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in cases under this Subchapter in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child; provided, the court may allow mediation to proceed without the participation of a parent whose identity is unknown, a party who was served and has not made an appearance, or a parent, guardian, or custodian who has not been served despite a diligent attempt to serve the person. Upon a finding of good cause, the court may allow mediation to proceed without the participation of a parent who is unable to participate due to incarceration, illness, or some other cause. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

(b) The Administrative Office of the Courts shall establish in phases a statewide Permanency Mediation Program consisting of local district programs to be established in all judicial districts of the State. The Director of the Administrative Office of the

Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district, such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate policies and regulations necessary and appropriate for the administration of the program. Any funds appropriated by the General Assembly for the establishment and maintenance of permanency mediation programs under this Article shall be administered by the Administrative Office of the Courts.

(c) Mediation proceedings shall be held in private and shall be confidential. Except as provided otherwise in this section, all verbal or written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court.

(d) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the General Statutes or G.S. 108A-102.

(e) Any agreement reached by the parties as a result of the mediation, whether referred to as a "placement agreement," "case plan," or some similar name, shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not to, the court shall incorporate the agreement in a court order, and the agreement shall become enforceable as a court order. If some or all of the issues referred to mediation are not resolved by mediation, the mediator shall report that fact to the court."

SECTION 14.10.(b) The Administrative Office of the Courts may use funds available in the 2006-2007 fiscal year to implement the provisions of this section.

COURT INTERPRETERS

SECTION 14.11.(a) G.S. 7A-314(f) reads as rewritten:

"(f) In ~~a criminal case when a person who~~ any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English ~~language is an indigent defendant, a witness for an indigent defendant, or a witness for the State~~ language, and the court appoints a foreign language interpreter to assist that ~~defendant or witness in the case,~~ party or witness, the reasonable fee for the interpreter's services, ~~as set by the court, are~~ is payable from funds appropriated to the ~~Administrative Office of the Courts.~~ Judicial Department. The appointment and payment shall be made in accordance with G.S. 7A-343(9b)."

SECTION 14.11.(b) G.S. 7A-343 is amended by adding a new subdivision to read:

"(9b) Prescribe, in consultation with the Office of Indigent Defense Services, policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so."

SECTION 14.11.(c) G.S. 7A-450(a) reads as rewritten:

"(a) An indigent person is a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding enumerated in this Subchapter. ~~An~~ A sign language interpreter is a necessary expense as defined in Chapter 8B of the General Statutes for a deaf person who is entitled to counsel under this subsection. A foreign language interpreter is a

necessary expense for a party entitled to counsel under this subsection who does not speak or understand the English language."

SECTION 14.11.(d) G.S. 8C-1, Evidence Rule 604, reads as rewritten:

"**Rule 604. Interpreters.**

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true ~~translation.~~interpretation. Interpreters provided under G.S. 7A-314(f) shall be appointed and compensated in accordance with G.S. 7A-343(9b)."

MONITORING OF COMMUNITY MEDIATION CENTERS

SECTION 14.12. G.S. 7A-38.6(a) reads as rewritten:

"(a) All community mediation centers currently receiving State funds shall report annually to the Mediation Network of North Carolina on the program's funding and activities, including:

(1) Types of dispute settlement services provided;
(2) Clients receiving each type of dispute settlement service;
(3) Number and type of referrals received, cases actually mediated (identified by docket number), cases resolved in mediation, and total clients served in the cases mediated;
(4) Total program funding and funding sources;
(5) Itemization of the use of funds, including operating expenses and personnel;
(6) Itemization of the use of State funds appropriated to the center;
(7) Level of volunteer activity; and
(8) Identification of future service demands and budget requirements.

The Mediation Network of North Carolina shall compile and summarize the information provided pursuant to this subsection and shall provide the information to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by February 1 of each year.

The Mediation Network of North Carolina shall also submit a copy of its report to the Administrative Office of the Courts. The receipt and review of this report by the Administrative Office of the Courts shall satisfy any program monitoring, evaluation, and contracting requirements imposed on the Administrative Office of the Courts by G.S. 143-6.2 and any rules adopted under that section."

COMMUNITY MEDIATION CENTER FUNDING

SECTION 14.13. G.S. 7A-38.6(e) reads as rewritten:

"(e) Each community mediation center receiving State funds for six or more years shall document that at least ~~fifty percent (50%)~~ twenty-five percent (25%) of total funding comes from non-State sources."

INDIGENT DEFENSE SERVICES/STATE MATCH FOR GRANTS

SECTION 14.14. The Office of Indigent Defense Services may use a sum up to fifty thousand dollars ($50,000) from funds available to provide the State matching funds needed to receive grant funds. Prior to using funds for this purpose, the Office shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS

SECTION 14.15. Section 14.11 of S.L. 2005-276 reads as rewritten:

"**SECTION 14.11.** The Judicial Department, Office of Indigent Defense Services, may use ~~up to the sum of one million sixty-nine thousand six hundred forty-five dollars~~

~~($1,069,645) in appropriated funds during the 2005-2006 fiscal year and~~ up to the sum of ~~one million twenty three thousand one hundred thirty five dollars ($1,023,135)~~ two million one hundred eighteen thousand five hundred eighty dollars ($2,118,580) in appropriated funds during the 2006-2007 fiscal year for the expansion of existing offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services by creating up to ~~10~~20 new attorney positions and ~~five~~ 10 new support staff positions. These funds may be used for salaries, benefits, equipment, and related expenses. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion."

PART XV. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

REPORTS ON CERTAIN PROGRAMS

SECTION 15.1. Section 16.3 of S.L. 2005-276 reads as rewritten:

"**SECTION 16.3.(a)** Project Challenge North Carolina, Inc., shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by April 1 each year on the operation and the effectiveness of its program in providing alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The report shall include information on:

(1) The source of referrals for juveniles.
(2) The types of offenses committed by juveniles participating in the program.
(3) The amount of time those juveniles spend in the program.
(4) The number of juveniles who successfully complete the program.
(5) The number of juveniles who commit additional offenses after completing the program.
(6) The program's budget and expenditures, including all funding sources.

SECTION 16.3.(b) The Juvenile Assessment Center shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the effectiveness of the Center by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of juvenile assessment plans and services provided as a result of these plans. In addition, the report shall include information on the Center's budget and expenditures, including all funding sources.

SECTION 16.3.(c) Communities in Schools shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, ~~the Joint Legislative Commission on Governmental Operations,~~ the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Joint Legislative Education Oversight Committee by April 1 each year on the operation and effectiveness of its program. The report shall include information on:

(1) The number of children served.
(2) The number of volunteers used.
(3) The impact on children who have received services from Communities in Schools.
(4) The program's budget and expenditures, including all funding sources."

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 15.2. Section 16.5 of S.L. 2005-276 reads as rewritten:

"**SECTION 16.5.** Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the ~~2005-2006~~ 2006-2007 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants, or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the ~~2005-2006~~ 2006-2007 fiscal year, the amount of funds anticipated for the ~~2006-2007~~ 2007-2008 fiscal year, and the allocation of funds by program and purpose."

WAIVER OF REVISED LICENSING STANDARDS FOR JUVENILE FACILITIES

SECTION 15.3. Notwithstanding any other provision of law, the Department of Juvenile Justice and Delinquency Prevention shall operate the seven wilderness camping programs in conjunction with Eckerd Youth Alternatives, Inc., pursuant to the mental health licensing standards of the Department of Health and Human Services, Division of Social Services, effective on July 1, 2006, until January 1, 2008. Revisions or amendments to the State mental health licensing standards that become effective after July 1, 2006, shall not apply to the seven Eckerd wilderness camping programs from July 1, 2006, to July 1, 2008.

ANNUAL EVALUATION OF COMMUNITY PROGRAMS

SECTION 15.4. Section 16.4 of S.L. 2005-276 reads as rewritten:

"**SECTION 16.4.** The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the Eckerd and Camp Woodson wilderness camp programs, the teen court programs, the program that grants funds to the local organizations of the Boys and Girls Clubs established pursuant to Section 21.10 of S.L. 1999-237, the Save Our Students program, the Governor's One-on-One Programs, and multipurpose group homes. The teen court report shall include statistical information on the number of juveniles served, the number and type of offenses considered by teen courts, referral sources for teen courts, and the number of juveniles that become court-involved after participation in teen courts. The report on the Boys and Girls Clubs program shall include information on:

(1) The expenditure of State appropriations on the program;
(2) The operations and the effectiveness of the program; and
(3) The number of juveniles served under the program.

In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department shall also identify whether the programs are achieving the goals and objectives of the Juvenile Justice Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations ~~Committees~~ Committees, and the Chairs of the Subcommittees on Justice and Public Safety of the House of Representatives and Senate Appropriations Committees by March 1 of each year."

ALTERNATIVES TO JUVENILE COMMITMENT/JUVENILE CRIME PREVENTION COUNCILS

SECTION 15.5. Section 16.11 of S.L. 2005-276 reads as rewritten:

"**SECTION 16.11.(a)** Of the funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention, the sum of two hundred fifty thousand dollars ($250,000) shall be used to expand Juvenile Crime Prevention Councils demonstration projects designed to reduce commitments to youth development centers. Specifically, the funds shall be awarded to Juvenile Crime Prevention Councils to provide residential and/or community-based intensive services to juveniles who have been adjudicated delinquent with a level 2 or 3 disposition or who are reentering the community after serving time in a youth development center. The Department shall develop a competitive grant award process to allocate the funds to county Juvenile Crime Prevention Councils. The programs must initiate services to the targeted population no later than March 1, 2006. On June 30, 2006, any funds not awarded for demonstration projects pursuant to this section by the Department shall revert to the General Fund. The Department may award up to four grants to Juvenile Crime Prevention Councils, and no individual grant may exceed one hundred thousand dollars ($100,000).

SECTION 16.11.(b) The Department of Juvenile Justice and Delinquency Prevention shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than March 1, 2006, on the implementation and award process. The report shall provide a detailed description of the services to be provided by each program, the number and types of juveniles to be served, and the amount awarded to each program.

SECTION 16.11.(c) The Department of Juvenile Justice and Delinquency Prevention shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety no later than March 1, 2006, and annually thereafter, on the results of the alternatives to commitment demonstration programs funded by Section 16.7 of S.L. 2004-124. The 2007 report and all annual reports thereafter shall also include projects funded by this section for the 2005-2006 fiscal year. Specifically, the report shall provide a detailed description of each of the demonstration programs, including the numbers of juveniles served, their adjudication status at the time of service, the services/treatments provided, the length of service, the total cost per juvenile, and the six- and 12-month recidivism rates for the juveniles after the termination of program services.

SECTION 16.11.(d) The requirements of this section apply to all future allocations by the Department of Juvenile Justice and Delinquency Prevention of the funds appropriated to the Department by Section 16.11 of S.L. 2005-276 and Section 16.7 of S.L. 2004-124."

REPORTS ON YOUTH DEVELOPMENT CENTERS

SECTION 15.6.(a) Section 16.6 of S.L. 2005-276 reads as rewritten:

"**SECTION 16.6.(a)** The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers. The report shall include a list of total positions at each facility by job class, whether the position is vacant or filled, whether positions were filled from internal employees or new employees, and the training and certification status of each position. The report shall also describe the nature of the treatment program, the criteria for evaluating the program, and how the program is performing in comparison to these criteria. The report shall also describe the training approach to be used to train staff in using treatment methods in youth development centers and provide information on current staff training and staff training planned for the next quarter. The Department shall also develop indicators for evaluating staff performance once the model has been implemented.

SECTION 16.6.(b) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers. The Department shall identify the number of positions reallocated to the new treatment job classes and the source of funding for those positions.

SECTION 16.6.(c) The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee by November 10, 2006, on the final recommended staffing plan for youth development centers for the 2007-2008 fiscal year. The report shall include:

(1) The latest results of the evaluation of the pilot treatment staffing models at the Samarkand and Stonewall Jackson Youth Development Centers and the progress in implementing the model at other youth development centers.

(2) The total recommended staffing by position classification for each youth development center. Staffing by shift shall be provided for each housing unit as well as justification for the level and type of staff on each shift.

(3) The total cost and cost per bed for each youth development center to implement the staffing model.

(4) The primary basis for the number of staff at each youth development center by classification.

(5) An identification of other states that have implemented a treatment based staffing model, how the staffing patterns compare to the Department of Juvenile Justice and Delinquency Prevention proposal, and any research on the benefits and outcomes of using the treatment based approach in these states."

SECTION 15.6.(b) It is the intent of the General Assembly to consider appropriating funds for new treatment positions at youth development centers only when the report required by subsection (a) of this section is received by the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

PART XVI. DEPARTMENT OF CORRECTION

INMATE COSTS/MEDICAL BUDGET FOR PRESCRIPTION DRUGS AND INMATE LAUNDRY SERVICES

SECTION 16.1. Section 17.6 of S.L. 2005-276 reads as rewritten:

"**SECTION 17.6.(a)** If the cost of providing ~~food and~~ health care to inmates housed in the Division of Prisons is anticipated to exceed the continuation budget amounts provided for that purpose in this act, the Department of Correction shall report the reasons for the anticipated cost increase and the source of funds the Department intends to use to cover those additional needs to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

SECTION 17.6.(b) Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the ~~2005-2006 fiscal year~~ 2005-2007 biennium for the purchase of prescription drugs for inmates if expenditures are projected to exceed the Department's inmate medical continuation budget for

prescription drugs. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

SECTION 17.6.(c) Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the ~~2005-2006 fiscal year~~ 2005-2007 biennium for the purchase of ~~clothing and~~ laundry services for inmates if expenditures are projected to exceed the Department's budget for clothing and laundry services. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount."

CONVERSION OF CONTRACTED MEDICAL POSITIONS

SECTION 16.2. Section 17.7 of S.L. 2005-276 reads as rewritten:

"**SECTION 17.7.(a)** The Department of Correction may convert contract medical positions to permanent State medical positions if the Department can document that the total savings generated will exceed the total cost of the new positions for each facility. Where practical, the Department shall convert contract positions to permanent positions by using existing vacancies in medical positions.

SECTION 17.7.(b) The Department of Correction shall report by ~~April 1, 2006,~~ April of each year to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on all conversions made pursuant to this section, by type of position and location, and on the savings generated at each correctional facility."

COMPUTER/DATA PROCESSING SERVICES FUNDS

SECTION 16.3. Section 17.10. of S.L. 2005-276 reads as rewritten:

"**SECTION 17.10.** Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the ~~2005-2006 fiscal year~~ 2005-2007 biennium for expenses for computer/data processing services if expenditures exceed the Department's continuation budget amount for those services. The Department shall report to the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount."

REPORTS ON NONPROFIT PROGRAMS

SECTION 16.4. Section 17.22 of Session Laws 2005-276 reads as rewritten:

"**SECTION 17.22.(a)** Funds appropriated in this act to the Department of Correction to support the programs of Harriet's House may be used for program operating costs, the purchase of equipment, and the rental of real property to serve women released from prison with children in their custody. Harriet's House shall report by February 1 of each year to the ~~Joint Legislative Commission on Governmental Operations~~ Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who successfully complete the Harriet's House program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 17.22.(b) Summit House shall report by February 1 of each year to the ~~Joint Legislative Commission on Governmental Operations~~ Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who successfully complete the program while housed at Summit House, Inc., and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide

financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 17.22.(c) Women at Risk shall report by February 1 of each year to the ~~Joint Legislative Commission on Governmental Operations~~ Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the expenditure of State funds and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who have successfully completed the program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts."

PAROLE ELIGIBILITY REPORT

SECTION 16.5. Section 17.28 of S.L. 2005-276 reads as rewritten:

"**SECTION 17.28.(a)** The Post-Release Supervision and Parole Commission shall, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, analyze the amount of time each parole-eligible inmate has served compared to the time served by offenders under Structured Sentencing for comparable crimes. The Commission shall determine if the person has served more time in custody than the person would have served if sentenced to the maximum sentence under the provisions of Article 81B of Chapter 15A of the General Statutes. The "maximum sentence", for the purposes of this section, shall be calculated as set forth in subsection (b) of this section.

SECTION 17.28.(b) For the purposes of this section, the following rules apply for the calculation of the maximum sentence:

(1) The offense upon which the person was convicted shall be classified as the same felony class as the offense would have been classified if committed after the effective date of Article 81B of Chapter 15A of the General Statutes.

(2) The minimum sentence shall be the maximum number of months in the presumptive range of minimum durations in Prior Record Level VI of G.S. 15A-1340.17(c) for the felony class determined under subdivision (1) of this subsection. The maximum sentence shall be calculated using G.S. 15A-1340.17(d), (e), or (e1).

(3) If a person is serving sentences for two or more offenses that are concurrent in any respect, then the offense with the greater classification shall be used to determine a single maximum sentence for the concurrent offenses. The fact that the person has been convicted of multiple offenses may be considered by the Commission in making its determinations under subsection (a) of this section.

SECTION 17.28.(c) The Commission shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee ~~on the results of its analysis by October 1, 2005.~~ and to the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2007. The report shall include the following: the class of the offense for which each parole-eligible inmate was convicted and whether an inmate had multiple criminal convictions. The Commission shall reinitiate the parole review process for each offender who has served more time than that person would have under Structured Sentencing as provided by subsections (a) and (b) of this section.

The Commission shall also report ~~by February 1, 2006, regarding~~ on the number of parole-eligible inmates reconsidered in compliance with this section and the number who were actually paroled."

PRETRIAL SERVICES PROGRAM

SECTION 16.6. Of funds appropriated from the General Fund to the Department of Correction the sum of four hundred thousand dollars ($400,000) for the 2006-2007 fiscal year shall be used for the Pretrial Services Program. These funds will be managed by the Criminal Justice Partnership Program and will be allocated on a matching basis according to the following priorities:

(1) Counties that received State funds through the Criminal Justice Partnership Program to operate pretrial services programs in the 2005-2006 fiscal year.

(2) Counties that do not currently have a pretrial services program, but would like to start one.

(3) Counties that currently operate pretrial services programs but did not receive State funds to operate during the 2005-2006 fiscal year.

GPS MONITORING OF MOST SERIOUS SEX OFFENDERS

SECTION 16.7.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 5. Sex Offender Monitoring.

"**§ 14-208.33. Establishment of program; creation of guidelines; duties.**

(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor two categories of offenders as follows:

(1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.

(2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based monitoring.

(b) In developing the guidelines for the program, the Department shall require that any offender who is enrolled in the satellite-based program submit to an active continuous satellite-based monitoring program, unless an active program will not work as provided by this section. If the Department determines that an active program will not work as provided by this section, then the Department shall require that the defendant submit to a passive continuous satellite-based program that works within the technological or geographical limitations.

(c) The satellite-based monitoring program shall use a system that provides all of the following:

(1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.

(2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

(d) The Department may contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents. The contract may provide for services necessary to implement or facilitate any of the provisions of this Part.

"**§ 14-208.34. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

(a) Any person described by G.S. 14-208.33(a)(1) shall enroll in a satellite-based monitoring program with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the registration period imposed under G.S. 14-208.23 which is the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.35.

(b) Any person described by G.S. 14-208.33(a)(2) who is ordered by the court to enroll in a satellite-based monitoring program shall do so with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the period of time ordered by the court.

"**§ 14-208.35. Lifetime registration offenders required to submit to satellite-based monitoring for life and to continue on unsupervised probation upon completion of sentence.**

Notwithstanding any other provision of law, when the court sentences an offender who is in the category described by G.S. 14-208.33(a)(1) for a reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll in a satellite-based monitoring program, the court shall also order that the offender, upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, continue to be enrolled in the satellite-based monitoring program for the offender's life and be placed on unsupervised probation unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.36.

"**§ 14-208.36. Request for termination of satellite-based monitoring requirement.**

(a) An offender described by G.S. 14-308.33(a)(1) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence.

(b) Upon receipt of the request for termination, the Commission shall review documentation contained in the offender's file and the statewide registry to determine whether the person has complied with the provisions of this Article. In addition, the Commission shall conduct fingerprint-based state and federal criminal history record checks to determine whether the person has been convicted of any additional reportable convictions.

(c) If it is determined that the person has not received any additional reportable convictions during the period of satellite-based monitoring and the person has substantially complied with the provisions of this Article, the Commission may terminate the monitoring requirement if the Commission finds that the person is not likely to pose a threat to the safety of others.

(d) If it is determined that the person has received any additional reportable convictions during the period of satellite-based monitoring or has not substantially

complied with the provisions of this Article, the Commission shall not order the termination of the monitoring requirement.

(e) The Commission shall not consider any request to terminate a monitoring requirement except as provided by this section. The Commission has no authority to consider or terminate a monitoring requirement for an offender described in G.S. 14-208.33(a)(2).

"**§ 14-208.37. Failure to enroll; tampering with device.**

(a) Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class E felony.

(b) Any person who intentionally tampers with, removes, or vandalizes a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class C felony.

"**§ 14-208.38. Fees.**

(a) There shall be a onetime fee of ninety dollars ($90.00) assessed to each person required to enroll pursuant to this Part. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on satellite-based monitoring. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (c) of this section to determine the payment schedule. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system.

(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department.

(c) If a person placed on supervised probation, parole, or post-release supervision is required as a condition of that probation, parole, or post-release supervision to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule."

SECTION 16.7.(b) G.S. 15A-1343(b2) reads as rewritten:

"(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(1).

(8) Submit to electronic monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.33(a)(2), and the Department of Correction, based on the Department's risk assessment program, recommends that the defendant submit to the highest possible level of supervision and monitoring.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation."

SECTION 16.7.(c) G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(f1) Mandatory Condition of Satellite-Based Monitoring For Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.33(a)(1)."

SECTION 16.7.(d) G.S. 15A-1343.2(f) is amended by adding a new subdivision to read:

"(5) Submit to electronic monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(2)."

SECTION 16.7.(e) G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who is in the category described by G.S. 14-208.33(a)(1) violates probation and if the court extends the probation as a result of the violation, then the court shall order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of the extended probation."

SECTION 16.7.(f) G.S. 15A-1368.2 is amended by adding a new subsection to read:

"(c1) Notwithstanding subsection (c) of this section, a person required to submit to satellite-based monitoring pursuant to G.S. 15A-1368.4(b1)(6) shall continue to participate in satellite-based monitoring beyond the period of post-release supervision until the Commission releases the person from that requirement pursuant to G.S. 15A-1368.4A."

SECTION 16.7.(g) G.S. 15A-1368.4 (b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. –

In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that

the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Failure to submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(1).

(7) Failure to submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(2)."

SECTION 16.7.(h) G.S. 15A-1374 is amended by adding a new subsection to read:

"(b1) Mandatory Satellite-Based Monitoring Required as Condition of Parole for Certain Offenders. – If a parolee is in a category described by G.S. 14-208.33(a)(1), the Commission must require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes. If a parolee is in a category described by G.S. 14-208.33(a)(2), the Commission may require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 16.7.(i) G.S. 143B-266 is amended by adding a new subsection to read:

"(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by G.S. 14-208.35. The Commission may grant or deny those requests in compliance with G.S.14-208.35."

SECTION 16.7.(j) The Department of Correction shall have the program enacted by subsection (a) of this section established by January 1, 2007.

SECTION 16.7.(k) This section is effective when it becomes law and applies to offenses committed on or after that date. This section also applies to any person sentenced to intermediate punishment on or after that date and to any person released from prison by parole or post-release supervision on or after that date. This section also applies to any person who completes his or her sentence on or after the effective date of this section who is not on post-release supervision or parole. However, the requirement to enroll in a satellite-based program is not mandatory until January 1, 2007, when the program is established.

PART XVII. DEPARTMENT OF ADMINISTRATION

EXAMINE FEASIBILITY OF COMBINING FUNDING SOURCES/NC COUNCIL FOR WOMEN AND DOMESTIC VIOLENCE COMMISSION

SECTION 17.1. The North Carolina Council for Women and the Domestic Violence Commission, within the Department of Administration, shall examine the feasibility of combining the funding sources to distribute domestic violence grants and sexual assault grants. The North Carolina Council for Women and the Domestic Violence Commission shall report their findings to the Joint Legislative Commission on Governmental Operations by February 1, 2007.

PART XVIII. OFFICE OF ADMINISTRATIVE HEARINGS

CODIFIER'S AUTHORITY OVER THE REGISTER

SECTION 18.1. G.S. 150B-21.17 reads as rewritten:

"**§ 150B-21.17. North Carolina Register.**

(a) Content. – The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

(1) Temporary rules entered in the North Carolina Administrative Code.
(1a) The text of proposed rules and the text of permanent rules approved by the Commission.
(1b) Emergency rules entered into the North Carolina Administrative Code.
(2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.
(3) Executive orders of the Governor.
(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.
(5) Orders of the Tax Review Board issued under G.S. 105-241.2.
(6) Other information the Codifier determines to be helpful to the public.

(b) Form. – When an agency publishes notice in the North Carolina Register of the proposed text of a new rule, the Codifier of Rules must publish the complete text of the proposed new rule. In publishing the text of a proposed new rule, the Codifier must indicate the rule is new by underlining the proposed text of the rule.

When an agency publishes notice in the North Carolina Register of the proposed text of an amendment to an existing rule, the Codifier must publish the complete text of the rule that is being amended unless the Codifier determines that publication of the complete text of the rule being amended is not necessary to enable the reader to understand the proposed amendment. In publishing the text of a proposed amendment to a rule, the Codifier must indicate deleted text with overstrikes and added text with underlines.

When an agency publishes notice in the North Carolina Register of the proposed repeal of an existing rule, the Codifier must publish the complete text of the rule the agency proposes to repeal unless the Codifier determines that publication of the complete text is impractical. In publishing the text of a rule the agency proposes to repeal, the Codifier must indicate the rule is to be repealed.

(c) The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Register."

PART XIX. DEPARTMENT OF REVENUE

EXTENDED DOR CALL CENTER FEE USE

SECTION 19.1. Section 22.6(a) of S.L. 2002-126, as amended by Section 23.1 of S.L. 2003-284, as amended by Section 23.1 of S.L. 2004-124, reads as rewritten:

"**SECTION 22.6.(a)** There is appropriated from the collection assistance fee account created in G.S. 105-243.1 to the Department of Revenue the sum of one million six hundred twenty-two thousand eight hundred ninety-six dollars ($1,622,896) for the 2003-2004 fiscal year and the sum of two million one hundred fifty-four thousand five hundred ninety-three dollars ($2,154,593) for the 2004-2005 fiscal year to pay for the costs of establishing and equipping a central taxpayer telecommunications service center for collections and assistance and for the costs associated with aligning local field offices with the new center. Of the funds appropriated in this subsection, the sum of three million dollars ($3,000,000) that was designated for the 2003-2005 biennium to pay for the costs of establishing and equipping a central taxpayer telecommunications service center does not revert at the end of the 2004-2005 fiscal year but remains available until June 30, ~~2006,~~ 2007, for operating costs of the service center."

REVISED MAXIMUMS FOR COLLECTION ASSISTANCE FEES

SECTION 19.2. G.S. 105-243.1(e) reads as rewritten:

"(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The proceeds of the fee may not be used for any purpose that is not directly and primarily related to collecting overdue tax debts. The Department may apply the proceeds of the fee for the purposes listed in this subsection. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the costs of collecting overdue tax debts. The Department and the Office of State Budget and Management must account for all expenditures using accounting procedures that clearly distinguish costs allocable to collecting overdue tax debts from costs allocable to other purposes and must demonstrate that none of the fee proceeds are used for any purpose other than collecting overdue tax debts.

The Department may apply the fee proceeds for the following purposes:

(1) To pay contractors for collecting overdue tax debts under subsection (b) of this section.

(2) To pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina.

(3) To pay for taxpayer locater services, not to exceed ~~one hundred thousand dollars ($100,000)~~ one hundred forty-one thousand dollars ($141,000) a year.

(4) To pay for postage or other delivery charges for correspondence directly and primarily relating to collecting overdue tax ~~debts.~~debts, not to exceed three hundred fifty-three thousand dollars ($353,000) a year.

(5) To pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.

(6) To pay for expenses of the Examination and Collection Division directly and primarily relating to collecting overdue tax debts."

CONSOLIDATE TAX PROJECTS REPORTS

SECTION 19.3.(a) G.S. 105-243.1(f) reads as rewritten:

"(f) Reports. – The report of Department activities required by G.S. 105-256 contains information on the Department's efforts to collect tax debts and its use of the proceeds of the collection assistance fee.~~Department must report semiannually to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee on its efforts to collect tax debts. Each report must include a breakdown of the amount and age of tax debts collected by collection agencies on contract, the amount and age of tax debts collected by the Department through warning letters, and the amount and age of tax debts otherwise collected by Department personnel. The report must itemize collections by type of tax. Each report must also include a long-term collection plan, a timeline for implementing each step of the plan, a summary of steps taken since the last report and their results, and any other data requested by the Commission or the Committee.~~

~~The Department must report by April 1, 2006, and annually thereafter, to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly on the use of the fee proceeds for collecting overdue tax debts.~~"

SECTION 19.3.(b) G.S. 105-256(a) reads as rewritten:

"(a) Reports. – The Secretary shall prepare and publish the following:

...

(6) On an annual basis, a report on the quality of services provided to ~~taxpayers, including telephone and~~taxpayers through the Taxpayer Assistance Call Center, walk-in ~~assistance~~ assistance, and taxpayer education. The report must be submitted to the Joint Legislative Commission on Governmental Operations.

...

(8) By January 1 and July 1 of each year, a semiannual report on the Department's activities listed in this subdivision. The report must be submitted to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee.

a. Its efforts to increase compliance with the tax laws. The report must describe the Department's existing initiatives in this area as of July 1, 2006, and must estimate, by tax type and amount, the revenue expected in the fiscal year by the initiative. The report must describe any new initiative implemented since July 1, 2006, and estimate, by tax type and amount, the revenue expected in the fiscal year by the initiative.

b. Its efforts to identify and address fraud and other abuses of the voluntary tax compliance system that result in unreported and underreported tax. The report must describe the Department's long-term plan for achieving greater voluntary compliance and must summarize the steps taken since the last report and their results.

c. Its efforts to collect tax debts. The report must include a breakdown of the amount and age of tax debts collected through warning letters and by other means, must itemize collections by type of tax, must describe the Department's long-term collection plan, and must summarize the steps taken since the last report and their results.

d. Its use of the proceeds of the collection assistance fee imposed by G.S. 105-243.1.

SECTION 19.3.(c) The first report required under G.S. 105-256(a)(8), as enacted by this section, is due by January 1, 2007.

PAYMENT OF USUB PENALTIES TO CIVIL PENALTY AND FORFEITURE FUND

SECTION 19.4. Notwithstanding G.S. 143-18, the Department of Revenue shall be allowed to expend up to two million four hundred thirty-four thousand two hundred seventy dollars and seventy-one cents ($2,434,270.71) of unencumbered maintenance appropriations as of June 30, 2006, for the purpose of paying the Civil Penalty and Forfeiture Fund. The amount to be expended represents Unauthorized Substance Tax penalty collections that were paid to local law enforcement agencies for the period of July 1, 2005, through December 31, 2005. The source of the unencumbered funds shall come entirely from the Department of Revenue. If unencumbered funds are not sufficient at June 30, 2006, the Department shall use anticipated unencumbered funds as of July 1, 2006. The Department shall reduce succeeding distributions to a law enforcement agency under G.S. 105-113.113 by the amount that was improperly distributed to that agency.

PART XX. DEPARTMENT OF THE STATE TREASURER

CONSOLIDATE PUBLIC EMPLOYEE RETIREMENT PROGRAMS IN SINGLE AGENCY

SECTION 20.1. G.S. 143B-426.24 reads as rewritten:

"**§ 143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.**

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of ~~Administration.~~State Treasurer. The Board shall create, establish, implement, coordinate

and administer a Deferred Compensation Plan for employees of the State, any county or municipality, the North Carolina Community College System, and any political subdivision of the State. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

(b) The Board shall consist of seven voting members, as follows:

(1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, one of whom shall be a State employee;

(2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;

(3) One member shall be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate under G.S. 120-121;

(4) The ~~State Treasurer,~~Secretary of Administration, ex officio; and

(5) The ~~Secretary of Administration,~~State Treasurer, ex officio, chairman.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for teachers and employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(h1) Notwithstanding any other law, an employee of any county or municipality, an employee of the North Carolina Community College System, or an employee of any political subdivision of the State may participate in any 457 Plan adopted by the State, with the consent of the Board and with the consent of the proper governing authority of such county, municipality, community college, or political subdivision of the State where such employee is employed.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and

marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(l) All clerical and other services and personnel required by the Board shall be supplied by the ~~Secretary of Administration,~~Department of State Treasurer, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The ~~Secretary of Administration~~State Treasurer is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein."

PART XXI. DEPARTMENT OF TRANSPORTATION

TRANSPORTATION OF WOOD RESIDUALS

SECTION 21.1. 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.

..."

ONLINE DEALER REGISTRATION FUNDS

SECTION 21.2.(a) Notwithstanding the provisions of Section 28.22(b) of S.L. 2005-276, for fiscal year 2006-2007, the Division of Motor Vehicles is prohibited from spending any funds appropriated to it for Online Dealer Registration enhancements.

SECTION 21.2.(b) This section becomes effective June 30, 2006.

TRANSPORTATION IMPROVEMENT PLAN PILOT

SECTION 21.3. The Department of Transportation may enter into agreements with units of local government for the purpose of expediting transportation projects currently programmed in the Transportation Improvement Plan.

The agreements affected by this section shall be between the Department of Transportation and units of local government. The agreements may authorize units of local government to construct projects scheduled in the Transportation Improvement Plan more than two years from the date of the agreement. The units of local government shall fund one hundred percent (100%) of the project at current prices. In a future year, when the project is funded from State and federal sources, the units of local government shall be reimbursed an appropriate share of the funds, at the future programmed project funding amount, as identified and scheduled in the Transportation Improvement Plan.

The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee by December 1, 2006, on any agreements executed with units of local government pursuant to this section.

CASH FLOW HIGHWAY FUNDS AND HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 21.4.(a) The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 2007-2008	$1,798.0 million
For Fiscal Year 2008-2009	$1,836.2 million
For Fiscal Year 2009-2010	$1,859.2 million
For Fiscal Year 2010-2011	$1,872.6 million

SECTION 21.4.(b) The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 2007-2008	$1,128.9 million
For Fiscal Year 2008-2009	$1,167.8 million
For Fiscal Year 2009-2010	$1,203.0 million
For Fiscal Year 2010-2011	$1,235.0 million

DEPARTMENT OF TRANSPORTATION TO PROVIDE REAL-TIME ACCESS TO ALL WEIGH-IN-MOTION DATA PRODUCED AND TRANSMITTED FROM WEIGH-IN-MOTION SITES THROUGHOUT THE STATE AND PROVIDE PERIODIC SUMMARIES OF DATA COLLECTED AT EXISTING DOT WEIGH-IN-MOTION SITES

SECTION 21.5.(a) The Department of Transportation shall provide the State Highway Patrol real-time access to all real-time data collection efforts at all existing weigh-in-motion sites by October 1, 2006, to include but not limited to:

(1) Install wireless access points at each site to allow the State Highway Patrol to station troopers at or near the weigh-in-motion site, capture data on a computer with software and technology capable of receiving the real-time data as it is captured by the weigh-in-motion site, and then take appropriate enforcement action.

(2) Provide periodic summaries of collected data to assist in monitoring overweight vehicle travel volumes, habits, routes, and date and time information.

(3) Acquire any necessary software to allow the State Highway Patrol to interface with the existing systems at all weigh-in-motion sites throughout the State.

(4) Provide access to any new facilities constructed on DOT rights-of-way that collect, monitor, seize, or capture any data related to violations of weight, length, or height restrictions.

SECTION 21.5.(b) The State Highway Patrol shall report the effectiveness of the access to weigh-in-motion sites, the collected data, and use of these sites as a vehicle weight screening technology to increase the effectiveness of Motor Carrier Enforcement activities to the Joint Legislative Transportation Oversight Committee by October 1, 2006.

FUNDS FOR ECONOMIC DEVELOPMENT, SPOT SAFETY, AND TRANSPORTATION IMPROVEMENT PROGRAM PROJECTS

SECTION 21.6. Of the funds appropriated by this act to the Department of Transportation in fiscal year 2006-2007, twenty-eight million dollars ($28,000,000) shall be allocated equally among the 14 Highway Divisions for economic development transportation projects recommended by the member of the Board of Transportation representing the Division in which the project is to be constructed in consultation with the Division Engineer and approved by the Board of Transportation. Funds in each Division not needed for economic development projects shall be used on spot safety needs to enhance safety, reduce congestion, improve traffic flow, reduce accidents, and for system preservation. Any remaining funds in each Division shall be used on Transportation Improvement Program projects. The Secretary of Transportation shall not prevent or delay the implementation of any projects approved by the Board of Transportation pursuant to this section.

CHANGE SUNSET OF OPEN CONTAINER LAW

SECTION 21.7. Section 21 of S.L. 2000-155, as amended by Section 1 of S.L. 2002-25, reads as rewritten:

"**SECTION 21.** Section 4 of this act is effective September 1, 2000, and expires September 30, ~~2006.~~2010. Sections 19 and 20 of this act are effective when those sections become law. The remainder of this act becomes effective September 1, 2000, and applies to offenses committed on or after that date."

MAINTENANCE OF PERMANENT WEIGH STATIONS

SECTION 21.8. G.S. 20-183.9 reads as rewritten:

"**§ 20-183.9. Establishment and maintenance of permanent weigh stations.**

The Department of Crime Control and Public Safety is hereby authorized, empowered and directed to ~~equip, operate, and maintain~~ equip and operate permanent weigh stations equipped to weigh vehicles using the streets and highways of this State to determine whether such vehicles are being operated in accordance with legislative enactments relating to weights of vehicles and their loads. The permanent weigh stations shall be established at such locations on the streets and highways in this State as will enable them to be used most advantageously in determining the weight of vehicles and their loads. The Department of Transportation shall be responsible for the maintenance and upkeep of all permanent weigh stations established pursuant to this section."

VIPER RADIO PROGRAM

SECTION 21.9. The State Highway Patrol shall issue a request for a proposal for the maintenance of the Voice Interoperability Plan for Emergency Responders (VIPER). The bid shall be for the current system in place and shall not include installation of the system.

The Criminal Justice Information Network (CJIN) shall prepare a cost allocation plan for the continued building and operation of the VIPER system that shall include proposed shared costs for installation and use by all State government users, including, but not limited to the Department of Health and Human Services, the State Emergency Management Division, the Wildlife Resources Commission, the State Bureau of Investigation, the State Highway Patrol, and Alcohol Law Enforcement.

The CJIN shall report to the Legislative Transportation Oversight Committee, the Chairs of both the Appropriations Subcommittees for Transportation and Justice and Public Safety, and the Fiscal Research Division by October 1, 2006.

ACCESS ROADS FOR ECONOMIC DEVELOPMENT

SECTION 21.10. Of funds appropriated to the Department of Transportation, the Department shall use up to the sum of one million seven hundred thousand dollars ($1,700,000) from the maintenance funds account for construction of access roads in municipalities that have populations greater than 500,000 persons, according to the most recent decennial federal census, to encourage economic development of undeveloped lands. The Department of Transportation may contract with an approved developer to construct an access road and reimburse the developer from the appropriate funds.

CONFORM SEAT BELT LAW TO FEDERAL LAW TO PREVENT A LOSS OF FEDERAL HIGHWAY FUNDS

SECTION 21.11. G.S. 20-135.2A.(c) reads as rewritten:

"(c) This section shall not apply to any of the following:

(1) A driver or occupant of a noncommercial motor vehicle with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints;

(2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route;

(3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour;

(4) Any vehicle registered and licensed as a property-carrying vehicle in accordance with G.S. 20-88, while being used for agricultural ~~or commercial purposes;~~ purposes in intrastate commerce; or

(5) A motor vehicle not required to be equipped with seat safety belts under federal law."

UTILIZATION OF SMALL BUSINESS ENTERPRISES IN DEPARTMENT PROJECTS OR THE USE OF FULLY OPERATED RENTAL EQUIPMENT

SECTION 21.12. From funds available to the Department of Transportation, a goal of fifty million dollars ($50,000,000) per year is established for the utilization of small business enterprises through contracts or the use of fully operated rental equipment.

CONSOLIDATION OF RURAL FUNDING PROGRAMS BY THE DEPARTMENT OF TRANSPORTATION'S PUBLIC TRANSPORTATION DIVISION

SECTION 21.13. The Department of Transportation, Public Transportation Division, may consolidate its rural funding programs into one large rural capital and operating program for funding of rural and small urban public transportation systems. The Division shall have flexibility to realign funding based on actual needs of

transportation systems and for leveraging additional federal funds. The programs affected by the consolidation include: Rural Capital Program, Rural Intercity Program, Rural General Public, Rural Facility Program, Elderly and Disabled Transportation Assistance Program, Rural Technology Program, and Work First/Employment Transportation Program.

The Division shall submit a report on its funding allocation no later than October 31, 2006, to the Chairs of the Appropriations Subcommittee for Transportation and the Fiscal Research Division.

FUNDS FOR STORMWATER PROJECTS

SECTION 21.14. Of funds available to the Department of Transportation, fifteen million dollars ($15,000,000) shall be transferred during the 2006-2007 fiscal year to the Department of Environment and Natural Resources for a stormwater pilot project to clean up State-maintained ocean outfalls and associated outlets through new and innovative technologies and filtering mechanisms.

ALLOWABLE LOADS IN AGRICULTURAL TRANSPORTING

SECTION 21.15. 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 transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, ~~potatoes,~~ potatoes, all vegetables, fruits, greenhouse and nursery plants and flowers, Christmas trees, fertilizers or chemicals purchased or owned by the farmer or tenant for personal use in implementing husbandry, irrigation pipes, loaders, or equipment owned by the farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term "transporting" as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith."

AN ACT TO PROMOTE PRESERVATION OF THE INTERSTATE HIGHWAY SYSTEM

SECTION 21.16. In order to promote the preservation of the Interstate Highway System and to more effectively utilize existing Federal Highway Funds for Interstate Maintenance and Preservation, the Department of Transportation shall annually allocate, of the funds available from the Interstate Maintenance Federal Funds authorization, thirty million dollars ($30,000,000) to the 14 Highway Divisions for Interstate resurfacing and preventive maintenance activities specifically for the purposes of pavement preservation, improving ride quality, and extending the life of the Interstate System.

These funds shall be distributed to each Highway Division according to the percentage of lane-miles of Interstate Highways within that division and deducting from that lane-mileage, projects awarded the previous fiscal year for pavement rehabilitation, not including Division awarded projects for preventive maintenance.

If during any fiscal year, the Board of Transportation authorizes the transfer of Interstate Maintenance Funds to other federal funding types, the amount of funds distributed to the 14 Highway Divisions by this act shall be concurrently increased by an amount equal to the transfer of Interstate Maintenance Funds.

DEVELOP AND IMPLEMENT A PLAN TO PLANT TREES AND OTHER VEGETATION ON THE RIGHT-OF-WAYS OF THE STATE'S ROADS AND HIGHWAYS AND TO PROVIDE FUNDING FOR THAT PLAN.

SECTION 21.17.(a) The Department of Environment and Natural Resources, in collaboration with the Departments of Transportation and Correction shall

develop and implement a plan to plant the maximum number of trees and other natural and native vegetation feasible along State roads and highways in the right-of-way of the Department of Transportation. The Department of Environment and Natural Resources shall report to the Legislative Oversight Commission on Governmental Operations and the Fiscal Research Division by January 1, 2007, on the number of trees and the amount of native vegetation planted pursuant to this section.

SECTION 21.17.(b) Of the funds available to the Department of Transportation, the Department shall transfer twenty-five thousand dollars ($25,000) to the Department of Environment and Natural Resources during the 2006-2007 fiscal year to implement this section.

PART XXII. SALARIES AND EMPLOYEE BENEFITS

GOVERNOR AND COUNCIL OF STATE/SALARY INCREASES

SECTION 22.1.(a) Effective July 1, 2006, G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred twenty-three thousand eight hundred nineteen dollars ($123,819)~~ one hundred thirty thousand ten dollars ($130,010) annually, payable monthly."

SECTION 22.1.(b) Section 29.1(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 29.1.(b)** Effective ~~July 1, 2005,~~ July 1, 2006, the annual salaries for the members of the Council of State, payable monthly, for the ~~2005-2006 and~~ 2006-2007 fiscal ~~years~~ year are:

Council of State	Annual Salary
Lieutenant Governor	$~~109,279~~114,743
Attorney General	~~109,279~~114,743
Secretary of State	~~109,279~~114,743
State Treasurer	~~109,279~~114,743
State Auditor	~~109,279~~114,743
Superintendent of Public Instruction	~~109,279~~114,743
Agriculture Commissioner	~~109,279~~114,743
Insurance Commissioner	~~109,279~~114,743
Labor Commissioner	~~109,279~~114,743"

NONELECTED DEPARTMENT HEADS/SALARY INCREASES

SECTION 22.2. Section 29.2 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.2.** In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the ~~2005-2006 and~~ 2006-2007 fiscal ~~years~~ year are:

Nonelected Department Heads	Annual Salary
Secretary of Administration	$~~106,765~~112,103
Secretary of Correction	~~106,765~~112,103
Secretary of Crime Control and Public Safety	~~106,765~~112,103
Secretary of Cultural Resources	~~106,765~~112,103
Secretary of Commerce	~~106,765~~112,103
Secretary of Environment and Natural Resources	~~106,765~~112,103
Secretary of Health and Human Services	~~106,765~~112,103
Secretary of Juvenile Justice and Delinquency	~~106,765~~112,103
Secretary of Revenue	~~106,765~~112,103
Secretary of Transportation	~~106,765~~112,103"

CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES

SECTION 22.3. Section 29.3 of Section of S.L. 2005-276 reads as rewritten:

"**SECTION 29.3.** The annual salaries, payable monthly, for the ~~2005-2006 and~~ 2006-2007 fiscal ~~years~~ year for the following executive branch officials are:

Executive Branch Officials	Annual Salary
Chairman, Alcoholic Beverage Control Commission	~~$97,175~~ 102,034
State Controller	~~135,997~~ 142,797
Commissioner of Motor Vehicles	~~97,175~~ 102,034
Commissioner of Banks	~~109,279~~ 114,743
Chairman, Employment Security Commission	133,161
State Personnel Director	~~106,765~~ 112,103
Chairman, Parole Commission	~~88,733~~ 93,170
Members of the Parole Commission	~~40,960~~ 43,008
Chairman, Utilities Commission	~~121,701~~ 127,786
Members of the Utilities Commission	~~109,279~~ 114,743
Executive Director, Agency for Public Telecommunications	~~81,921~~ 86,017
Director, Museum of Art	~~99,573~~ 104,552
Executive Director, North Carolina Agricultural Finance Authority	~~94,587~~ 99,316
State Chief Information Officer	~~135,915~~ 142,711"

JUDICIAL BRANCH OFFICIALS/SALARY INCREASES

SECTION 22.4. Section 29.4 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.4.(a)** The annual salaries, payable monthly, for specified Judicial Branch officials for the ~~2005-2006 and~~ 2006-2007 fiscal ~~years~~ year are:

Judicial Branch Officials	Annual Salary
Chief Justice, Supreme Court	$~~123,819~~130,010
Associate Justice, Supreme Court	~~120,583~~126,612
Chief Judge, Court of Appeals	~~117,568~~123,446
Judge, Court of Appeals	~~115,559~~121,337
Judge, Senior Regular Resident Superior Court	~~112,419~~118,040
Judge, Superior Court	~~109,279~~114,743
Chief Judge, District Court	~~99,231~~104,193
Judge, District Court	~~96,091~~100,896
Administrative Officer of the Courts	~~112,419~~118,040
Assistant Administrative Officer of the Courts	~~102,684~~107,818"

SECTION 29.4.(b) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts or the Commission on Indigent Defense Services, respectively, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed ~~sixty-two thousand nine hundred thirty dollars ($62,930),~~ sixty-six thousand seventy-seven dollars ($66,077), and the minimum salary of any assistant district attorney or assistant public defender is at least ~~thirty-two thousand eight hundred eighty-five dollars ($32,885),~~ thirty-four thousand five hundred twenty-nine dollars ($34,529) effective ~~July 1, 2005~~.July 1, 2006.

SECTION 29.4.(c) Effective July 1, 2005, the annual salaries of permanent, full-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by the greater of eight hundred fifty dollars ($850.00) or two percent (2%). Effective July 1, 2006, the annual salaries of permanent full-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by five percent (5%).

SECTION 29.4.(d) Effective July 1, 2005, the annual salaries of permanent, part-time employees of the Judicial Department whose salaries are not itemized in this

act shall be increased by pro rata amounts of eight hundred fifty dollars ($850.00) or two percent (2%), whichever is greater. Effective July 1, 2006 the annual salaries of permanent, part-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by five percent (5%)."

CLERK OF SUPERIOR COURT/SALARY INCREASES

SECTION 22.5. Effective July 1, 2006, G.S. 7A-101(a) reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county as determined in subsection (a1) of this section, according to the following schedule:

Population	Annual Salary
Less than 100,000	~~$73,092~~ $76,747
100,000 to 149,999	~~82,021~~ 86,122
150,000 to 249,999	~~90,952~~ 95,500
250,000 and above	~~99,884.~~ 104,878.

The salary schedule in this subsection is intended to represent the following approximate percentage of the salary of a chief district court judge:

Population	Annual Salary
Less than 100,000	73%
100,000 to 149,999	82%
150,000 to 249,999	91%
250,000 and above	100%.

When a county changes from one population group to another, the salary of the clerk shall be changed, on July 1 of the fiscal year for which the change is reported, to the salary appropriate for the new population group, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

ASSISTANT AND DEPUTY CLERKS OF COURT/SALARY INCREASES

SECTION 22.6. Effective July 1, 2006, G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper	Annual Salary
Minimum	~~$28,365~~$29,783
Maximum	~~48,579~~ 51,008

Deputy Clerks	Annual Salary
Minimum	~~$24,415~~$25,636
Maximum	~~37,784.~~39,673."

MAGISTRATES' SALARY INCREASES

SECTION 22.7.(a) Effective July 1, 2006, G.S. 7A-171.1(a) reads as rewritten:

"(a) The Administrative Officer of the Courts, after consultation with the chief district judge and pursuant to the following provisions, shall set an annual salary for each magistrate.

(1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate

was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.

Table of Salaries of Full-Time Magistrates

Step Level	Annual Salary
Entry Rate	~~$28,739~~$30,176
Step 1	~~31,375~~32,944
Step 2	~~34,243~~35,955
Step 3	~~37,373~~39,242
Step 4	~~40,802~~42,842
Step 5	~~44,665~~46,898
Step 6	~~48,997.~~51,447.

(2) A part-time magistrate is a magistrate who is assigned to work an average of less than 40 hours of work a week during the term, except that no magistrate shall be assigned an average of less than 10 hours of work a week during the term. A part-time magistrate is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and G.S. 135-40.2(a). The Administrative Officer of the Courts designates whether a magistrate is a part-time magistrate. A part-time magistrate shall receive an annual salary based on the following formula: The average number of hours a week that a part-time magistrate is assigned work during the term shall be multiplied by the annual salary payable to a full-time magistrate who has the same number of years of service prior to the beginning of that term as does the part-time magistrate and the product of that multiplication shall be divided by the number 40. The quotient shall be the annual salary payable to that part-time magistrate.

(3) Notwithstanding any other provision of this subsection, a magistrate who is licensed to practice law in North Carolina or any other state shall receive the annual salary provided in the Table in subdivision (1) of this subsection for Step 4."

SECTION 22.7.(b) Effective July 1, 2006, G.S. 7A-171.1(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, the following salary provisions apply to individuals who were serving as magistrates on June 30, 1994:

(1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

Less than 1 year of service	~~$23,175~~$24,334
1 or more but less than 3 years of service	~~24,239~~ 25,451
3 or more but less than 5 years of service	~~26,380.~~27,699.

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a).

(2) The salaries of magistrates who on June 30, 1994, were paid at a salary level of five or more years of service shall be based on the rates set out in subsection (a) as follows:

Salary Level on June 30, 1994	Salary Level on July 1, 1994
5 or more but less than 7 years of service	Entry Rate
7 or more but less than 9 years of service	Step 1
9 or more but less than 11 years of service	Step 2
11 or more years of service	Step 3

Thereafter, their salaries shall be set in accordance with the provisions in subsection (a).

(3) The salaries of magistrates who are licensed to practice law in North Carolina shall be adjusted to the annual salary provided in the table in subsection (a) as Step 4, and, thereafter, their salaries shall be set in accordance with the provisions in subsection (a).

(4) The salaries of "part-time magistrates" shall be set under the formula set out in subdivision (2) of subsection (a) but according to the rates set out in this subsection."

GENERAL ASSEMBLY PRINCIPAL CLERKS/SALARY INCREASES

SECTION 22.8. Effective July 1, 2006, G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~ninety-two thousand three hundred twenty-four dollars ($92,324)~~ ninety-six thousand nine hundred forty dollars ($96,940) payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, for additional employment duties beyond those provided by the rules of their House. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

SERGEANTS-AT-ARMS AND READING CLERKS

SECTION 22.9. Effective July 1, 2006, G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~three hundred twenty-seven dollars ($327.00)~~ three hundred forty-three dollars ($343.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

LEGISLATIVE EMPLOYEES

SECTION 22.10. Effective July 1, 2006, the Legislative Services Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 2005-2006 by five percent (5%). Nothing in this act limits any of the provisions of G.S. 120-32.

COMMUNITY COLLEGE PERSONNEL/SALARY INCREASES

SECTION 22.11. Section 29.11 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.11.** The Director of the Budget shall transfer from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, funds to the North Carolina Community Colleges System Office necessary to provide an annual salary increase of the greater of eight hundred fifty dollars ($850.00) or two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all community college employees supported by State funds. The Director of the Budget shall transfer from the Reserve for Compensation Increases, created in this act for fiscal year 2006-2007, funds to the North Carolina Community Colleges System Office necessary to provide:

(1) An annual salary increase for faculty and professional staff of six percent (6%), plus a one-time two percent (2%) bonus, including funds for the employer's retirement and social security contributions, commencing July 1, 2006, for all community college employees supported by State funds. The one-time two percent (2%) bonus authorized by this section shall be made in accordance with rules adopted by the State Board of Community Colleges.

(2) An annual increase of five percent (5%), including funds for employer's retirement and social security contributions, commencing July 1, 2006, for all other community college employees supported by State funds."

UNIVERSITY OF NORTH CAROLINA SYSTEM/EPA COMPENSATION

SECTION 22.12. Section 29.12 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.12.(a)** ~~The~~ For the 2005-2006 fiscal year, the Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, to provide an annual salary increase of the greater of eight hundred fifty dollars ($850.00) or two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). The flat dollar increase of eight hundred fifty dollars ($850.00) shall be made to all employees whose annual salary is less than or equal to forty-two thousand five hundred dollars ($42,500). The percentage annual salary increase of two percent (2%) authorized by this section shall be made on an aggregated average basis, and these funds shall be allocated to individuals whose annual salary is greater than forty-two thousand five hundred dollars ($42,500), according to the rules adopted by the Board of Governors of The University of North Carolina or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

SECTION 29.12(a1) For the 2006-2007 fiscal year, the Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal year 2006-2007, to provide an annual salary increase of six percent (6%), plus a one-time two percent bonus (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2006, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). The percentage annual salary increase of six percent (6%), plus the one-time two percent (2%) bonus, authorized by this section shall be made on an aggregated average basis, according to the rules adopted by the Board of Governors of The University of North Carolina or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

SECTION 29.12.(b) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, to provide an average annual salary increase of two and twenty-four hundredths percent (2.24%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all teaching employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according

to the rules adopted by the Board of Trustees of the North Carolina School of Science and Mathematics and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

SECTION 29.12.(b1) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal year 2006-2007, to provide an average annual salary increase of eight percent (8%), but at least an annual increase of two thousand two hundred fifty dollars ($2,250) including funds for the employer's retirement and social security contributions, commencing July 1, 2006, for all teaching employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Trustees of the North Carolina School of Science and Mathematics and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section."

MOST STATE EMPLOYEES/SALARY INCREASES

SECTION 22.13. Section 29.13 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.13.(a)** The salaries in effect June 30, 2005, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund shall be increased, effective July 1, 2005, by the greater of eight hundred fifty dollars ($850.00) or two percent (2%), unless otherwise provided by this act. Effective July 1, 2006, the salaries in effect June 30, 2006, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act, and who are paid from the General Fund or Highway Funds shall be increased by five percent (5%).

SECTION 29.13.(b) Except as otherwise provided in this act, the fiscal year 2005-2006 salaries for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by the greater of eight hundred fifty dollars ($850.00) or two percent (2%), effective July 1, 2005, unless otherwise provided by this act. Effective July 1, 2006, the compensation of permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by five percent (5%).

SECTION 29.13.(c) The salaries in effect for fiscal year 2005-2006 for all permanent part-time State employees shall be increased, effective July 1, 2005, by pro rata amounts of eight hundred fifty dollars ($850.00) or two percent (2%), whichever is greater. Effective July 1, 2006, the salaries of all permanent part-time State employees shall be increased by five percent (5%).

SECTION 29.13.(d) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow ~~a salary increase, effective July 1, 2005,~~ salary increases, in accordance with subsection (a), (b), or (c) of this section, including funds for the employer's retirement and social security contributions, for the permanent full-time and part-time employees of the agency, provided the employing agency elects to make available the necessary funds.

SECTION 29.13.(e) ~~Within~~ For the 2005-2006 fiscal year, within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts of the greater of the eight hundred fifty dollar ($850.00) or two percent (2%) increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 2005. For the 2006-2007 fiscal year, within regular Executive Budget Act procedures

as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by the five percent (5%) increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 2006."

ALL STATE-SUPPORTED PERSONNEL/SALARY INCREASES

SECTION 22.14. Section 29.14 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.14.(a)** Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

SECTION 29.14.(b) The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

SECTION 29.14.(c) The fiscal year 2005-2006 salary increases provided in this act are to be effective July 1, 2005, and do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, or whose last workday is prior to July 1, 2005. The fiscal year 2006-2007 salary increases provided in this act are to be effective July 1, 2006, and do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, or whose last workday is prior to July 1, 2006.

Payroll checks issued to employees ~~after July 1, 2005,~~ which represent payment of services provided prior to ~~July 1, 2005,~~these increases shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

SECTION 29.14.(d) The Director of the Budget shall transfer from the Reserve for Compensation Increases in this act for fiscal year 2005-2006 and fiscal year 2006-2007 all funds necessary for the salary increases provided by this act, including funds for the employer's retirement and social security contributions.

SECTION 29.14.(e) Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

SECTION 29.14.(f) ~~Permanent~~ For the 2005-2006 fiscal year, permanent full-time employees who work a nine-, ten-, or eleven-month work year schedule shall receive the eight hundred fifty dollars ($850.00) or two percent (2%) annual increase provided by this act, whichever is greater. For the 2006-2007 fiscal year, permanent full-time employees who work a nine-, ten-, or eleven-month work year schedule shall receive the five percent (5%) annual increase provided by this act."

SALARY ADJUSTMENT FUND

SECTION 22.15. Section 29.15(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 29.15.(b)** Funds appropriated or otherwise transferred to the Salary Adjustment Fund by this act or any other provision of law shall be used to fund agency requests for the following purposes:

(1) Salary range ~~revisions~~ revisions, including special minimum rate adjustments, to provide competitive salary rates for affected job classifications in response to changes in labor market salary rates as documented through data collection and analysis according to accepted human resource professional practices and standards.

(2) Reallocation of positions to higher-level job classifications to compensate employees for more difficult duties at competitive salary rates as documented through data collection and analysis according to accepted human resource professional practices and standards.

The terms 'salary range revision' and 'reallocation' as used in this section shall conform to the definitions of those terms as previously contained in the State Personnel Manual and adopted by the State Personnel Commission effective immediately prior to November 1, 2005. ~~Priority funding~~ Funding shall be given only to those salary range revisions previously approved by the State Personnel Commission and reallocations previously approved by the Office of State Personnel or ~~designee.~~ designee prior to January 1, 2006, and shall not be used for other purposes including, but not limited to, in-range adjustments, career banding adjustments (whether by grade to band transfer adjustments, career progression adjustments, or other similar methods), geographic differentials, or other adjustments as these terms may be defined by State Personnel Policy."

DIVISION OF WATER QUALITY SALARY INCREASES

SECTION 22.16. The Department of Environment and Natural Resources is authorized to, and shall, provide to the employees of the Division of Water Quality an increase in annual salary of ten percent (10%). This increase shall be calculated and awarded after any across-the-board salary increases authorized by this act.

SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 22.17. Section 29.24(c) of S.L. 2005-276 reads as rewritten:

"**SECTION 29.24.(c)** Effective July 1, 2006, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2006-2007 fiscal year are: (i) ~~six and eighty-two hundredths percent (6.82%)~~ seven and fourteen hundredths percent (7.14%) – Teachers and State Employees; (ii) ~~eleven and eighty-two hundredths percent (11.82%)~~ twelve and fourteen hundredths percent (12.14%) – State Law Enforcement Officers; (iii) eleven and sixteen hundredths percent (11.16%) – University Employees' Optional Retirement System; (iv) eleven and sixteen hundredths percent (11.16%) – Community College Optional Retirement Program; (v) sixteen and thirty-nine hundredths percent (16.39%) – Consolidated Judicial Retirement System; and (vi) three and eight-tenths percent (3.8%) – Legislative Retirement System. Each of the foregoing contribution rates includes three and eight-tenths percent (3.8%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income."

PROVIDE COST-OF-LIVING INCREASES FOR RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, AND THE LEGISLATIVE RETIREMENT SYSTEM

SECTION 22.18.(a). G.S. 135-5 is amended by adding a new subsection to read:

"(ooo) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2005, and June 30, 2006."

SECTION 22.18.(b) G.S. 120-4.22A is amended by adding a new subsection to read:

"(u) In accordance with subsection (a) of this section, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2006, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2006, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2006, and June 30, 2006."

SECTION 22.18.(c) G.S. 135-65 is amended by adding a new subsection to read:

"(aa) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2005, and June 30, 2006."

INCREASE THE MONTHLY PENSION FOR MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND

SECTION 22.19. G.S. 58-86-55 reads as rewritten:

"**§ 58-86-55. Monthly pensions upon retirement.**

Any member who has served 20 years as an "eligible fireman" or "eligible rescue squad worker" in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of ~~one hundred sixty-three dollars ($163.00)~~ one hundred sixty-five dollars ($165.00) per month. Any retired fireman receiving a pension shall, effective ~~July 1, 2005,~~ July 1, 2006, receive a pension of ~~one hundred sixty-three dollars ($163.00)~~ one hundred sixty-five dollars ($165.00) per month.

Members shall pay ten dollars ($10.00) per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No "eligible rescue squad member" shall receive a pension prior to July 1, 1983. No member shall be entitled to a pension hereunder until the member's official duties as a fireman or rescue squad worker for which the member is paid compensation shall have been terminated and the member shall have retired as such according to standards or rules fixed by the board of trustees.

A member who is totally and permanently disabled while in the discharge of the member's official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of those official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of ~~one hundred sixty-three dollars ($163.00)~~ one hundred sixty-five dollars ($165.00) per month beginning the first month after the member's fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of ten dollars ($10.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

A member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member shall upon attaining the age of 55

years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application and annually thereafter.

A member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose volunteer department is taken over by a city or county, and because of such annexation or takeover is unable to perform as a fireman or rescue squad worker of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law."

INCREASE THE MAXIMUM MONTHLY PENSION BENEFITS FOR RETIRED MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD

SECTION 22.20. G.S. 127A-40(a) reads as rewritten:

"(a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of ~~seventy-five dollars ($75.00)~~ eighty dollars ($80.00) per month for 20 years' creditable military service with an additional ~~seven dollars and fifty cents ($7.50)~~ eight dollars ($8.00) per month for each additional year of such service; provided, however, that the total pension shall not exceed ~~one hundred fifty dollars ($150.00)~~ one hundred sixty dollars ($160.00) per month. The requirements for such pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.

(3) Have received an honorable discharge from the North Carolina national guard."

PART XXIII. CAPITAL APPROPRIATIONS.

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 23.1. There is appropriated from the General Fund for the 2006-2007 fiscal year the following amounts for capital improvements:

Capital Improvements – General Fund	**2006-2007**
Department of Agriculture and Consumer Services	
Rollins Laboratory – Bio Security Level 2 Lab Conversion	$250,000
Department of Crime Control and Public Safety	
Emergency Management Operations Center	8,500,000
Department of Environment and Natural Resources	

Hickory Nut Gorge Expansion	15,000,000
Water Resources Development Projects	20,000,000
Office of the Governor	
Information Technology Services – State Data Center	24,841,300
University of North Carolina System	
University of North Carolina at Wilmington – School of Nursing	27,000,000
North Carolina State University – Engineering Complex III	61,000,000
University of North Carolina at Charlotte – Center City Classroom Building	45,827,400
Winston Salem State University – Center for Design Innovation	3,500,000
University of North Carolina at Chapel Hill – Genomics Science Building Design and Construction Preparation	35,000,000
UNC Hospitals at Chapel Hill – Master Facilities Plan	3,000,000
Western Carolina University – New School of Health and Gerontological Sciences Building Planning Funds	2,402,661
Dental Schools Planning Funds	7,000,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**$253,321,361**

WATER RESOURCES DEVELOPMENT PROJECT FUNDS

SECTION 23.2.(a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects to the following projects whose costs are as indicated:

	Name of Project	2006-2007
(1)	Wilmington Harbor Deepening	$ 5,275,000
(2)	Morehead City Harbor Sand Management	1,200,000
(3)	Manteo (Shallowbag) Bay Channel Maintenance	-
(4)	Wilmington Harbor Maintenance Dredging	-
(5)	Morehead City Harbor Maintenance Dredging	0
(6)	Carolina Beach Renourishment	1,125,000
(7)	Carolina Beach Renourishment (Kure Beach)	681,000
(8)	Brunswick County Beaches Study	0
(9)	Ocean Isle Beach Renourishment (Brunswick County)	435,000
(10)	Beaufort Harbor Maintenance Dredging	300,000
(11)	B. Everett Jordan Reservoir Water Supply Storage	100,000
(12)	Aquatic Weed Control – Lake Gaston and Statewide	400,000
(13)	Waterway Connecting Pamlico Sound to Beaufort Harbor (Carteret)	400,000
(14)	John H. Kerr Reservoir Operations Evaluation	188,000
(15)	Currituck Sound Water Management Study	386,000
(16)	Surf City / North Topsail Beach Protection Study	-
(17)	West Onslow Beach (Topsail) Study (Pender County)	85,000
(18)	Hurricane Steam Restoration – Western NC (Phase II)	2,000,000

(19)	Hurricane Isabel Emergency Management Stream Cleanup (Phase III)	850,000
(20)	Bogue Banks Shore Protection Study (Carteret County)	-
(21)	Neuse River Basin Study	280,000
(22)	Beach and Inlet Management Study	500,000
(23)	Dredging Contingency Fund	2,295,000
(24)	State – Local Projects	3,500,000
	TOTALS	**$ 20,000,000**

SECTION 23.2.(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 2006-2007 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

(1) U.S. Army Corps of Engineers project feasibility studies.
(2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2006-2007.
(3) State-local water resources development projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 2007-2008 fiscal year.

SECTION 23.2.(c) The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

(1) All projects listed in this section.
(2) The estimated cost of each project.
(3) The date that work on each project began or is expected to begin.
(4) The date that work on each project was completed or is expected to be completed.
(5) The actual cost of each project.

The semiannual reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

REPAIRS AND RENOVATIONS RESERVE ALLOCATION

SECTION 23.3. Of the funds in the Reserve for Repairs and Renovations for the 2006-2007 fiscal year, forty-six percent (46%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143-15.3A.

Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

INCLUDE IN THE SIX-YEAR CAPITAL IMPROVEMENT PLAN THE RECOMMENDED FUNDING SOURCES FOR THE PROJECTS PROPOSED

SECTION 23.4. G.S. 143-34.45 reads as rewritten:

"**§ 143-34.45. Six-year capital improvement plan.**

(a) The State capital improvement plan shall address the long-term capital improvement needs of all State government agencies and shall incorporate all capital projects, however financed, proposed to meet those needs, except that transportation infrastructure projects shall be excluded. On or before December 31 of each even-numbered year, the Director of the Budget shall prepare and transmit to the General Assembly a six-year capital improvement plan. When preparing the plan, the Director of the Budget shall consider the capital improvement needs estimates submitted by State agencies as required in G.S. 143-34.44. The plan shall be prepared in two parts.

(b) The first part of the capital improvement plan shall set forth repair and renovations requirements that, in the judgment of the Director of the Budget, must be met to protect and preserve existing capital improvement facilities. ~~General Fund expenditure levels anticipated in this part of the plan shall be consistent with the formula establishing the repair and renovation reserve in G.S. 143-15.3A.~~The plan shall identify individual projects in priority order by State agency and shall specify the proposed means of financing.

(c) The second part of the capital improvement plan shall set forth an integrated schedule for land acquisition, new construction, or rehabilitation of existing facilities that, in the judgment of the Director of the Budget, should be initiated within each year of the six-year planning period. ~~The plan shall contain an estimated schedule for each project, along with estimates of planning, design, and construction cost.~~ The plan shall contain all of the following for each project:

(1) An estimate of land acquisition and construction or rehabilitation costs.

(2) The proposed means of financing the project. Where the means of financing would involve direct or indirect debt service obligations, the plan shall include a schedule of those obligations.

(3) An estimated schedule for the completion of the project."

USE OF EXISTING PLANS FOR STATE CONSTRUCTION

SECTION 23.5.(a) 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.

Notwithstanding G.S. 143-135, the Director of the Budget may authorize the Department of Health and Human Services and the Department of Correction to use funds necessary for projects that correct deficiencies, improve living conditions, or renovate unneeded patient space for State office space."

SECTION 23.5.(b) G.S. 116-31.11(a) reads as rewritten:

"(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of two million dollars ($2,000,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(4) Use existing plans and specifications for construction projects, where feasible. Prior to designing a project, the Board shall consult with the Department of Administration on the availability of existing plans and specifications and the feasibility of using them for a project."

SECTION 23.5.(c) This section applies to construction projects on which design is begun after that date.

USE OF RECEIPTS OF THE AQUARIUMS

SECTION 23.6. Notwithstanding any other provision of law and pursuant to G.S. 143B-289.44, the Department of Environment and Natural Resources shall use funds available in the North Carolina Aquariums Fund to pay the debt service related to the construction of a one million gallon aquarium tank at the aquarium on Roanoke Island, a one million gallon tank at the Fort Fisher aquarium, and improvements to Jennette's pier in Nags Head and the Emerald Isle pier.

TIMBER SALES RECEIPTS FOR CAPITAL IMPROVEMENTS AT AGRICULTURAL RESEARCH STATIONS AND FARMS

SECTION 23.7. Section 11.2 of S.L. 2005-276 reads as rewritten:

"**SECTION 11.2.** The sum of one million thirty-three thousand one hundred dollars ($1,033,100) shall be transferred from the Department of Agriculture and Consumer Services' timber sales capital improvement account in the Department of Agriculture and Consumer Services as such funds become available ~~during the 2005-2006 fiscal year,~~ during the 2006-2007 fiscal year and used by the Department for the following capital improvements projects at agricultural research stations and research farms:

(1) $378,000 for improvements at the swine facility at the Cherry Research Farm.

(2) $285,500 for renovation of dairy facilities at the Cherry Research Farm.

(3) $369,600 for land acquisition and development at the Tidewater Research Station."

TIMBER SALES RECEIPTS FOR LAND ACQUISITION AT PIEDMONT RESEARCH STATION

SECTION 23.8. The sum of one million seven hundred thousand dollars ($1,700,000) shall be transferred from the Department of Agriculture and Consumer Services' timber sales capital improvement account in the Department of Agriculture and Consumer Services as such funds become available during the 2006-2007 fiscal year and shall be used by the Department for land acquisition at the Piedmont Research Station in Rowan County.

PLANT CONSERVATION PROGRAM FUNDS

SECTION 23.9. Section 11.3 of S.L. 2005-276 reads as rewritten:

"**SECTION 11.3.** From funds ~~received from the sale of timber~~ that are deposited with the State Treasurer pursuant to G.S. 146-30 to the credit of the Department of Agriculture and Consumer Services in a capital improvement account, the sum of ~~twenty thousand dollars ($20,000)~~thirty thousand dollars ($30,000) for the 2006-2007 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, and environmental ~~studies.~~studies and for the management of plant conservation program preserves owned by the Department."

PART XXIV. TAX REDUCTIONS

REDUCE SALES TAX RATE EARLY

SECTION 24.1.(a) Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284, Section 9.1 of S.L. 2005-144, and Section 33.1 of S.L. 2005-276, reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. ~~This section is repealed effective for sales made on or after July 1, 2007.~~ This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

SECTION 24.1.(b) G.S. 105-164.4(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and ~~one-half percent (4 1/2%).~~one-quarter percent (4.25%).

..."

SECTION 24.1.(c) G.S. 105-164.4(a), as amended by subsections (a) and (b) of this section, reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four ~~and one-quarter percent (4.25%).~~percent (4%).

..."

SECTION 24.1.(d) G.S. 105-164.44F (a) reads as rewritten:

"(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ eighteen and seventy one-hundredths percent (18.70%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars ($2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." The Secretary

must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section."

SECTION 24.1.(e) G.S. 105-164.44F(a), as amended by subsection (d) of this section, reads as rewritten:

"(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and seventy one-hundredths percent (18.70%)~~nineteen and forty-two one-hundredths percent (19.42%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars ($2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section."

SECTION 24.1.(f) Subsection (b) of this section becomes effective January 1, 2007, and applies to sales made on or after that date. Subsection (d) of this section becomes effective January 1, 2007, and applies to taxes collected on or after that date. Subsection (c) of this section becomes effective July 1, 2007, and applies to sales made on or after that date. Subsection (e) of this section becomes effective July 1, 2007, and applies to taxes collected on or after that date. The remainder of this section is effective when it becomes law.

REDUCE INCOME TAX RATE APPLICABLE TO MOST SMALL BUSINESSES EARLY

SECTION 24.2.(a) Section 39.1 of S.L. 2003-284, as amended by Section 36.1(a) of S.L. 2005-276, is repealed.

SECTION 24.2.(b) G.S. 105-134.2(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	$21,250	6%
$21,250	$100,000	7%
$100,000	$200,000	7.75%
$200,000	NA	~~8.25%~~8%

(2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	$17,000	6%
$17,000	$80,000	7%
$80,000	$160,000	7.75%
$160,000	NA	~~8.25%~~8%

(3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	$12,750	6%

$12,750	$60,000	7%
$60,000	$120,000	7.75%
$120,000	NA	~~8.25%~~8%

(4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
0	$10,625	6%
$10,625	$50,000	7%
$50,000	$100,000	7.75%
$100,000	NA	~~8.25%~~8%".

SECTION 24.2.(c) G.S. 105-134.2(a), as amended by subsections (a) and (b) of this section, reads as rewritten:

"(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	$21,250	6%
$21,250	$100,000	7%
$100,000	~~$200,000~~NA	7.75%
~~$200,000~~	~~NA~~	~~8%~~

(2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	$17,000	6%
$17,000	$80,000	7%
$80,000	~~$160,000~~NA	7.75%
~~$160,000~~	~~NA~~	~~8%~~

(3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	$12,750	6%
$12,750	$60,000	7%
$60,000	~~$120,000~~NA	7.75%
~~$120,000~~	~~NA~~	~~8%~~

(4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
0	$10,625	6%
$10,625	$50,000	7%
$50,000	~~$100,000~~NA	7.75%
~~$100,000~~	~~NA~~	~~8%~~".

SECTION 24.2.(d) Subsection (b) of this section is effective for taxable years beginning on or after January 1, 2007. Subsection (c) of this section is effective for taxable years beginning on or after January 1, 2008. The remainder of this section is effective when it becomes law.

PART XXV. MINIMUM WAGE INCREASE

INCREASE MINIMUM WAGE

SECTION 25.1.(a) 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 ~~the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time,~~six dollars and fifteen cents ($6.15) per hour, except as otherwise provided in this section."

SECTION 25.1.(b) This section becomes effective September 1, 2006.

PART XXVI. SET REGULATORY FEES

SET UTILITIES REGULATORY FEE

SECTION 26.1.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2006.

SECTION 26.1.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2006-2007 fiscal year is two hundred thousand dollars ($200,000).

SET INSURANCE REGULATORY FEE

SECTION 26.2. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2006 calendar year.

PART XXVII. SPECIAL INDEBTEDNESS PROJECTS

HOSPITAL AND MUSEUM SPECIAL INDEBTEDNESS

SECTION 27.1.(a) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the following maximum aggregate principal amounts to finance the costs of the following projects. The table below provides the maximum principal amounts. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of these projects. Each project is listed below in its order of priority.

Aggregate Maximum	**Project**
$20,000,000	Completing the construction and equipping of the Central Regional Psychiatric Hospital for the Department of Health and Human Services.
$145,500,000	Acquiring, constructing, and equipping a new Eastern Regional Psychiatric Hospital for the Department of Health and Human Services.
$40,000,000	Acquiring, constructing, and equipping an expansion for the North Carolina Museum of Art, but not including the acquisition of additional land.

TOTAL:
$205,500,000

SECTION 27.1.(b) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred sixty-two million eight hundred thousand dollars ($162,800,000) to finance the capital facility costs of a new Western Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of acquiring, constructing, and equipping the project described in this subsection. The special indebtedness authorized by this subsection may not be issued before July 1, 2008, unless the State Treasurer makes a specific written finding that an earlier issuance date is in the best interests of the State.

SECTION 27.1.(c) This section is effective when it becomes law.

PART XXVIII. MISCELLANEOUS PROVISIONS

EXECUTIVE BUDGET ACT APPLIES

SECTION 28.1. The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

COMMITTEE REPORT

SECTION 28.2.(a) The Senate Appropriations Committee Report on the Continuation, Expansion, and Capital Budgets shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

SECTION 28.2.(b) The budget enacted by the General Assembly for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2006-2007 fiscal year is a line-item budget, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. This budget includes the appropriations made from all sources including the General Fund, Highway Fund, special funds, cash balances, federal receipts, and departmental receipts.

The General Assembly amended the requested adjustments to the budgets submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission in accordance with the steps that follow, and the line-item detail in the budget enacted by the General Assembly may be derived accordingly:

(1) The base budget was adjusted in accordance with the base budget cuts and additions that were set out in the Senate Appropriations Committee Report on the Continuation, Expansion, and Capital Budgets.

(2) Transfers of funds supporting programs were made in accordance with the Senate Appropriations Committee Report on the Continuation, Expansion, and Capital Budgets.

SECTION 28.2.(c) The budget enacted by the General Assembly shall also be interpreted in accordance with the special provisions in this act and in accordance with other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

MOST TEXT APPLIES ONLY TO 2006-2007

SECTION 28.3. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year.

APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

SECTION 28.4.(a) Except where expressly repealed or amended by this act, the provisions of S.L. 2005-276 and S.L. 2005-345 remain in effect.

SECTION 28.4.(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 2006-2007 fiscal year in S.L. 2005-276 and S.L. 2005-345 that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

EFFECT OF HEADINGS

SECTION 28.5. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a part.

SEVERABILITY CLAUSE

SECTION 28.6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 28.7. Except as otherwise provided, this act becomes effective July 1, 2006.

SENATE FINANCE COMMITTEE
Wednesday, May 31, 2006 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 31, 2006, in Room 544 of the Legislative Office Building. Thirty members of the committee were present. Senator John Kerr presided. Alexandra Leonard and Jamie Keener of Wake County and Hannah Welch and Abby Brack of Gaston County served as pages.

SB 339 – Omnibus Occupancy Taxes III.

Sen. Kerr moved to not concur with the House Committee Substitute and the motioned passed. Copies of the bill, summary and fiscal note are attached.

SB 1431 – Burgaw Occupancy Tax.

Sen. Soles was recognized to explain the bill. Sen. Hoyle moved for a favorable report and the motion carried. Copies of the bill, summary and fiscal note are attached.

SB 1506 – Additional St. Pauls Occupancy Tax.

Sen. Hoyle moved to adopt the proposed committee substitute for discussion and the motion carried. Sen. Weinstein was recognized to explain the committee substitute. Sen. Dannelly moved for a favorable report and the motion carried. Copies of the bill, proposed committee substitute, summary and fiscal note are attached.

SB 1552 – Additional Personal Income Tax Filing Option.

Sen. Webster was recognized to explain the bill. Sen. Dannelly moved to adopt the proposed committee substitute for discussion and the motion carried. Sen. Berger moved for a favorable report and the motion carried. Copies of the bill, proposed committee substitute, summary and fiscal note are attached.

SB 948 – Amend Boating Safety/Vessel Titling Law.

Sen. Hoyle was recognized to explain the bill and motioned to adopt the proposed committee substitute for discussion. The motion carried. Sen. Tillman moved for a favorable report and the motion carried. Copies of the bill, proposed committee substitute, summary and fiscal note are attached.

SB 1692 – Sales Tax on R&D Equipment.

Sen. Hoyle was recognized to explain the bill and motioned to adopt the proposed committee substitute for discussion. The motion carried. Sen. Hoyle moved for a favorable report and the motion carried. Copies of the bill, proposed committee substitute, summary and fiscal note are attached.

HB 1330 – Authorize Licensure/Anesthesiologist Asst's.

Sen. Purcell was recognized to explain the bill. Dana Simpson, Counsel to the NC Society of Anesthesiologists was available to answer questions. Sen. Apodaca moved for a favorable report and the motion carried. Copies of the bill, summary and fiscal note are attached.

SB 1213 – Film Incentive Changes.

Sen. Boseman was recognized to explain the bill. Sen. Hoyle motioned to adopt the proposed committee substitute for discussion and the motion carried. Sabra Faires, Senate Tax Counsel, Trina Griffin, Research Division staff attorney, Canaan Huie, Bill Drafting staff attorney, and Dave Crotts, Fiscal Research Division fiscal analyst, were available to answer questions. Sen. Dannelly moved for a favorable report and the motion carried. Copies of the bill, proposed committee substitute, summary and fiscal note are attached.

SB 1283 – Franchise Tax Base Calculation.

Sen. Hartsell was recognized to explain the bill and offer an amendment to change the effective date. He moved to adopt the amendment and the motion carried. Sen. Goodall moved for a favorable report and the motion carried. Copies of the bill, summary, fiscal note, and amendment are attached.

SB 1809 – University Indebtedness Projects.

Sen. Kerr was recognized to explain the bill and motioned to adopt the proposed committee for discussion. The motion carried. Rob Nelson, Vice President – Finance, UNC System, was available to answer questions. Sen. Soles moved for a favorable report and the motion carried. Copies of the bill, proposed committee substitute, summary and fiscal note are attached.

The meeting adjourned at 1:58 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Wednesday, May 31, 2006, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 339	Omnibus Occupancy Taxes-III	Senator Holloman
SB 1431	Burgaw Occupancy Tax.	Senator Soles, Jr.
SB 1506	Additional St. Pauls Occupancy Tax.	Senator Weinstein
SB 1552	Additional Personal Income Tax Filing Option.	Senator Webster
SB 948	Amend Boating Safety/Vessel Titling Law.	Senator Hoyle
SB 1213	Film Incentive Changes.	Senator Boseman
SB 1809	University Self-Liquidating Projects.	Senator Kerr
HB 1330	Authorize Licensure/Anesthesiologist Asst's.	Representative Jeffus
SB 1692	Sales Tax on R&D Equipment.	Senator Hoyle
SB 1283	Franchise Tax Base Calculation	Senator Hartsell

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	May 31, 2006	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 339	Omnibus Occupancy Taxes-III	Senator Holloman
SB 948	Amend Boating Safety/Vessel Titling Law.	Senator Hoyle
HB 1330	Authorize Licensure/Anesthesiologist Asst's.	Representative Jeffus
SB 1809	University Self-Liquidating Projects.	Senator Kerr
SB 1213	Film Incentive Changes.	Senator Boseman
SB 1283	Franchise Tax Base Calculation.	Senator Hartsell
SB 1431	Burgaw Occupancy Tax.	Senator Soles, Jr.
SB 1506	Additional St. Pauls Occupancy Tax.	Senator Weinstein
SB 1552	Additional Personal Income Tax Filing Option.	Senator Webster
SB 1692	Sales Tax on R&D Equipment.	Senator Hoyle

Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Thursday, June 01, 2006

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

FAVORABLE

S.B. **1431** Burgaw Occupancy Tax.
Sequential Referral: None
Recommended Referral: None

H.B.(SCS #2) **1330** Authorize Licensure/Anesthesiologist Asst's.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. **1283** Franchise Tax Base Calculation.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

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

S.B. **1213** Film Incentive Changes.
Draft Number: 75531
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1506** Additional St. Pauls Occupancy Tax.
Draft Number: 55483
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1552** Additional Personal Income Tax Filing Option.
Draft Number: 65601
Sequential Referral: None
Recommended Referral: None

Long Title Amended: No

S.B. **1692** Sales Tax on R&D Equipment.
Draft Number: 55485
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1809** University Self-Liquidating Projects.
Draft Number: 15410
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **948** Amend Boating Safety/Vessel Titling Law.
Draft Number: 65602
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO CONCURRENCE

S.B.(HCS #1) **339** Omnibus Occupancy Taxes-III
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 10

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 31, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	S.A.
	Bond Counsel
	Smith
	Electricities
PATRICK HANNAH	DURHAM CHAMBER
Andy Sabol	NC DOR
Lennie Collins	NC DOR
Karl Knapp	NC DOR
	NC DOR
Jonathan Smith	SAS Institute

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 31, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	AAAA
Ellen Allinger	AAAA
Margaret O'Neil	AAAA
Dana Simpson	Smith Anderson
Rebecca McGhee	Smith Anderson
STEVE KEENE	NC MEDICAL SOCIETY
Lisa Hocutt	NCWRC
David Stokes	NCWRC
Richard Hamilton	NCWRC
William J. Clinton	ICCLH
GENE AINSWORTH	AINSWORTH & ASSOC.
[signature]	GOV. OFFICE

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 31, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Rittelmeyer	NCFPC
Tami Fitzgerald	NCFPC
V. L. McBride	WRAL
Jim Blackburn	NC Association of County Commissioners
David Thorkelson	OSBM
Nathan Kauffman	OSBM
Gale Adcock	citizen
Kelly Caldaria	Capstrat
John Mobley	UNC Office of

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 31, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jessica Hubbard	East Carolina University
Dawn Kolbaken	N.C. Board of Nursing
Mary Thurman	RCBIC
Stephanie Dorko	Charlotte Chamber

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 339

Finance Committee Substitute Adopted 5/12/05
House Committee Substitute Favorable 7/28/05
Fourth Edition Engrossed 8/23/05

Short Title: Omnibus Occupancy Taxes-III. (Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWNS OF AHOSKIE AND ELKIN TO LEVY ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES, CREATING A TAXING DISTRICT IN OCRACOKE TOWNSHIP FOR THE PURPOSES OF AUTHORIZING THE LEVY OF A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, AMENDING THE ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES FOR THE COUNTIES OF CHOWAN AND MARTIN, AND REENACTING THE OCCUPANCY TAX AMENDMENTS IN CARTERET COUNTY.

The General Assembly of North Carolina enacts:

PART I. TOWN OF AHOSKIE OCCUPANCY TAX.

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Ahoskie Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Ahoskie shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Town of Ahoskie Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this Part:

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

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

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

SECTION 1.2. Town of Ahoskie Tourism Development Authority. – (a) Appointment and Membership. – When the Ahoskie Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Ahoskie Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART II. ELKIN OCCUPANCY TAX.

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Elkin Town Council may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State

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

SECTION 2.1.(b) Administration. – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Elkin shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Elkin Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Elkin and shall use the remainder for tourism-related expenditures.

The following definitions apply in this Part:

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

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

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

SECTION 2.2. Elkin Tourism Development Authority. – (a) Appointment and Membership. – When the Elkin Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall

promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Elkin Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. OCRACOKE OCCUPANCY TAX.

SECTION 3.1. Occupancy Tax. – The Ocracoke Township Taxing District is created. It is coterminous with Ocracoke Township in Hyde County. The Ocracoke Township Taxing District is a body politic and corporate and has the power to carry out the provisions of this Part. The Hyde County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 3.2.(a) Authorization and Scope. – The governing body of Ocracoke Township Taxing District may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

SECTION 3.2.(b) Administration. – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155, as if it were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 3.2.(c) Distribution and Use of Tax Revenue. – Ocracoke Township Taxing District shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Ocracoke Township Tourism Development Authority created pursuant to Section 3.3 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Ocracoke Township. None of the proceeds may be used to promote travel or tourism in areas within Hyde County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this Part:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

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

SECTION 3.3.(a) Ocracoke Township Tourism Development Authority. – Appointment and Membership. – The Board of Commissioners of Hyde County shall adopt a resolution creating the Ocracoke Township Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Tourism Development Authority shall have five members in addition to the Finance Officer. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the district. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 3.3.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in Section 3.2 of this Part. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 3.3.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hyde County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

PART IV. CHOWAN OCCUPANCY TAX.

SECTION 4. S.L. 1989-174 reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Chowan County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Chowan County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Chowan County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

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

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied in this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

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

(e) Distribution and ~~use of tax revenue.~~Use of Tax Revenue. – Chowan County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Chowan Tourism Development Authority. ~~The Authority may spend funds remitted to it under this subsection only to promote travel and tourism in Chowan County, to sponsor tourist-oriented events and activities in Chowan County, and to finance tourist-related capital projects in Chowan County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Chowan County and the remainder for tourism-related expenditures.

The following definitions apply in this act:

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

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

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

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

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

"Sec. 2. Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. ~~The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority.~~At least one-third of the members must

be individuals affiliated with businesses that collect the tax in the county and at least one-half must be individuals currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The county shall serve as the fiscal agent of the Authority. The Finance Officer for Chowan County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"Sec. 3. This act is effective upon ratification."

PART V. MARTIN OCCUPANCY TAX.

SECTION 5. S.L. 1991-80 reads as rewritten:

"Section 1. Occupancy Tax. – (a) Authorization and ~~scope.~~Scope. – The Martin County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, when furnished in furtherance of their nonprofit purpose, by summer camps, or by businesses that offer to rent no more than five units.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Martin County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Martin County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead~~

~~of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

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

(e) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Martin County shall, on a ~~monthly~~quarterly basis, remit the net proceeds of the occupancy tax to the Martin County Travel and Tourism Authority. ~~The Authority may spend funds remitted to it under this subsection only to further the development of travel and tourism and cultural, recreational, and historic activities in Martin County through advertising and promotion, to sponsor tourist-oriented events and activities in Martin County, and to finance tourist-related capital activities and projects in Martin County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Martin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the ~~tax, which may~~tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross ~~proceeds.~~proceeds

collected each year and one percent (1%) of the remaining gross receipts collected each year.

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

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

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

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

"Sec. 2. Martin County ~~Travel and~~ Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Martin County ~~Travel and~~ Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following 12 members:

(1) A Martin County Commissioner appointed by the Martin County Board of Commissioners.

(2) Two owners or operators of restaurants, motels, hotels, or other taxable accommodations in Martin County that have at least five units, nominated by representatives of this industry, both to be appointed by the Martin County Board of Commissioners.

(3) One member selected by the Martin County Chamber of Commerce to be appointed by the Martin County Board of Commissioners.

(4) One member appointed by the Martin County Board of Commissioners selected from the Martin County Economic Development Commission.

(5) Five members, one appointed by each member of the Martin County Board of Commissioners.

(6) One member appointed by the Martin County Board of Commissioners selected from the Martin County Historical Society.

(7) One member appointed by the Martin County Board of Commissioners selected from the Robersonville Downtown Merchants Association.

The appointees shall be made from throughout the County by the Martin County Board of Commissioners. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the county. All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a Chair. No member may serve as Chair more than two one-year terms in succession. The Authority shall meet at the call of the Chair or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Martin County shall be the ex officio finance officer of the Authority.

(b) Terms of office. – Members of the Authority shall serve three-year terms except that the Martin County Commissioner appointed pursuant to subdivision (a)(1) shall be appointed yearly by the chairman of the board of commissioners and initial appointees shall serve the following terms:

(1) The Martin County Commissioner appointed pursuant to subdivision (a)(1): one year.

(2) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): one year.

(3) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): three years.

(4) The representative of the Martin County Chamber of Commerce appointed pursuant to subdivision (a)(3): three years.

(5) The representative of the Martin County Economic Development Commission appointed pursuant to subdivision (a)(4): two years.

(6) Three members appointed by Martin County Commissioners pursuant to subdivision (a)(5): one year.

(7) Two representatives appointed by Martin County Commissioners pursuant to subdivision (a)(5): three years.

(8) The representative of the Martin County Historical Society appointed pursuant to subdivision (a)(6): two years.

(9) The representative of the Robersonville Downtown Merchants Association appointed pursuant to subdivision (a)(7): three years.

(c) Limitation on terms. – No member of the Authority shall serve more than two consecutive three-year terms.

(d) ~~Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended.~~Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote

travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. The board of county commissioners may from time to time determine an appropriate percentage not to exceed five percent (5%) of net proceeds that may be expended for administrative services.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~(f) Notwithstanding the provisions of this act, the board of commissioners may abolish the Martin County Travel and Tourism Authority and itself function and carry out the duties of the Authority provided in this act.~~

"Sec. 3. This act is effective upon ratification."

PART VI. UNIFORM PROVISIONS.

SECTION 6.1. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Caswell, Chowan, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Granville, Halifax, Madison, Martin, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett ~~County.~~County and the Ocracoke Township Taxing District."

SECTION 6.2. G.S. 160A-215(g) reads as rewritten:

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

PART VII. CARTERET OCCUPANCY TAX.

SECTION 7. S.L. 2005-120 is reenacted.

PART VIII. CASWELL COUNTY OCCUPANCY TAX.

SECTION 8.1. Occupancy Tax. – (a) Authorization and Scope. – The Caswell County Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 8.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 8.1.(c) Distribution and Use of Tax Revenue. – Caswell County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Caswell County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Caswell County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

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

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

SECTION 8.2. Caswell County Tourism Development Authority. – (a) Appointment and Membership. – When the Caswell County Board of Commissioners adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 8.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 8.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Caswell County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

PART IX. YANCEYVILLE OCCUPANCY TAX.

SECTION 9.1. Occupancy Tax. – (a) Authorization and Scope. – The Yanceyville Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 9.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 9.1.(c) Distribution and Use of Tax Revenue. – The Town of Yanceyville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Yanceyville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Yanceyville and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

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

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

SECTION 9.2. Yanceyville Tourism Development Authority. – (a) Appointment and Membership. – When the Yanceyville Town Council adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office,

and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 9.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 9.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Yanceyville Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART X. EFFECTIVE DATES.

SECTION 10. This act is effective when it becomes law. Chowan and Martin counties must ensure that the membership of the Tourism Development Authorities are in compliance with the requirements of this act on or before January 1, 2006.

SENATE BILL 339:
Omnibus Occupancy Taxes-III

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	Mary 31, 2006
Introduced by:	Sen. Holloman	**Summary by:**	Trina Griffin
Version:	Fourth Edition		Committee Counsel

SUMMARY: THIS BILL IS IN SENATE FINANCE FOR A RECOMMENDATION TO CONCUR OR NOT TO CONCUR IN THE HOUSE COMMITTEE SUBSTITUTE.

Senate Bill 339 authorizes Caswell County and the towns of Ahoskie, Elkin, and Yanceyville to levy room occupancy taxes, creates a special taxing district in Ocracoke Township for the purposes of levying an occupancy tax, amends the occupancy taxes in Chowan and Martin counties, reenacts the Carteret occupancy tax amendments that passed session. All taxes fully conform to the House Finance committee's occupancy tax guidelines.

BILL ANALYSIS: Senate Bill 339 does the following:

- Authorizes the Town of Ahoskie to levy a room occupancy tax at a rate of 3%. Ahoskie is located in Hertford County, which has authority to levy a 3% occupancy tax in the county. The total rate of tax levied in the Town of Ahoskie will be 6%.
- Authorizes the Town of Elkin to levy a room occupancy tax at a rate of 6%. Elkin is located in Surrey County, which does not have authority to levy an occupancy tax.
- Creates a special taxing district in the existing Ocracoke Township and authorizes the district to levy a room occupancy tax at a rate of 2%. Ocracoke Township is an unincorporated area located in Hyde County, which has authority to levy a 3% tax. The total rate of tax levied in Ocracoke will be 5%, and the Hyde County Board of Commissioners will act as the governing body of the district and levy and administer the tax.
- Authorizes Chowan County to levy an additional room occupancy tax at a rate of 2% and amends the existing Chowan County legislation to bring it into conformity with the House occupancy tax guidelines. Currently, Chowan has authority to levy a 3% tax, and no city in the county levies an occupancy tax. The total rate of tax in Chowan will be 5%.
- Authorizes Martin County to levy an additional room occupancy tax at a rate of 3% and amends the existing Martin County legislation to bring it into conformity with the House occupancy tax guidelines. Currently, Martin has authority to levy a 3% tax, and no city in the county levies an occupancy tax. The total rate of tax in Martin will be 6%.
- Reenacts Session Law 2005-120, which was not properly roll-called when it passed in the House of Representatives last session. The original legislation, House Bill 1056, sponsored by Representative Preston, amended the Carteret Occupancy Tax to extend the sunset of a 1% tax to allow the county more time to develop a convention center plan. This provision is no longer necessary since S.L. 2005-120 was re-enacted in the Technical Corrections bill last year, but it does not pose any problems if it is left in the bill. **However, if this bill goes to conference, this provision can be removed.**

- Authorizes Caswell County and the Town of Yanceyville to each levy a room occupancy tax at the rate of 3%. The Town of Yanceyville is located in Caswell County. With this provision, the total rate of occupancy tax in Yanceyville would be 6%.

Each new tax or amended legislation contains the following uniform provisions:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6%, and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism, and the remainder must be used for tourism-related expenditures.
Definitions – The terms "net proceeds," "promote travel and tourism," and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority (TDA), which determines how the tax proceeds will be used and is created by a local ordinance. At least ½ of the members must be currently active in the promotion of travel and tourism in the city or county, and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

EFFECTIVE DATE: This act is effective when it becomes law. The effective date section requires that Chowan and Martin Counties ensure that the membership of their TDAs are in compliance with the requirements of this act by January 1, 2006. **Since this date has lapsed, this section should be amended.**

S0339e4-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 339 (Fourth Edition)

SHORT TITLE: Omnibus Occupancy Taxes-III.

SPONSOR(S): Senator Holloman

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11**
REVENUES:					
Town of Ahoskie	$20,695	$21,337	$21,827	$22,329	$22,843
Town of Elkin	$19,710	$20,321	$20,788	$21,267	$21,756
Ocracoke Special District	$200,000	$206,200	$210,943	$215,794	$220,758
Chowan County	$48,176	$49,622	$51,110	$52,644	$54,223
Martin County	$142,102	$151,622	$161,781	$172,620	$184,186
Carteret County	*See Assumptions and Methodology*				
Caswell County	$3,133	$3,231	$3,305	$3,381	$3,459
Town of Yanceyville	$3,133	$3,231	$3,305	$3,381	$3,459

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Ahoskie, Town of Elkin, Ocracoke Special District, Chowan County, Martin County, Carteret County, Caswell County and Town of Yanceyville.

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: Senate Bill 339 authorizes the towns of Ahoskie and Elkin to levy room occupancy taxes, creates a special taxing district in Ocracoke Township for the purposes of levying an occupancy tax, amends the occupancy taxes in Chowan and Martin counties, and reenacts the Carteret occupancy tax amendments that passed earlier this session. The fourth edition authorizes Caswell County and the Town of Yanceyville to each levy a 3% occupancy tax.

ASSUMPTIONS AND METHODOLOGY:

Town of Ahoskie

The bill would allow the Town of Ahoskie to levy a room occupancy tax of 3%. According to the Ahoskie Chamber of Commerce, there are 3 motels in Ahoskie and 1 bed and breakfast. Assuming an average of 20 rooms each for the motels and 3 rooms for the bed and breakfast, an average room rate of $50 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $20,695 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Fiscal Year	Proposed 3% Tax	Each 1%
2006-07	$20,695	$6,898
2007-08	$21,337	$7,112
2008-09	$21,827	$7,276
2009-10	$22,329	$7,443
2010-11	$22,843	$7,614

Town of Elkin

SB 339 would authorize the Town of Elkin to levy a 6% occupancy tax. According to the Town of Elkin, there is currently 1 bed and breakfast with 3 rooms, and 1 motel with 25-30 rooms in the town limits of Elkin. Assuming an average room rate of $50 per night and a room occupancy rate of 60%, the 6% tax would generate approximately $19,710. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Fiscal Year	Proposed 6% Tax	Each 1%
2006-07	$19,710	$3,285
2007-08	$20,321	$3,387
2008-09	$20,788	$3,465
2009-10	$21,267	$3,544
2010-11	$21,756	$3,626

Ocracoke Township

The bill would create a special taxing district in the existing Ocracoke Township and authorize a 2% occupancy tax. There is currently a 3% occupancy tax levied in Hyde County, which generated $316,080 in 2004. Of this amount, the county manager estimates that approximately $300,000 was generated within the boundaries of the proposed Ocracoke special district. Based on this estimate

and the General Consumer Price Index rate of increase, the following revenue stream is projected for the proposed 2% occupancy tax:

Fiscal Year	Proposed 2% Tax	Each 1%
2006-07	$200,000	$100,000
2007-08	$206,200	$103,100
2008-09	$210,943	$105,471
2009-10	$215,794	$107,897
2010-11	$220,758	$110,379

Chowan County

The bill would allow Chowan County to levy an occupancy tax of 2% in addition to the 3% tax that is currently levied. The total rate of tax for Chowan County would be 5%. The table below provides collections data for the existing tax for the last four years.

Fiscal Year	Chowan County 3% (Existing)	Each 1%
2001-02	$63,757	$21,252
2002-03	$62,581	$20,860
2003-04	$74,512	$24,837
2004-05	$68,117	$22,705

Extending this trend for the proposed 2% tax suggests the following revenue stream:

Fiscal Year	Proposed 2% Tax	Each 1%
2006-07	$48,176	$24,088
2007-08	$49,622	$24,811
2008-09	$51,110	$25,555
2009-10	$52,644	$26,322
2010-11	$54,223	$27,112

Martin County

SB 339 would allow Martin County to levy a 3% occupancy tax in addition to the existing 3% tax. The total rate of tax in Martin County would be 6%. The table below provides collections data for the current tax for the last six years.

Fiscal Year	Martin County 3% (Existing)	Each 1%
1999-00	$93,095	$31,032
2000-01	$88,631	$29,544
2001-02	$88,222	$29,407
2002-03	$90,575	$30,192
2003-04	$118,740	$39,580
2004-05	$124,816	$41,605

Extending this trend for the proposed 3% tax suggests the following revenue stream:

Fiscal Year	Proposed 3% Tax	Each 1%
2006-07	$142,102	$47,367
2007-08	$151,622	$50,541
2008-09	$161,781	$53,927
2009-10	$172,620	$57,540
2010-11	$184,186	$61,395

Carteret County
The bill includes a provision to extend the sunset of a the 1% Carteret County occupancy tax to allow more time to develop plans for a convention center. This provision is no longer necessary since it was included in the Technical Corrections bill last year.

Caswell County and the Town of Yanceyville
The bill allows Caswell County and the Town of Yanceyville to each levy a 3% occupancy tax. The Town of Yanceyville is located in Caswell County. According to the county manager for Caswell County, there is one motel in the county. The motel is located in Yanceyville and is expected to generate approximately $3,000 each year for the Town of Yanceyville and Caswell County based on the proposed occupancy tax rate of 3% each for the county and the town. Applying the General Consumer Price Index rate of increase for future years provides the following revenue estimate:

Fiscal Year	Yanceyville	Caswell Co.	Each 1%
2006-07	$3,133	$3,133	$1,044
2007-08	$3,231	$3,231	$1,077
2008-09	$3,305	$3,305	$1,102
2009-10	$3,381	$3,381	$1,127
2010-11	$3,459	$3,459	$1,153

SOURCES OF DATA: Town of Ahoskie, Town of Elkin, Hyde County, Caswell County and NC Dept. of State Treasurer

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official Fiscal Research Division Publication

DATE: May 30, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 1431

Short Title:	Burgaw Occupancy Tax.	(Local)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF BURGAW TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of the Town of Burgaw may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Burgaw shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Burgaw Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Burgaw and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

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

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Burgaw Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

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

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

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

SENATE BILL 1431:
Burgaw Occupancy Tax

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 31, 2006
Introduced by:	Sen. Soles	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1431 authorizes the Town of Burgaw to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

CURRENT LAW: The Town of Burgaw currently has no authority to levy a room occupancy tax. It is located in Pender County, which is authorized to levy a 3% tax. Under this bill, the total rate of occupancy tax in the Town of Burgaw would be 6%.

BILL ANALYSIS: Senate Bill 1431 authorizes the Town of Burgaw to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

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

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

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

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

S1431e1-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1431 (First Edition)

SHORT TITLE: Burgaw Occupancy Tax.

SPONSOR(S): Senator Soles

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Town of Burgaw	$6,570	$6,773	$6,929	$7,088	$7,251

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Burgaw

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
Senate Bill 1431 authorizes the Town of Burgaw to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

ASSUMPTIONS AND METHODOLOGY:
Based on information from Pender County, there is one motel in the Town of Burgaw. Assuming 25 rooms, an average rate of $40 per night and a 60% occupancy rate, the 3% occupancy tax would generate approximately $6,570 annually. The general rate for the Consumer Price Index is used to determine the rate of growth in the tax collections for future years.

SOURCES OF DATA:
Pender County

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 31, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1506
PROPOSED COMMITTEE SUBSTITUTE S1506-CSSVx-69 [v.1]

5/26/2006 2:52:14 PM

Short Title: Additional St. Pauls Occupancy Tax. (Local)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF ST. PAULS TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 1998-112 is amended by adding a new subsection to read:

"(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the board of commissioners of the Town of St. Pauls may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, use, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. St. Pauls may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section."

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

SENATE BILL 1506:
Additional St. Pauls Occupancy Tax

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 31, 2006
Introduced by:	Sen. Weinstein	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S1506-CSSVx-69		Committee Counsel

SUMMARY: Senate Bill 1506 authorizes the Town of St. Pauls to levy an additional 2% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

The PCS makes one minor technical change by adding the term "use" on line 11.

CURRENT LAW: In 1998, the General Assembly authorized the Town of St. to levy a 1% room occupancy tax. Currently, the proceeds are remitted to the St. Pauls Tourism Development Authority, which is required to spend at least two-thirds of the proceeds on tourism promotion and the remainder on tourism-related expenditures. The town is located in Robeson County, which does not have authority to levy a room occupancy tax.

BILL ANALYSIS: Senate Bill 1506 authorizes the Town of St. Pauls to levy an additional 2% room occupancy tax, for a total rate of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

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

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

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

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

S1506e1-SMSV-CSSVx-

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 30, 2006

TO: Senator Weinstein

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 1506 (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11**
REVENUES:					
Town of St. Pauls	**$11,388**	**$11,741**	**$12,011**	**$12,287**	**$12,569**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of St. Pauls

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
The PCS for SB1506 authorizes the Town of St. Pauls to levy an additional 2% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

ASSUMPTIONS AND METHODOLOGY:
The Town of St. Pauls has one hotel. It is estimated that the 2% occupancy tax would generate approximately $11,000 annually. This estimate assumes 40 rooms with an average rate of $65 per night and a 60% occupancy rate. The general Consumer Price Index is used to estimate growth in the tax for future years.

SOURCES OF DATA: NC Dept. of Commerce

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1552
PROPOSED COMMITTEE SUBSTITUTE S1552-PCS65601-LA-33

Short Title: Additional Personal Income Tax Filing Option. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ADDITIONAL JOINT FILING OPTION FOR INDIVIDUAL INCOME TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. – A husband and wife ~~shall file a single income tax return jointly if (i) their~~whose federal taxable income is determined on a joint federal return ~~and (ii) both spouses are residents of this State or both spouses have~~shall file a single income tax return jointly if each spouse either is a resident of this State or has North Carolina taxable ~~income.~~income and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1552

Short Title:	Additional Personal Income Tax Filing Option.	(Public)
Sponsors:	Senators Webster, Clodfelter, Dalton, Hartsell, Hoyle, Kerr; Allran, Atwater, Forrester, Goodall, Hunt, Jacumin, Miller, Pittenger, Presnell, Smith, Stevens, and Tillman.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ADDITIONAL JOINT FILING OPTION FOR INDIVIDUAL INCOME TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-162(e) reads as rewritten:

"(e) Joint Returns. – A husband and wife ~~shall file a single income tax return jointly if (i) their~~whose federal taxable income is determined on a joint federal return ~~and (ii) both spouses are residents of this State or both spouses have~~shall file a single income tax return jointly if each spouse either is a resident of this State or has North Carolina taxable ~~income.~~income and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

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

SENATE BILL 1552:
Additional Personal Income Tax Filing Option

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 31, 2006
Introduced by:	Sen. Webster	**Summary by:**	Martha Walston Committee Counsel
Version:	PCS to First Edition S1552-CSLA		

SUMMARY: Senate Bill 1552 is a recommendation of the Department of Revenue and would allow married couples the option of filing a joint return if one spouse is a nonresident with no North Carolina income.

The proposed committee substitute corrects an incorrect statutory cite.

CURRENT LAW: Under current law, a married couple who file a federal joint return are required to file a North Carolina joint return if each spouse is either a resident or has North Carolina income. If one spouse is a nonresident and has no North Carolina income, that spouse is not subject to North Carolina income tax and the other spouse must file a separate return. The current law is based on the fact that North Carolina has no jurisdiction to tax a person who is not a resident and does not have income from North Carolina sources. The current law makes filing more complicated because the couple must recompute their income separately in order to file a North Carolina return.

BILL ANALYSIS: Senate Bill 1552 would allow a married couple the option of filing jointly if they file a federal joint return and if one spouse is a nonresident with no income from North Carolina. Because North Carolina does not have jurisdiction over the nonresident spouse, the bill does not require a joint return.[1] It merely gives a couple a joint return option so that they may choose to file jointly, for example if doing so would simplify their tax preparation or reduce their North Carolina taxes. This option would also allow North Carolina residents to file jointly in Georgia and South Carolina. Currently, these two states do not allow nonresident joint filing for residents of states that do not allow joint filings for Georgia and South Carolina residents.

EFFECTIVE DATE: Senate Bill 1552 is effective for taxable years beginning on or after January 1, 2006.

S1552e1-SMLA-CSLA

[1] A New York court found that a provision, which required married nonresidents to file a joint nonresident tax return in New York if they filed a joint federal return, was unconstitutional. The court explained that the provision exposed a nonresident spouse with no New York connections to civil and criminal liability in New York by virtue of that spouse's signature on the State tax return.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 948

Agriculture/Environment/Natural Resources Committee Substitute Adopted 8/9/05
PROPOSED COMMITTEE SUBSTITUTE S948-CSSY-31 [v.4]

5/30/2006 10:20:30 AM

Short Title: Amend Boating Safety/Vessel Titling Law. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE BOATING SAFETY AND VESSEL TITLING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75A of the General Statutes reads as rewritten:

"Article 1.

"Boating Safety Act.

"**§ 75A-1. Declaration of policy.**

It is the policy of this State to promote safety for persons and property in and connected with the use, operation, and equipment of vessels, and to promote uniformity of laws relating thereto.

"**§ 75A-2. Definitions.**

As used in this Chapter, unless the context clearly requires a different meaning:

(1) "Abandoned vessel" means a vessel that has been relinquished, left, or given up by the lawful owner without the intention to later resume any right or interest in the vessel. The term does not include a vessel that is left by an owner or agent of the owner with any person or business for the purpose of storage, maintenance, or repair and that is not subsequently reclaimed.

(1a) "Certificate of number" means the document and permanent identification number issued by the Wildlife Resources Commission for the purpose of registering a vessel in this State.

(1b) "Commission" means the Wildlife Resources Commission.

(1c) "Director" means the Executive Director of the Wildlife Resources Commission.

(1d) "Electric generating facility" means any plant facilities and equipment used for the purposes of producing, generating, transmitting, delivering, or furnishing electricity for the production of power.

~~(1)~~(1e) "Motorboat" means any vessel equipped with propulsion machinery of any type, whether or not ~~such~~ the machinery is the principal source of propulsion: Provided, that "propulsion machinery" as used in this section shall not include an electric motor when used as the only means of mechanical propulsion of any ~~vessel: Provided further, that the term "motorboat" shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.~~vessel.

(1f) "No-wake speed" means idle speed or slow speed creating no appreciable wake.

(2) "Operate" means to navigate or otherwise use or occupy ~~a~~ any motorboat or ~~vessel, and shall be applicable to any motorboat or~~ vessel that is afloat.

(3) "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(4a) "Underway" means a vessel that is not at anchor, or made fast to the shore, or aground.

(5) "Vessel" means every description of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water.

(6) "Waters of this State" means any waters within the territorial limits of this State, and the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State, but does not include private ponds as defined in G.S. 113-129.

~~(7) "Electric generating facility" means any plant facilities and equipment for the purposes of producing, generating, transmitting, delivering or furnishing electricity for the production of power.~~

"§ 75A-3. Wildlife Resources Commission to administer Chapter; ~~Motorboat~~ Vessel Committee; funds for administration.

(a) ~~It shall be the duty and responsibility of the North Carolina Wildlife Resources~~ The Commission ~~to~~ shall enforce and administer the provisions of this Chapter.

(b) The ~~chairman~~ chair of the ~~Wildlife Resources~~ Commission shall designate from among the members of the ~~Wildlife Resources~~ Commission three members who

shall serve as the ~~Motorboat~~ Vessel Committee of the ~~Wildlife Resources~~ Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. ~~Gasoline~~ Motor fuel excise tax revenue is credited to the Account under G.S. 105-449.126. ~~Revenue in the Account shall be used by the Wildlife Resources~~ The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. ~~At~~ The Commission shall use at least three dollars ($3.00) of each one-year ~~vessel registration~~ certificate of number fee and at least nine dollars ($9.00) of each three-year ~~vessel registration~~ certificate of number fee collected under the numbering provisions of G.S. 75A-5 ~~shall be used~~ for boating access area acquisition, development, and maintenance.

"§ 75A-4. Identification numbers required.

Every vessel on the waters of this State shall be numbered, except those vessels exempted from numbering under G.S. 75A-7. No person shall operate or give permission for the operation of any vessel on ~~such~~ the waters ~~unless the~~ of this State unless all of the following conditions are met:

(1) The vessel is numbered in accordance with this Chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another ~~state, and unless~~ state.

(2)~~(1)~~ The certificate of number awarded to ~~such~~ the vessel is in full force and ~~effect, and~~ effect.

(3)~~(2)~~ The ~~identifying~~ identification number set forth in the certificate of number is displayed on each side of the bow of ~~such~~ the vessel.

"§ 75A-5. Application for ~~numbers; fee; displaying;~~ certificate of number and fees; reciprocity; change of ownership; ~~loss of certificate; presumption from possession of certificate;~~ conformity with ~~United States~~federal regulations; ~~award of certificates;~~ records; award of certificates; renewal of certificates; transfer of ~~interest, abandonment, etc.;~~ partial interest; destroyed or junked vessels; abandonment; change of address; ~~unauthorized numbers.~~ duplicate certificates; display.

(a) Application for Certificate of Number and Fees. – The owner of each vessel requiring numbering by this State shall file an application for a certificate of number with the ~~Wildlife Resources Commission on forms approved by it.~~ Commission. The Commission shall furnish application forms and shall prescribe the information contained in the application form. The application shall be signed by the owner of the ~~vessel, or his agent,~~ vessel or the owner's agent and shall be accompanied by a fee of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period; provided, however, there shall be no fee charged for vessels owned and operated by nonprofit rescue squads if they are operated exclusively for rescue

purposes, including rescue training. The ~~applicant~~ owner shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall ~~have the same entered upon the records of its office~~enter the application in its records and issue ~~to~~ the ~~applicant~~ owner a certificate of number stating the identification number awarded to the vessel and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The identification number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available ~~at all times~~ for inspection on the vessel for which ~~issued, whenever such~~ the certificate is issued at all times the vessel is in operation. ~~Provided, however, any~~Any person charged with failing to so carry ~~such~~ a certificate of number shall not be convicted if ~~he~~ the person produces in court a certificate of number ~~theretofore~~ previously issued to ~~him~~ the owner that was ~~and~~ valid at the time of ~~his arrest.~~ the alleged violation.

(b) Reciprocity. – The owner of any vessel already covered by a number in full force and effect ~~which has been awarded to it~~ pursuant to ~~then operative~~ federal law or a federally approved numbering system of another state shall record the identification number prior to operating the vessel on the waters of this State in excess of the 90-day reciprocity period provided for in G.S. 75A-7(a)(1). ~~Such~~ The recordation shall be ~~in the manner and pursuant to the procedure required for the award of a number under~~made pursuant to subsection (a) of this section, except that no additional or substitute identification number shall be issued.

(c) Change of Ownership. – Should the ownership of a vessel change, a new application form with a fee of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period shall be filed with the ~~Wildlife Resources~~ Commission and a new certificate bearing the same identification number shall be awarded to the new owner in the same manner as ~~provided for in~~ an original ~~award~~ certificate of number. ~~In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of two dollars ($2.00).~~ Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears ~~therein~~ on the certificate is the owner of the ~~boat~~ vessel referred to ~~therein.~~ on the certificate.

(d) Conformity With Federal Regulations. – In the event that an agency of the ~~United States~~ federal government shall have in force an over-all system of identification numbering for vessels within the United States, the numbering system employed pursuant to this Chapter by the ~~Wildlife Resources~~ Commission shall be in conformity therewith.

~~(e) The Wildlife Resources Commission may issue any vessel transaction pursuant to the provisions of Article 1 or 4 of this Chapter directly or may authorize any person qualified as prescribed in subsection (1) of this section to act as agent for the~~

~~issuance of vessel transactions subject to the requirements set forth in this Chapter. Upon acceptance of this authorization, an agent's actions in issuing any vessel transaction pursuant to this Chapter shall be valid as if issued directly by the Commission. As compensation for services rendered to the Commission and to the general public, the agent shall receive the following specified commission from the statutory fee for each listed transaction:~~

~~(1) Renewal of vessel registration -- $1.25.~~

~~(2) Transfer of ownership and registration of a vessel -- $3.00.~~

~~(3) Issuance of new certificate of vessel number and registration -- $3.00.~~

~~(4) Issuance of duplicate vessel registration -- $0.50.~~

~~(5) Issuance, transfer, duplication, or lien recordation of vessel title -- $3.00.~~

~~It is a Class 1 misdemeanor for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services.~~

(f) Records. -- All records of the ~~Wildlife Resources~~ Commission made or kept pursuant to this section shall be public records.

(g) Award of Certificates. -- Each certificate of number awarded pursuant to this Chapter, unless sooner terminated or discontinued in accordance with the provisions of this Chapter, shall continue in full force and effect to and including the last day of the ~~same~~ month during which the ~~same~~ certificate was awarded after the lapse of one year in the case of a one-year certificate or three years in the case of a three-year certificate. ~~In addition to the year of expiration, the validation decal required by subsection (a) of this section shall indicate the last month during which the certificate is valid.~~ No person shall willfully remove a validation decal from any vessel during the continuance of its validity or alter, counterfeit, or otherwise tamper with a validation decal attached to any vessel for the purpose of changing or obscuring the indicated date of expiration of the certificate of number of ~~such~~ the vessel.

(h) Renewal of Certificates. -- ~~Each~~ An owner of a vessel awarded a certificate of number ~~awarded~~ pursuant to this Chapter ~~must be renewed~~ shall renew the certificate on or before the first day of the month ~~next succeeding that during~~ after which the ~~same~~ certificate expires; otherwise, ~~such~~ the certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the ~~Wildlife Resources~~ Commission and shall be accompanied by a fee of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period; provided, there shall be no fee required for a period of one year for renewal of certificates of number ~~which~~ that have been previously issued to commercial fishing vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section.

(i) Transfer of Partial Interest. -- The owner shall furnish the ~~Wildlife Resources~~ Commission notice of the transfer of ~~all or~~ any part of ~~his~~ the owner's interest other than the creation of a security interest in a vessel numbered in this State pursuant to subsections (a) and (b) of this section ~~or of the destruction or abandonment of such vessel,~~ within 15 days ~~thereof. Such transfer, destruction, or abandonment shall terminate the certificate of number for such vessel except that, in the case of a transfer~~

~~of a part interest which does~~ of the transfer. A transfer of partial interest in a vessel shall not affect the owner's right to operate ~~such~~ the vessel, nor shall a ~~such~~ transfer of partial interest in a vessel ~~shall not~~ terminate the certificate of number.

(i1) Destroyed or Junked Vessels. – The owner of any destroyed or junked vessel shall furnish the Commission notice of the destruction or junking of that vessel within 15 days of its occurrence. Destruction or junking terminates the certificate of number and renders the hull identification number invalid for that vessel.

(i2) Abandonment. – A person may acquire ownership of an abandoned vessel by providing proof to the Commission that the lawful owner has actually abandoned the vessel. The Commission shall adopt rules by which a person seeking to acquire ownership may demonstrate that the vessel is actually abandoned. At a minimum, the rules shall provide for a reasonable attempt to locate the lawful owner and, if the owner is located, notice by the claimant of an intention to claim ownership of the vessel.

(j) ~~Any holder of a certificate of number shall notify the Wildlife Resources Commission within 15 days if his address no longer conforms to the address appearing on the certificate, and shall, as a part of such notification, furnish the Commission his new address. The Commission may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.~~ Change of Address. – Whenever any person, after applying for or obtaining the certificate of number of a vessel, moves from the address shown in the application or upon the certificate of number, that person shall notify the Commission of the change of address within 30 days of moving in a form acceptable to the Commission.

(j1) Duplicate Certificates. – The Commission shall issue a duplicate certificate of number for a vessel upon application by the person entitled to hold the certificate, if the Commission is satisfied that the original certificate of number has been lost, stolen, mutilated, or destroyed, or has become illegible. The Commission shall charge a fee of five dollars ($5.00) for issuance of each duplicate certificate.

(k) Display. – No number other than the identification number ~~awarded to a vessel~~ set forth in the certificate of number or granted reciprocity pursuant to this Chapter shall be painted, attached, or otherwise displayed on either side of the bow of ~~such~~ a vessel, except the validation decal required by subsection (a) of this section.

~~(l) When certificates of number are to be issued by agents as provided by subsection (e) of this section, the Wildlife Resources Commission may establish administrative guidelines that prescribe:~~

~~(1) The qualifications of agents;~~

~~(2) The duties of agents;~~

~~(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number;~~

~~(4) Requirements for security bonds in amounts sufficient to protect the State against loss of public funds or documents;~~

~~(5) Methods and procedures, including submission of the kinds and amounts of evidence deemed sufficient to relieve an agent of~~

~~responsibility for losses due to occurrences beyond the agent's control; and~~

~~(6) Any other reasonable requirement or condition deemed necessary and desirable to expedite and control the issuance of certificates of boat number by agents.~~

~~In accordance with administrative guidelines developed pursuant to this section, the executive director may:~~

~~(1) Select and appoint agents in the areas most convenient to the boating public and limit the number of agents in any one area if necessary for efficiency of operation;~~

~~(2) Require prompt and accurate reporting and remittance of public funds or documents by agents;~~

~~(3) Conduct periodic and special audits of accounts;~~

~~(4) Terminate the authorization of any agent found to be in noncompliance with administrative guidelines or directives of the Commission or when State funds or property are reasonably believed to be in jeopardy; and~~

~~(5) Demand the immediate surrender of all accounts, forms, certificates, decals, records, and State funds and property in the event of the termination of an agency.~~

~~A person who is denied the authority to act as an agent for the issuance of certificates of number and validation decals or whose authority to do so is revoked may not commence a contested case under G.S. 150B-23. If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.~~

"§ 75A-5.1. Commercial fishing vessels; renewal of identification number.

(a) The owner of any commercial fishing vessel that is registered under the provisions of G.S. 113-168.6 may renew the certificate of number of the vessel free of charge for a one-year period when the owner has complied with all of the conditions of this section.

(b) As used in this section, "commercial fishing vessel" is a vessel used in a commercial fishing operation, as defined in G.S. 113-168.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the vessel shall ~~submit, and the Wildlife Resources Commission shall require:~~submit both of the following to the Commission:

(1) The regular application for renewal of the certificate of number of the vessel, as provided by G.S. ~~75A-5; and~~75A-5.

(2) ~~A statement, on a form to be supplied by the Commission, and signed by the applicant, that the vessel for which the application for renewal~~

~~is made is a commercial fishing vessel; and~~Satisfactory proof that the vessel owner possesses a valid commercial fishing vessel registration.

~~(3) A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing vessel registration fee imposed by G.S. 113-168.6 has been paid for the vessel for the period during which the application for renewal of the certificate of number is submitted.~~

(d) Any person who ~~shall~~ willfully ~~give~~ gives false information upon ~~the~~ an application or ~~the~~ statement required by this section or who ~~shall falsify~~falsifies any ~~registration~~ certificate of number fee receipt required by this section ~~shall be~~is guilty of a Class 1 misdemeanor.

"**§ 75A-5.2. Vessel agents.**

(a) In order to facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Commission, and to facilitate vessel transactions, the Commission may conduct vessel transactions through any of the following:

(1) Vessel agents.
(2) The Commission's headquarters.
(3) Employees of the Commission.
(4) Two or more of those sources simultaneously.

(b) When there are substantial reasons for differing treatment, the Commission may conduct vessel transactions by one method in one locality and by another method in another locality.

(c) As compensation for services rendered to the Commission and to the general public, vessel agents shall receive the following specified commission from the statutory fee for each listed transaction:

(1) Renewal of certificate of number – $1.25.
(2) Transfer of ownership and certificate of number – $3.00.
(3) Issuance of new certificate of number – $3.00.
(4) Issuance of duplicate certificate of number – $0.50.
(5) Issuance or transfer of certificate of title – $3.00.

(d) When certificates of number are to be issued by vessel agents as provided by subsection (a) of this section, the Commission may adopt rules to provide for any of the following:

(1) Qualifications of the vessel agents.
(2) Duties of the vessel agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number.
(4) Types and amounts of evidence that a vessel agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.

(5) Any other reasonable requirement or condition that the Commission deems necessary to expedite and control the issuance of certificates of number by vessel agents.

(e) The Commission may adopt rules to authorize the Director to take any of the following actions related to vessel agents:

(1) Select and appoint vessel agents in the areas most convenient to the boating public.

(2) Limit the number of vessel agents in any one area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by vessel agents.

(4) Conduct periodic and special audits of accounts.

(5) Suspend or terminate the authorization of any vessel agent found to be noncompliant with rules adopted by the Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, supplies, records, and State funds and property, issued by or belonging to the Commission, in the event of the termination of a license agent.

(f) The Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to conduct vessel transactions as a vessel agent of the Commission.

(g) If any check or bank account draft of any vessel agent for the issuance of certificates of number shall be returned by the banking facility upon which the same is drawn for lack of funds, the vessel agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Vessel agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

(h) It is a Class 1 misdemeanor for a vessel agent to do any of the following:

(1) Withhold or misappropriate funds generated from vessel transactions.

(2) Falsify records of vessel transactions.

(3) Willfully and knowingly assist or allow a person to obtain a certificate of number or certificate of title for which the person is ineligible.

(4) Willfully issue a backdated certificate of number or certificate of title.

(5) Willfully include false information or omit material information on vessel transaction forms and records regarding either:

a. A person's entitlement to a particular certificate of number or certificate of title.

b. The applicability or term of a particular certificate of number.

(6) Charge or accept any fee, remuneration, or other item of value that exceeds the fee amounts provided by statute.

(7) Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

"§ 75A-6. Classification; rules.

(a) ~~Motorboats~~ Vessels subject to the provisions of this Chapter shall be divided into ~~four classes~~ five categories as follows:

(1) Class A. Less than 16 feet in length.

(2) Class 1. Sixteen feet or over and less than 26 feet in length.

(3) Class 2. Twenty-six feet or over and less than 40 feet in length.

(4) Class 3. Forty feet or ~~over.~~ over and not more than 65 feet in length.

(5) Class 4. More than 65 feet in length.

(b) through (e) Repealed by Session Laws 1993, c. 361, s. 2.

~~(f) Every motorboat shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Wildlife Resources Commission for each person on board, so placed as to be readily accessible: Provided, that every motorboat carrying passengers for hire shall carry so placed as to be readily accessible at least one life preserver of the sort prescribed by the regulations of the Commission for each person on board.~~

~~(g) Every motorboat shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the Wildlife Resources Commission, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.~~

~~(h) The provisions of subsection (g) of this section shall not apply to motorboats while competing in any race conducted pursuant to G.S. 75A-14 or, if such boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.~~

~~(i) Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the Wildlife Resources Commission.~~

~~(j) Every such motorboat and every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the Wildlife Resources Commission properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.~~

(k) Repealed by Session Laws 1993, c. 361, s. 2.

(l) No person shall operate or give permission for the operation of a vessel ~~which~~ that is not equipped as required by this ~~section or modification thereof.~~section.

(m) ~~In the event that any of the regulations of subsections (a), (f), (g), (h), (i), (j), and (l) of this section are in conflict with the equipment regulations of the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto, the Wildlife Resources~~ The Commission ~~is hereby granted the authority to~~ may adopt ~~such~~

~~regulations as are necessary~~rules to conform ~~with~~ to the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto.

(n) All ~~boats~~ vessels propelled by machinery of 10 hp or ~~less, which~~less that are operated on the public waters of this ~~State,~~State shall carry at least one ~~life preserver, or~~personal flotation device, life belt, ~~or~~ ring buoy, or other device of the sort prescribed by ~~the regulations~~rules of the ~~Wildlife Resources~~ Commission for each person on board, and from one-half hour after sunset to one-half hour before sunrise shall carry a white light in the stern or shall have on board a hand flashlight in good working condition, which light shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision.

(o) The Commission for Health Services shall adopt rules establishing standards for ~~the approval of~~ sewage treatment devices and holding tanks for marine toilets installed in ~~boats~~ vessels operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of the State. ~~No~~ The Commission shall not issue a certificate of number for any vessel operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of this State that is equipped with a marine toilet ~~shall be registered by the Wildlife Resources Commission~~ unless ~~such~~ the vessel is provided with a sewage treatment device or holding tank approved by the Commission for Health Services. All vessels operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of the State that are equipped with a marine toilet shall ~~be required to~~ provide a sewage treatment device or holding tank approved by the Commission for Health Services. ~~The~~ Wildlife protectors ~~of the Wildlife Resources Commission shall~~ may inspect vessels on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters to determine if approved treatment devices or holding tanks are properly installed and if they are operating in a satisfactory manner. A vessel registered, ~~documented~~ documented, or otherwise licensed in another state and equipped with a marine toilet not prohibited in such state may be operated on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission, without regard to the provisions of this subsection while making an interstate trip.

"§ 75A-6.1. Navigation rules.

(a) Every vessel operated on the waters of this State that is required to obtain an identification number pursuant to this ~~Chapter or~~ Chapter, has a valid marine document issued by the federal Bureau of Customs or any federal agency successor to it, or issued pursuant to a federally approved numbering system of another state shall comply with the navigation rules, including requirements for navigational lights, sound-signaling devices, and other equipment, contained in the Inland Navigational Rules Act of 1980, codified as amended at 33 U.S.C. §§ 2001-2038, 2071-2073 (1993) and rules adopted pursuant thereto, see 33 C.F.R. Part 84 (1992).

(b) The ~~Wildlife Resources~~ Commission is responsible for the enforcement of the rules specified in subsection (a) of this section. The rules specified in subsection (a) of

this section are also enforceable by all peace officers with general subject matter jurisdiction.

(c) Violation of the navigation rules specified in subsection (a) of this section shall constitute a Class 3 misdemeanor and is punishable only by a fine not to exceed one hundred dollars ($100.00).

"§ 75A-7. Exemption from numbering requirements.

(a) A vessel shall not be required to be numbered under this Chapter if it is:

(1) A vessel ~~which~~ that is required to be awarded ~~a~~ an identification number pursuant to federal law or a federally approved numbering system of another state, and for which ~~a~~ an identification number has been so awarded: Provided, that any such ~~boat~~ vessel shall not have been within this State for a period in excess of 90 consecutive days.

(2) A vessel from a country other than the United States temporarily using the waters of this State.

(3) A vessel whose owner is the United States, a state or a subdivision thereof.

(4) A ship's lifeboat.

(5) A vessel ~~which~~ that has a valid marine document issued by the federal Bureau of Customs ~~of the United States government~~ or any federal agency successor thereto.

(6) A sailboat of not more than 14 feet on the load water line (LWL).

(7) A vessel with no means of propulsion other than drifting or manual paddling, poling, or rowing.

(b) The ~~Wildlife Resources~~ Commission is hereby empowered to permit the voluntary numbering of vessels owned by the United States, a state or a subdivision thereof.

(c) Those vessels owned by the United States, a state or a subdivision thereof and those owned by nonprofit rescue squads may be assigned a certificate of number bearing no expiration date but which shall be stamped with the word "permanent" and shall not be renewable so long as the vessel remains the property of the governmental entity or nonprofit rescue squad. If the ownership of any such ~~boat~~ vessel is transferred from one governmental entity to another or to a nonprofit rescue squad or if a ~~boat~~ vessel owned by a nonprofit rescue squad is transferred to another nonprofit rescue squad or governmental entity, the Commission shall issue a new permanent ~~certificate may be issued~~ certificate of number, displaying the same identification number, without charge to the successor entity. When any such ~~boat~~ vessel is sold to a private owner or is otherwise transferred to private ownership, the applicable certificate of number shall be deemed to have expired immediately prior to ~~such~~ the transfer. Prior to further use on the waters of this State, the new owner shall obtain ~~either a temporary certificate of number or a regular~~ a certificate of number pursuant to the provisions of this Chapter. The provisions of this subsection applicable to ~~motorboats~~ a vessel owned by a nonprofit rescue ~~squads~~ squad apply only to ~~those~~ a vessel operated exclusively for rescue purposes, including rescue training.

"§ 75A-8. ~~Boat~~ Vessel liveries.

~~It shall be unlawful for the~~An owner of a ~~boat~~ vessel livery ~~to~~ shall not rent a vessel to any person unless the provisions of this Chapter have been complied with. ~~It shall be the duty of owners~~An owner of ~~boat liveries to~~ a vessel livery shall equip all vessels rented as required by this Chapter.

"§ 75A-9. Muffling devices.

(a) ~~The exhaust of every~~Every internal combustion engine used on ~~any motorboat~~ a vessel shall ~~be effectively muffled by~~ have effective muffling equipment ~~so constructed~~ installed and used on the exhaust to muffle the noise ~~of the exhaust~~ in a reasonable manner. The use of cutouts is ~~prohibited, except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race.~~prohibited.

(b) Every internal combustion engine with an open-air exhaust that is used on a vessel that has a capacity of operating at more than 4,000 revolutions per minute shall have effective muffling equipment installed and used on each exhaust manifold stack. This subsection shall not apply to a licensed commercial fishing vessel.

(c) This section shall not apply to vessels competing in a regatta or race approved by the United States Coast Guard, for such vessels while on trial runs during a period not to exceed 48 hours immediately preceding the regatta or race, and for such vessels while competing in official trials for speed records during a period not to exceed 48 hours immediately following the regatta or race.

~~"§ 75A-9.1. Muffling devices—Motorboats.~~

~~Every internal combustion engine with an open-air exhaust which is used on any motorboat and which has a capacity of operating at more than 4000 revolutions per minute shall have effective muffling equipment installed on each exhaust manifold stack except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such motorboats while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race. This Article shall not apply to licensed commercial fishing boats.~~

"§ 75A-10. Operating ~~boat~~ vessel or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.

(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device on the waters of this State in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall manipulate any water skis, surfboard, nonmotorized vessel, or similar device on the waters of this State while under the influence of an impairing substance.

(b1) No person shall operate any ~~motorboat or motor~~ vessel while underway on the waters of this State:

(1) While under the influence of an impairing substance, or

(2) After having consumed sufficient alcohol that ~~he~~ the person has, at any relevant time after the boating, an alcohol concentration of 0.08 or more.

(b2) The fact that a person charged with violating this subsection is or has been legally entitled to use alcohol or a drug is not a defense to a charge under ~~this subsection or subsection (b) above.~~ subsections (b) and (b1) of this section. The relevant definitions contained in G.S. 20-4.01 shall apply to ~~this subsection and subsection (b) above.~~ subsections (b), (b1), and (b2) of this section.

(b3) A person who violates a provision of subsection (a), (b), or (b1) of this section is guilty of a Class 2 misdemeanor.

(c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(e) A person who willfully violates subsection (d) of this section is guilty of a Class I misdemeanor. A person who willfully violates subsection (d) of this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation.

"**§ 75A-10.1. Family purpose doctrine applicable.**

The family purpose doctrine, as applicable in this State to tort cases arising from the operation of motor vehicles, shall apply to tort cases arising from the operation of motorboats and vessels as those terms are defined in this Chapter.

"**§ 75A-10.2. Proof of ownership of ~~motorboat.~~ vessel.**

(a) In all actions to recover damages for injury to the person or to property or for the death of a person, arising out of an accident or collision involving ~~motorboats or vessels as said terms are described in G.S. 75A-2,~~ a vessel, proof of ownership of such ~~motorboat or~~ vessel at the time of ~~such~~ the accident or collision shall be prima facie evidence that ~~said motorboat or~~ the vessel was being operated and used with the authority, consent and knowledge of the owner in the very transaction out of which ~~said~~ the injury or cause of action arose.

(b) Proof of the certificate of number stating the identification number awarded to the ~~motorboat or~~ vessel in the name of any person, ~~firm~~ firm, or corporation as required by this Chapter, or proof of the licensing, registration, or documentation of ~~said motorboat or~~ the vessel as required by other state or federal law in the name of any person, ~~firm~~ firm, or corporation, shall for the purpose of any such action, be prima

facie evidence of ownership and that ~~said motorboat or~~ the vessel was then being operated by and under the control of a person for whose conduct the owner was legally responsible, for the owner's benefit, and within the course and scope of ~~his~~ the operator's employment.

"§ 75A-11. **Duty of operator involved in collision, ~~accident or other casualty.~~accident, casualty, or other occurrence.**

(a) ~~It shall be the duty of the~~For the purposes of this section, the term 'occurrence' means a collision, accident, casualty, or other similar occurrence involving a vessel. The operator of a vessel involved in ~~a collision, accident, or other casualty,~~ an occurrence, so far as ~~he can~~the operator is able to do so without serious danger to ~~his own~~the operator's vessel, crew, and passengers (if any), ~~to~~ shall render persons affected by the ~~collision, accident, or other casualty such~~ occurrence any assistance as may be practicable and ~~as may be~~ necessary in order to save them from or minimize any danger caused by the ~~collision, accident, or other casualty,~~occurrence, and also to give ~~his~~ the operator's name, ~~address~~ address, and identification of ~~his~~ the operator's vessel in writing to any person injured and to the owner of any property damaged in the ~~collision, accident, or other casualty.~~occurrence.

(b) ~~In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty~~If an occurrence results in ~~death~~ the death, injury, or disappearance indicating death or injury, ~~or injury to~~ of a person or damage to ~~property in excess of five hundred dollars ($500.00), shall, within 10 days,~~ a vessel or other property of two thousand dollars ($2,000) or more, or if there is complete loss of any vessel, the operator of the vessel shall file with the ~~Wildlife Resources~~ Commission a full description of the ~~collision, accident, or other casualty,~~ occurrence, including ~~such~~ any information ~~as said~~ the agency may, by ~~regulation,~~rule, require. If an occurrence results in death, disappearance, or injury, the operator of the vessel shall file the report with the Commission within 48 hours of the occurrence. If the occurrence results in vessel or property damage, or complete loss of any vessel, the operator of the vessel shall file the report with the Commission within 10 days of the occurrence. When the operator of the vessel cannot submit the report, the owner of the vessel shall submit the report. ~~Such report~~Reports filed pursuant to this subsection shall not be admissible as evidence.

(c) When, as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel, the operator of the vessel shall, without delay and by the most expeditious means available, notify the nearest law enforcement agency of all of the following:

(1) The date, time, and exact location of the occurrence.

(2) The name of each person who died or disappeared.

(3) The certificate of number and name of the vessel.

(4) The name and address of the vessel owner or owners and the vessel operator.

(d) If the operator of the vessel cannot give notice required by this section, each person on board the vessel shall notify the law enforcement agency or determine that notice has been given. Upon receiving notice under this section, a law enforcement

agency shall immediately provide the Commission and the United States Coast Guard with the information required by this section.

"§ 75A-12. Furnishing information to agency of United States.

In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the ~~Wildlife Resources~~ Commission pursuant to G.S. 75A-11(b) shall be transmitted to ~~said~~ the requesting official or agency of the United States.

"§ 75A-13. Water skis, surfboards, etc.

(a) No person shall operate a vessel on any water of this State for towing a person or persons on water skis, ~~or~~ a surfboard, or similar device ~~unless there~~unless at least one of the following conditions is met:

(1) There is in ~~such a~~the vessel a person, in addition to the operator, in a position to observe the progress of the person or persons being ~~towed or unless the skiers~~towed.

(2) The persons being towed wear a ~~life preserver or unless the boat~~ personal flotation device.

(3) The vessel is equipped with a rear view mirror.

(b) No person shall operate a vessel on any water of this State towing a person or persons on water skis, a surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

(c) The provisions of subsections (a) and (b) of this section do not apply to a performer engaged in a professional ~~exhibition or a person or persons engaged in an activity authorized under G.S. 75A-14.~~exhibition.

(d) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon to collide with any object or person.

"§ 75A-13.1. Skin and scuba divers.

(a) No person shall engage in skin diving or scuba diving in the waters of this State ~~which~~ that are open to boating, or assist in such diving, without displaying a diver's flag from a mast, buoy, or other structure at the place of diving; and no person shall display such flag except when diving operations are under way or in preparation.

(b) The diver's flag shall be square, not less than 12 inches on a side, and shall be of red background with a diagonal white stripe, of a width equal to one fifth of the flag's height, running from the upper corner adjacent to the mast downward to the opposite outside corner.

(c) No operator of a vessel under way in the waters of this State shall permit ~~such~~ the vessel to approach closer than 50 feet to any structure from which a diver's flag is then being displayed, except where ~~such~~ the flag is so positioned as to constitute an unreasonable obstruction to navigation; and no person shall engage in skin diving or scuba diving or display a diver's flag in any locality ~~at which the same~~ that will unreasonably obstruct vessels from making legitimate navigational use of the water.

(d) A person who violates a provision of this section is guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed twenty-five dollars ($25.00).

"§ 75A-13.2: Repealed by Session Laws 1999-447, s. 3.

"§ 75A-13.3. Personal watercraft.

(a) No person shall operate a personal watercraft on the waters of this State at any time between sunset and sunrise. For purposes of this section, "personal watercraft" means a small vessel ~~which~~ that uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(a1) No person shall operate a personal watercraft on the waters of this State at greater than no-wake speed within 100 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel, unless the personal watercraft is operating in a narrow channel. No person shall operate a personal watercraft in a narrow channel at greater than no-wake speed within 50 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least 14 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a ~~boater~~ boating safety certification card issued by the ~~Wildlife Resources~~ Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the ~~Wildlife Resources~~ Commission or local law enforcement agency.

(b1) A person under 16 years of age who operates a personal watercraft in violation of the provisions of subsection (b) of this section is guilty of an infraction as provided in G.S. 14-3.1.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) ~~It shall be unlawful for any~~No person, firm, or corporation ~~to~~ shall engage in the business of renting personal watercraft to the public for operation by the rentee unless ~~such~~ the person, firm, or corporation has secured insurance for ~~his own~~ the

liability of the person, firm, or corporation and that of ~~his~~ the rentee, in such an amount as is hereinafter provided, from an insurance company duly authorized to sell liability insurance in this State. Each ~~such~~ personal watercraft rented must be covered by a policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars ($300,000) per occurrence.

(c2) A vessel livery that fails to carry liability insurance in violation of subsection (c1) of this section is guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000).

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind ~~such~~ the vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water ~~skis~~ skis, a surfboard, or ~~other devices~~similar device unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and ~~include:~~include any of the following:

(1) Unreasonably or unnecessarily weaving through congested vessel ~~traffic;~~traffic.

(2) Jumping the wake of another vessel within 100 feet of ~~such~~ the other vessel or when visibility around ~~such~~ the other vessel is ~~obstructed;~~obstructed.

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision;~~collision.

(4) Repealed by Session Laws 2000-52, s. 2.

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

(f1) For purposes of this section, "narrow channel" means a segment of the waters of the State 300 feet or less in width.

(g) Repealed by Session Laws 1999-447, s. 1.

(h) Nothing in this section prohibits units of local government, marine commissions, or local lake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section. Whenever a unit of local government, marine commission, or local lake authority regulates personal watercraft pursuant to this subsection, it shall conspicuously post signs that are reasonably calculated to provide notice to personal watercraft users of the stricter regulations.

"§ 75A-14: Repealed by Session Laws 1999-248, s. 4.

"§ 75A-14.1. Lake Norman No-Wake Zone.

It is unlawful to operate a vessel at greater than no-wake speed within 50 yards of a ~~boat~~ vessel launching area, bridge, dock, pier, marina, ~~boat~~ vessel storage structure, or ~~boat~~ vessel service area on the waters of Lake Norman. ~~No-wake speed is idle speed or slow speed creating no appreciable wake.~~

"§ 75A-15. Rules on water safety; adoption of the ~~Uniform Waterway Marking~~United States Aids to Navigation System.

(a) In accordance with subsection (b) of this section, the ~~Wildlife Resources~~ Commission is empowered to ~~make~~ adopt rules, for the local water in question, as to:

(1) Operation of vessels, including restrictions concerning speed zones, and type of activity conducted.

(2) Promotion of boating and water safety generally by occupants of vessels, swimmers, fishermen, and others using the water.

(3) Placement and maintenance of navigation aids and markers, in conformity with governing provisions of law.

Prior to ~~making~~ the adoption of any rules, the Commission shall investigate the water recreation and safety needs of the local water in question. In ~~making such~~ conducting the investigation, the Commission in its discretion may hold public hearings on the rules proposed and the general needs of the local water in question. After ~~such~~ completion of the investigation and application of standards, the Commission may in its discretion ~~pass~~ adopt the rules requested, ~~pass~~ adopt them in an amended form, or refuse to ~~pass~~ adopt them. After ~~passage,~~adoption, the Commission may amend or repeal the rules after first holding a public hearing.

(b) Any subdivision of this State may, but only after public notice, make formal application to the ~~Wildlife Resources~~ Commission for rules on waters within the subdivision's territorial limits as to the matters listed in subsection (a) of this section. The ~~Wildlife Resources~~ Commission ~~may,~~may adopt rules applicable to local areas of water defined by the Commission that are found to be heavily used for water recreation purposes by persons from other areas of the State and as to which there is not coordinated local interest in regulation.

(b1) The ~~Wildlife Resources~~ Commission may adopt rules ~~prohibiting~~ to prohibit entry of vessels into public swimming areas and ~~establishing~~ to establish speed zones at public ~~boat~~ vessel launching ramps, marinas, or ~~boat~~ vessel service areas and on other congested water areas where there are demonstrated water safety hazards. Enforcement of ~~such rules~~ rules adopted pursuant to this subsection shall be dependent upon placement and maintenance of regulatory markers in accordance with the ~~Uniform State Waterway Marking~~United States Aids to Navigation System by ~~such agency~~the Commission or ~~agencies as may be~~an agency designated by the ~~Wildlife Resources~~ Commission.

(c) The ~~Uniform State Waterway Marking System as approved by the Advisory Panel of State Officials to the Merchant Marine Council, United States Coast Guard, in October 1961~~United States Aids to Navigation System, as established by 33 Code of Federal Regulations Part 62 (1 July 2005 edition), is hereby adopted for use on the waters of North Carolina. The ~~Wildlife Resources~~ Commission is authorized to ~~pass~~ adopt rules implementing the marking system and may:

(1) Modify provisions as necessary to meet the special water recreational and safety needs of this State, provided that ~~such~~ the modifications do not depart in any essential manner from the uniform standards being adopted in other states.

(2) Modify provisions as necessary to conform with amendments to the marking system that may be proposed for adoption by the states.

(3) Enact supplementary standards regarding design, construction, placement, and maintenance of markers.

(4) Enact clarifying rules as to matters not covered with precision in the ~~report of the Advisory Panel of State Officials.~~United States Aids to Navigation System.

(5) Enact implementing rules as to matters left to State discretion in the ~~report of the Advisory Panel of State Officials.~~United States Aids to Navigation System.

(6) Enact rules forbidding or restricting the placement of markers either throughout the State or in certain classes or areas of waters without prior permission having been obtained from the Commission or some agency or official designated by the Commission.

(c1) It is unlawful to place or maintain any marker of the sort covered by the marking system in the waters of North Carolina that does not conform to or is in violation of the marking system and the implementing rules of the Commission.

(d) Rules enacted under the authority of subsections ~~(a)~~(a), (b), and ~~(b)~~(b1) of this section shall supersede all local rules in conflict or incompatible with such rules. As used in this subsection, "local rules" shall include provisions relating to boating, water safety, or other recreational use of local waters in special local, or private acts, in ordinances or rules of local governing bodies, or in ordinances or rules of local water authorities. Except as may be authorized in subsections ~~(a)~~(a), (b), and ~~(b)~~(b1) of this section, no local rules may be made respecting the ~~Uniform Waterway Marking~~ United States Aids to Navigation System and its implementation or respecting supplemental safety equipment on vessels.

(e) The ~~Wildlife Resources~~ Commission may adopt rules prohibiting entry or use by vessels or swimmers of waters of the State immediately surrounding impoundment structures and powerhouses associated with electric generating facilities that are found to pose a hazard to water safety. This subsection shall not apply to the Person-Caswell Lake Authority, Carolina Power and Light Company Lake (Hyco).

"§ 75A-16. Repealed by Session Laws 1979, c. 830, s. 9, effective July 1, 1980.

"§ 75A-16.1. Boating safety course.

(a) The Commission shall institute and coordinate a statewide course of instruction in boating safety, and in so doing may cooperate with any political subdivision of the State or with any reputable organization having as one of its objectives the promotion of boating safety.

(b) The Commission shall designate those persons or agencies authorized to conduct the course of instruction, and this designation shall be valid until revoked by the Commission. Within 30 days of completion of a course of instruction, a designated person or agency shall submit to the Commission a list of the names of all persons who successfully completed the course of instruction conducted by the designated person or agency.

(c) The Commission may conduct the course in boating safety using Commission personnel or other persons at times or in areas in which competent agencies are unable or unwilling to meet the demand for instruction.

(d) The Commission shall issue a boating safety certification card to each person who successfully completes the course of instruction.

(e) The Commission shall adopt rules to provide for the course of instruction and the issuance of boating safety certification cards consistent with the purposes of this section.

(f) Any person who presents a fictitious boating safety certification card or who attempts to obtain a boating safety certification card through fraud is guilty of a Class 2 misdemeanor.

"§ 75A-17. Enforcement of Chapter.

(a) Every wildlife protector and every other law-enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this Chapter and in the exercise thereof shall have authority to stop any vessel subject to this ~~Chapter; and,~~Chapter. Wildlife protectors or other law-enforcement officers of this State, after having identified ~~himself in his official capacity,~~ themselves as law enforcement officers, shall have authority to board and inspect any vessel subject to this Chapter.

(b) In order to secure broader enforcement of the provisions of this Chapter, the ~~Wildlife Resources~~ Commission is authorized to enter into an agreement with the Department of Environment and Natural Resources whereby the enforcement personnel of the Department shall assume responsibility for enforcing the provisions of this Chapter in the territory and area normally policed by ~~such~~ enforcement personnel of the Commission and whereby the ~~Wildlife Resources~~ Commission shall contribute a share of the expense of such personnel according to a ratio of time and effort expended by them in enforcing the provisions of this Chapter, when ~~such~~ the ratio has been agreed upon by both of the contracting agencies. ~~Such~~ The agreement may be modified from time to time as conditions may warrant.

(c) Law enforcement vessels may use a flashing blue light on the waters of this State whenever they are engaged in law enforcement or public safety activities. The use of a blue light by any other vessel is prohibited. A person other than a law enforcement officer who activates, installs, or operates a flashing blue light on a vessel other than a law enforcement vessel is guilty of a Class 1 misdemeanor.

(d) A siren may not be used on any vessel other than an official law enforcement vessel or other official emergency response vessel.

(e) Vessels operated on the waters of this State shall stop when directed to do so by a law enforcement officer. When stopped, vessels shall remain at idle speed, or shall maneuver in such a way as to permit the officer to come alongside the vessel. Law enforcement officers may direct vessels to stop by using a flashing blue light, a siren, or an oral command by officers in uniform. A person who violates this subsection is guilty of a Class 2 misdemeanor.

(f) Vessels operated on the waters of this State shall slow to a no-wake speed when passing within 50 yards of a law enforcement vessel that is displaying a flashing blue light. A person who violates this subsection is guilty of a Class 3 misdemeanor.

"§ 75A-18. Penalties.

(a) Except as otherwise provided, ~~any~~ a person who violates ~~any~~ a provision of this Article or who violates ~~any~~ a rule ~~or regulation~~ adopted under authority of this Chapter ~~shall be~~is guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed two hundred and fifty dollars ($250.00) for each ~~such~~ violation. ~~The~~ This limitation ~~prescribed by the preceding sentence~~ shall not apply in ~~any~~ a case where a more severe penalty ~~may be~~is prescribed in ~~any of said sections~~ this Chapter.

~~(b) Any person who violates any provision of G.S. 75A-10(a), (b), or (b1) shall be guilty of a Class 2 misdemeanor.~~

~~(c) Any person who violates any provision of G.S. 75A-13.1 shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall only be fined no more than twenty-five dollars ($25.00).~~

~~(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000).~~

~~(d) A person who:~~

~~(1) Willfully violates G.S. 75A-10(d) is guilty of a Class 1 misdemeanor.~~

~~(2) Willfully violates G.S. 75A-10(d) and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation.~~

~~(e) A person under 16 years of age who operates a personal watercraft in violation of the provisions of G.S. 75A-13.3 is guilty of an infraction as provided in G.S. 14-3.1.~~

"§ 75A-19. Operation of ~~watercraft~~ vessels by manufacturers, dealers, etc.

Notwithstanding any other provisions of this Chapter, the ~~Wildlife Resources~~ Commission may ~~promulgate such~~ adopt rules ~~and regulations~~ regarding the operation of ~~watercraft~~ vessels by manufacturers, distributors, dealers, and demonstrators as the Commission may deem necessary and proper."

SECTION 2. Article 4 of Chapter 75A of the General Statutes reads as rewritten:

"Article 4.

"~~Watercraft~~ Vessel Titling Act.

"§ 75A-32. Short title.

This Article shall be known as the ~~Watercraft~~ Vessel Titling Act.

"§ 75A-33. Definitions.

~~As used in this Article, unless the context clearly requires a different meaning:~~

~~(1) "Commission" means the North Carolina Wildlife Resources Commission.~~

~~(2) "Watercraft" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.~~

The definitions set forth in G.S. 75A-2 shall apply to this Article, unless the context clearly requires a different meaning.

"§ 75A-34. Who may apply for certificate of title; authority of employees of Commission.

(a) Any owner of ~~any watercraft in this State, which is not titled elsewhere, may~~ a motorized vessel or sailboat 14 feet or longer or any personal watercraft, as defined in G.S. 75A-13.3(a), that is applying for a certificate of number for the first time in this State pursuant to G.S. 75A-5(a), and any new owner of a motorized vessel or sailboat 14 feet or longer or any personal watercraft to whom ownership is being transferred under G.S. 75A-5(c) shall apply to the Commission for a certificate of ~~title.~~ title for that

vessel. Any other vessel may be titled in this State at the owner's option. A vessel may not be titled in this State if it is titled in another state, unless the current title is surrendered along with the application for a certificate of title in this State. The Commission shall issue a certificate of title upon reasonable evidence of ownership, which may be established by ~~affidavits, bills of sale, or other similar documents.~~ affidavit, bill of sale, manufacturer's statement of origin, certificate of title in this State, certificate of number or title from another state, or other document satisfactory to the Commission. Only one certificate of title may be issued for any vessel in this State. A vessel may not be titled in this State if it is documented with the United States Coast Guard. The Commission shall issue a certificate of title upon receipt of a completed application, along with the appropriate fee and reasonable evidence of ownership. The Commission shall require a manufacturer's statement of origin for all new vessels being issued a certificate of number and a certificate of title for the first time. The Commission may request a pencil tracing of the hull identification number (serial number) for vessels being transferred, in order to positively identify the vessel before issuance of a certificate of title for that vessel.

(b) Employees of the Commission are vested with the power to administer oaths and to take acknowledgements and affidavits incidental to the administration and enforcement of this section. They shall receive no compensation for these services.

"§ 75A-35. Form and contents of application.

(a) ~~Every application~~ The owner or the owner's attorney shall apply for a certificate of title for a vessel. ~~shall be made by the owner or his duly authorized attorney in fact, and~~The application shall contain the name, residence, and mailing address of the owner, the county where the vessel is taxed, ~~a statement of the applicant's title and~~ proof of ownership, and a statement of all liens or encumbrances upon the ~~watercraft~~ vessel in the order of their ~~priority, and the~~ priority. The application shall also contain the names and addresses of all persons having any interest in the ~~watercraft and the nature of the interest.~~ vessel.

(b) Every application for a certificate of title for a vessel shall contain a brief description of the ~~watercraft~~ vessel to be ~~registered,~~ titled, including the name of the manufacturer, ~~State identification~~ certificate of number, hull identification number, length, type, and principal material of construction, model year, ~~date of purchase, identification of the motor (including manufacturer's name and serial number, except on motors of 25 horsepower or less), and the name and address of the person from whom the watercraft was purchased.~~ and purchase information. It shall also include the name and address of the previous owner or owners from whom the vessel was obtained. If the vessel has an outboard motor of greater than 25 horsepower, the application shall also contain identification of the motor, including the serial number and manufacturer. The application shall be made on forms prescribed and furnished by the Commission and shall contain other information as may be required by the Commission.

"§ 75A-36. Notice by owner of change of address.

Whenever any person, after applying for or obtaining the certificate of title of a ~~watercraft,~~ vessel, moves from the address shown ~~in~~ on the application or ~~upon the~~ certificate of title, that person shall, within 30 ~~days,~~days of moving, notify the

Commission ~~in writing~~ of ~~his~~ the change of ~~address.~~address on a form acceptable to the Commission.

~~A fee of ten dollars ($10.00) shall be imposed upon anyone failing to comply with this section within the time prescribed.~~

"§ 75A-37. Certificate of title as evidence; duration; transfer of title.

(a) A certificate of title is prima facie evidence of the ownership of a ~~watercraft.~~ vessel. A certificate of title shall ~~be~~ remain in force for the life of the ~~watercraft so long as the certificate is owned or held by the legal holder.~~ vessel.

(b) Upon the sale, assignment, or transfer of a ~~watercraft which has been issued a certificate of title under this Article by the legal holder of the certificate, the certificate of title may, at the option of the purchaser or transferee, be delivered to the purchaser or transferee with an assignment on the certificate showing title in the purchaser or transferee. Otherwise, the certificate shall be returned to the Commission for cancellation.~~ vessel for which a certificate of title has been issued under this Article, the legal holder of the certificate of title shall deliver it to the purchaser or transferee. The assignment on the certificate must be completed showing transfer of ownership to the purchaser or transferee and settlement of all outstanding liens and encumbrances. The new owner shall submit the assigned certificate of title to the Commission, accompanied by evidence satisfactory to the Commission that all outstanding liens have been released, with the application for transfer of title. The application shall contain all the information required by the Commission for the transfer in order to identify the vessel and the new owner. The application shall show any and all new liens and encumbrances on the vessel, in order of priority, incurred by the owner. The nature of the new liens and encumbrances shall also be given, along with the name and address of all secured parties.

"§ 75A-38. Commission's records; fees.

(a) The Commission shall maintain a record of any title it issues.

(b) The Commission shall charge a fee of twenty dollars ($20.00) ~~for~~ to issue ~~of each certificate of title, and~~ a new or transfer certificate of title. The Commission shall charge a fee of ten dollars ($10.00) for each ~~transfer of title, duplicate title, or~~ duplicate title it issues and for the recording of a supplemental lien.

"§ 75A-39. Duplicate certificate of title.

The Commission may issue a duplicate certificate of title plainly marked "duplicate" across its face upon application by the person entitled to hold the certificate if the Commission is satisfied that the original certificate has been lost, stolen, mutilated, destroyed, or has become illegible. Mutilated or illegible certificates shall be returned to the Commission with the application for a duplicate. If a duplicate certificate of title has been issued and the lost or stolen original is recovered, the original shall be promptly surrendered to the ~~Commission for cancellation.~~ Commission. A duplicate certificate of title, not bearing the word "duplicate" across its face, shall be issued for anyone having an address change or name change so long as the original title is surrendered and the appropriate fees paid as provided in G.S. 75A-38(b). If the original certificate of title is not surrendered to the Commission, the duplicate certificate of title shall be plainly marked "duplicate" across its face.

"§ 75A-40. Certificate to show security interests.

The Commission, after receiving an application for a certificate of title ~~to a watercraft,~~ for a vessel, shall, upon issuing the certificate of title to the owner, show upon the face of the certificate of title all security interests in the order of their priority as shown in the application.

"§ 75A-41. Security interests subsequently created.

Except for security interests in ~~watercraft~~ vessels that are inventory held for sale, security interests created in ~~watercraft~~ vessels by the voluntary act of the owner after the original issue of title to the owner must be shown on the certificate of title. In such cases, the owner shall file an application with the Commission on a ~~blank~~ form furnished for that purpose, setting forth ~~the~~ all security interests and other information as the Commission requires. The Commission, if satisfied that it is proper that the ~~same~~ security interests be ~~recorded and~~ recorded, shall upon surrender of the certificate of title covering the ~~watercraft, shall thereupon~~ vessel, issue a new certificate of title showing ~~their~~ any security interests in the order of the priority according to the date of the filing of the application. For the purpose of recording the subsequent security interest, the Commission may require any secured party to deliver the certificate of title to the Commission. The newly issued certificate shall be sent or delivered to the secured party ~~from whom the prior certificate was obtained~~ of first priority listed on the certificate of title.

"§ 75A-42. Certificate as notice of security interest.

A certificate of title, when issued by the Commission showing a security interest, shall be deemed adequate notice to the State, creditors, and purchasers that a security interest in the ~~watercraft exists and the~~ vessel exists. No other recording or filing of the creation or reservation of a security interest in the county or city wherein the purchaser or debtor resides or elsewhere is ~~not~~ necessary and shall not be required. ~~Watercraft,~~ Vessels, other than those that are inventory held for sale, for which a certificate of title is currently in ~~effect~~ effect, shall be exempt from the provisions of G.S. 25-9-309, 25-9-310, 25-9-312, 25-9-320, 25-9-322, 25-9-323, 25-9-324, 25-9-331, 25-9-404, 25-9-405, 25-9-406, and 25-9-501 to 25-9-526 for so long as the certificate of title remains in effect.

"§ 75A-43. Security interest may be filed within 30 days after purchase.

If application for the recordation of a security interest to be placed upon a ~~watercraft~~ vessel is filed in the principal office of the Commission within 30 days from the date of the applicant's purchase of the ~~watercraft.~~ vessel, it shall be valid to all persons, including the State, as if the recordation had been done on the day the security interest was acquired.

"§ 75A-44. Priority of security interests shown on certificates.

Except for security interests in ~~watercraft~~ vessels that are inventory held for sale, security interests shown upon the certificates of title issued by the Commission pursuant to applications for certificates shall have priority over any other liens or security interests against the ~~watercraft~~ vessel however created and recorded, except for a mechanics lien for repairs, provided that the mechanic furnishes the holder of any

recorded lien who may request it with an itemized sworn statement of the work done and materials supplied for which the lien is claimed.

"§ 75A-45. Legal holder of certificate of title subject to security interest.

The certificate of title of a ~~watercraft~~ vessel shall be delivered to the person holding the security interest having first priority upon the ~~watercraft~~ vessel and retained by that person until the entire amount of the security interest is fully paid by the owner of the ~~watercraft.~~ vessel. The certificate of title shall then be delivered to the secured party next in order of priority and so on, or, if none, then to the owner of the ~~watercraft.~~ vessel.

"§ 75A-46. Release of security interest shown on certificate of title.

An owner, upon securing the release of any security interest upon a ~~watercraft~~ vessel shown upon the certificate of title issued for the ~~watercraft.~~ vessel, may exhibit the documents evidencing the release, signed by the person or persons making the release, and the certificate of title to the Commission. When it is impossible to secure the release from the secured party, the owner may exhibit to the Commission any available evidence showing that the debt secured has been satisfied, together with a statement by the owner under oath that the debt has been paid. ~~When~~ If the Commission ~~is satisfied as to the genuineness and regularity of the satisfied debt.~~determines that the secured debt has been satisfied in full, the Commission shall issue to the owner either a new certificate of title in proper form or an endorsement or rider showing the release of the security interest which the Commission shall attach to the outstanding certificate of title.

"§ 75A-47. Surrender of certificate required when security interest paid.

It is unlawful and constitutes a Class 1 misdemeanor for a secured party who holds a certificate of title as provided in this Article to refuse or fail to surrender the certificate of title to the person legally entitled to it within 10 days after ~~his~~ the security interest has been paid and satisfied.

"§ 75A-48. Levy of execution, etc.

A levy made by virtue of an execution or other proper court order, upon a ~~watercraft~~ vessel for which a certificate of title has been issued by the Commission, shall constitute a lien, subsequent to security interests previously recorded by the Commission and subsequent to security interests in inventory held for sale and perfected as otherwise permitted by law, if and when the officer making the levy reports to the Commission at its principal office, on forms provided by the Commission, that the levy has been made and that the ~~watercraft~~ vessel levied upon has been seized by and is in the custody of the officer. Should the lien thereafter be satisfied or should the ~~watercraft~~ vessel levied upon and seized thereafter be released by the officer, ~~he~~ the officer shall immediately report that fact to the Commission at its principal office. ~~Any owner who, after~~ After a levy and seizure by an officer and before the officer reports the levy and seizure to the Commission, any person who fraudulently ~~assigns or transfers his title to or interest in the watercraft, or~~ assigns, transfers, causes the certificate of title to be assigned or transferred, or causes a security interest to be shown upon ~~such~~ the certificate of title, is guilty of a Class 1 misdemeanor.

"§ 75A-49. Registration prima facie evidence of ownership; rebuttal.

~~Issuance of registration under the provisions of this Chapter shall be prima facie evidence of ownership of a watercraft and entitlement to a certificate of title under the provisions of this Article, but the registration and certificate of title shall be subject to rebuttal.~~ A valid certificate of number issued under the provisions of this Chapter, or any similar document issued under the jurisdiction of any other state or country, shall be prima facie evidence of ownership of a vessel and entitlement to a certificate of title under the provisions of this Article, but ownership established by such documents shall be subject to rebuttal."

SECTION 3. This act becomes effective January 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 948:
Amend Boating Safety/Vessel Titling Law

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 31, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Tim Dodge Legislative Analyst Trina Griffin, Committee Counsel
Version:	PCS to Second Edition S948-CSSY-31		

SUMMARY: Senate Bill 948 makes numerous changes to the boating safety and vessel titling laws, increases certain fees, adds penalties for certain violations of boating safety and vessel titling laws, and makes other changes.

CHANGES MADE IN PCS: The Proposed Committee Substitute (PCS) makes the following additional changes to the second edition:

- Deletes the $5.00 penalty that would be imposed for persons that fail to notify the Wildlife Resources Commission (WRC) of their change of address on their certificate of number within 30 days after moving and deletes the requirement that WRC deny renewal or reissuance of a certificate of number until the penalty is paid. Makes similar amendments to change of address provisions for certificates of title.
- Deletes the $0.50 fee vessel agents receive for issuance of a duplicate certificate of title, based on comments from WRC that current system limitations prevent vessel agents from issuing duplicate certificates of title.
- Changes numerous existing statutory references to the now-defunct Uniform Waterway Marking System to instead reference the current navigation system in use, the United States Aids to Navigation System.
- Changes the effective date of the bill to January 1, 2007.

BILL ANALYSIS: Senate Bill 948 makes the following changes to the laws related to boating safety and vessel titling:

Fee Increases:

- Increases the fee for a transfer of certificate of title from $10 to $20. This fee was established in 1989 and has not been changed since that time. The fee for a transfer of certificate of title would now be equivalent to the fee for issuance of a new certificate of title.
- Increases the fee for issuance of a duplicate certificate of number from $2.00 to $5.00. This fee was last changed in 1979, when the fee was increased from $1.00 to $2.00.

Boating Safety:

- Formalizes the framework for the Wildlife Resources Commission (Commission) to implement and coordinate boating safety education courses, to designate boating safety instructors, and to issue boating safety certification cards to persons who complete an approved course.

- Clarifies boating safety requirements by authorizing the Commission to adopt rules to conform to the Federal Boat Safety Act of 1971 and federal regulations adopted pursuant to the Act.
- Amends the incident reporting requirements for operators of a vessel that is involved in a collision, accident, casualty or other occurrence involving a vessel to require reporting of disappearance indicating death or injury in addition to other reporting requirements and to raise physical damage threshold for reporting accidents from $500 to $2,000.
- Provides that law enforcement vessels may use a blue flashing light and sirens whenever they are engaged in law enforcement or public safety activities. Establishes penalties for operating a siren or blue light on a vessel that is not a law enforcement vessel or other official emergency vessel.
- Requires a vessel to slow to a no-wake speed when passing within 50 yards of a law enforcement vessel that is displaying a flashing blue light.

Vessel Titling:

- Replaces the term "vessel registration" with "certificate of number" as used to provide identification numbers for vessels registered in the State. A certificate of number is issued on an annual basis and serves as a registration number for vessels.
- Establishes a mechanism for canceling the certificate of title or certificate of number for destroyed or junked vessels and directs the Commission to adopt rules to establish a mechanism by which a person may acquire ownership of an abandoned vessel.
- Requires the titling of all motorized vessels or sailboats 14 feet or longer and any personal watercraft at the time an application for a new certificate of number in this State is submitted and at the time ownership of a vessel is being transferred. The bill also allows (but does not require) the titling of other vessels.
- Clarifies the responsibilities and requirements for vessel agents, removes the requirement that vessel agents provide a security bond, and adds penalty provisions for actions taken by vessel agents that constitute criminal activity.

Makes numerous additional clarifying, conforming, and technical changes.

EFFECTIVE DATE: The PCS would become effective January 1, 2007, and apply to acts occurring on and after that date.

S0948e2-SMSY-CSSY

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 948 (Second Edition)

SHORT TITLE: Amend Boating Safety/Vessel Titling Law.

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11**
REVENUES:			**(in dollars)**		
General Fund			**No Impact to General Fund**		
Wildlife Resources Commission	823,508	831,743	840,060	848,461	856,945
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wildlife Resources Commission

EFFECTIVE DATE: January 1, 2006

BILL SUMMARY: Senate Bill 948 makes vessel titling mandatory, adds various fees to existing statute regarding boat safety and vessel titling, creates several new criminal offenses, and makes numerous technical changes. New fees include:

- A vessel titling fee of $20 and a duplicate vessel titling fee of $10
- An increase from $2 to $5 for duplicate vessel registrations
- A $0.50 fee for issuance of a duplicate certificate of number
- An increase from $10 to $20 for transfer of a vessel title

The bill also specifies that the Wildlife Resources Commission shall use at least three dollars ($3.00) of each one-year certificate of number fee and at least nine dollars ($9.00) of each three-year certificate of number fee for boating access area acquisition, development, and maintenance.

ASSUMPTIONS AND METHODOLOGY: The Wildlife Resources Commission (WRC) administers the registration and titling of vessels to the public. Senate Bill 948 requires that vessels be titled. Unlike many surrounding states, North Carolina does not currently require that vessels be

titled. Mandatory titling of vessels will conform to surrounding states and will improve and streamline the existing titling process as well as add ownership protection and identification for vessels.

The chart below provides detail on the three fee-related provisions in Section 75A-38(b) of this bill that would generate new revenue for the WRC.

Senate Bill 948, Estimated Gross Fee Revenues from Section 75A-38(b)					
Fee	2006-07	2007-08	2008-09	2009-10	2010-11
Mandatory vessel titling fee*	753,830	761,368	768,982	776,672	784,439
Increase in transfer title fee	100,450	101,455	102,469	103,494	104,529
Increase in duplicate vessel registration fee	21,792	22,010	22,230	22,452	22,677
Total, all fee increases	**876,072**	**884,833**	**893,681**	**902,618**	**911,644**

*Includes revenue from titling of new vessels and from non-titled vessels being transferred to a new owner

Under current law, vessel agents retain set commissions for specified statutory transactions as compensation for services rendered to the WRC and the general public. Vessel agents, as a subset of wildlife agents, conduct a considerable amount of WRC-related transactions; in 2005, six percent (6%) of gross fee collections was retained by wildlife agents. This projection assumes that 6% of collections will be retained by vessel agents. The chart below shows the estimated total fiscal impact of this legislation (gross revenues less 6% in commissions for vessel agents).

Senate Bill 948, Net Fee Revenues					
	2006-07	2007-08	2008-09	2009-2010	2010-11
6% of gross collections to wildlife agents	(52,564)	(53,090)	(53,621)	(54,157)	(54,69
Total	**823,508**	**831,743**	**840,060**	**848,461**	**856,945**

SOURCES OF DATA: Wildlife Resources Commission

TECHNICAL CONSIDERATIONS: The effective date of this legislation is retroactive. Since this bill contains fee increases, Fiscal Research suggests that the effective date be moved forward.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: May 31, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 948

Agriculture/Environment/Natural Resources Committee Substitute Adopted 8/9/05

Short Title: Amend Boating Safety/Vessel Titling Law. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE BOATING SAFETY AND VESSEL TITLING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75A of the General Statutes reads as rewritten:

"Article 1.

"Boating Safety Act.

"**§ 75A-1. Declaration of policy.**

It is the policy of this State to promote safety for persons and property in and connected with the use, operation, and equipment of vessels, and to promote uniformity of laws relating thereto.

"**§ 75A-2. Definitions.**

As used in this Chapter, unless the context clearly requires a different meaning:

(1) "Abandoned vessel" means a vessel that has been relinquished, left, or given up by the lawful owner without the intention to later resume any right or interest in the vessel. The term does not include a vessel that is left by an owner or agent of the owner with any person or business for the purpose of storage, maintenance, or repair and that is not subsequently reclaimed.

(1a) "Certificate of number" means the document and permanent identification number issued by the Wildlife Resources Commission for the purpose of registering a vessel in this State.

(1b) "Commission" means the Wildlife Resources Commission.

(1c) "Director" means the Executive Director of the Wildlife Resources Commission.

(1d) "Electric generating facility" means any plant facilities and equipment used for the purposes of producing, generating, transmitting, delivering, or furnishing electricity for the production of power.

~~(1)~~(1e)"Motorboat" means any vessel equipped with propulsion machinery of any type, whether or not ~~such~~ the machinery is the principal source of propulsion: Provided, that "propulsion machinery" as used in this section shall not include an electric motor when used as the only means of mechanical propulsion of any ~~vessel: Provided further, that the term "motorboat" shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.~~vessel.

(1f) "No-wake speed" means idle speed or slow speed creating no appreciable wake.

(2) "Operate" means to navigate or otherwise use or occupy ~~a~~ any motorboat or ~~vessel, and shall be applicable to any motorboat or~~ vessel that is afloat.

(3) "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(5) "Vessel" means every description of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water.

(6) "Waters of this State" means any waters within the territorial limits of this State, and the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State, but does not include private ponds as defined in G.S. 113-129.

~~(7) "Electric generating facility" means any plant facilities and equipment for the purposes of producing, generating, transmitting, delivering or furnishing electricity for the production of power.~~

"§ 75A-3. Wildlife Resources Commission to administer Chapter; ~~Motorboat~~ Vessel Committee; funds for administration.

(a) ~~It shall be the duty and responsibility of the North Carolina Wildlife Resources~~ The Commission ~~to~~ shall enforce and administer the provisions of this Chapter.

(b) The ~~chairman~~ chair of the ~~Wildlife Resources~~ Commission shall designate from among the members of the ~~Wildlife Resources~~ Commission three members who shall serve as the ~~Motorboat~~ Vessel Committee of the ~~Wildlife Resources~~ Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling

provisions of this Chapter shall be credited to this Account. ~~Gasoline~~ Motor fuel excise tax revenue is credited to the Account under G.S. 105-449.126. ~~Revenue in the Account shall be used by the Wildlife Resources~~ The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. ~~At~~ The Commission shall use at least three dollars ($3.00) of each one-year ~~vessel registration~~ certificate of number fee and at least nine dollars ($9.00) of each three-year ~~vessel registration~~ certificate of number fee collected under the numbering provisions of G.S. 75A-5 ~~shall be used~~ for boating access area acquisition, development, and maintenance.

"§ 75A-4. Identification numbers required.

Every vessel on the waters of this State shall be numbered, except those vessels exempted from numbering under G.S. 75A-7. No person shall operate or give permission for the operation of any vessel on ~~such~~ the waters ~~unless the~~of this State unless all of the following conditions are met:

(1) The vessel is numbered in accordance with this Chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another ~~state, and unless~~state.

(2)~~(1)~~ The certificate of number awarded to ~~such~~ the vessel is in full force and ~~effect, and~~effect.

(3)~~(2)~~ The ~~identifying~~ identification number set forth in the certificate of number is displayed on each side of the bow of ~~such~~ the vessel.

"§ 75A-5. Application for ~~numbers; fee; displaying;~~ certificate of number and fees; reciprocity; change of ownership; ~~loss of certificate; presumption from possession of certificate;~~ conformity with ~~United States~~federal regulations; ~~award of certificates;~~ records; award of certificates; renewal of certificates; transfer of ~~interest, abandonment, etc.;~~ partial interest; destroyed or junked vessels; abandonment; change of address; ~~unauthorized numbers.~~ duplicate certificates; display.

(a) Application for Certificate of Number and Fees. – The owner of each vessel requiring numbering by this State shall file an application for a certificate of number with the ~~Wildlife Resources Commission on forms approved by it.~~Commission. The Commission shall furnish application forms and shall prescribe the information contained in the application form. The application shall be signed by the owner of the ~~vessel, or his agent,~~ vessel or the owner's agent and shall be accompanied by a fee of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period; provided, however, there shall be no fee charged for vessels owned and operated by nonprofit rescue squads if they are operated exclusively for rescue purposes, including rescue training. The ~~applicant~~ owner shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall ~~have the same entered upon the records of its office~~enter the application in its records and issue ~~to~~ the ~~applicant~~ owner a certificate of number stating the identification number awarded to the vessel

and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The identification number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available ~~at all times~~ for inspection on the vessel for which ~~issued, whenever such~~ the certificate is issued at all times the vessel is in operation. ~~Provided, however, any~~Any person charged with failing to so carry ~~such~~ a certificate of number shall not be convicted if ~~he~~ the person produces in court a certificate of number ~~theretofore~~ previously issued to ~~him~~ the owner that was ~~and~~ valid at the time of ~~his arrest.~~ the alleged violation.

(b) Reciprocity. – The owner of any vessel already covered by a number in full force and effect ~~which has been awarded to it~~ pursuant to ~~then operative~~ federal law or a federally approved numbering system of another state shall record the identification number prior to operating the vessel on the waters of this State in excess of the 90-day reciprocity period provided for in G.S. 75A-7(a)(1). ~~Such~~ The recordation shall be ~~in the manner and pursuant to the procedure required for the award of a number under~~made pursuant to subsection (a) of this section, except that no additional or substitute identification number shall be issued.

(c) Change of Ownership. – Should the ownership of a vessel change, a new application form with a fee of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period shall be filed with the ~~Wildlife Resources~~ Commission and a new certificate bearing the same identification number shall be awarded to the new owner in the same manner as ~~provided for in~~ an original ~~award~~ certificate of number. ~~In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of two dollars ($2.00).~~ Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears ~~therein~~ on the certificate is the owner of the ~~boat~~ vessel referred to ~~therein.~~ on the certificate.

(d) Conformity With Federal Regulations. – In the event that an agency of the ~~United States~~ federal government shall have in force an over-all system of identification numbering for vessels within the United States, the numbering system employed pursuant to this Chapter by the ~~Wildlife Resources~~ Commission shall be in conformity therewith.

~~(e) The Wildlife Resources Commission may issue any vessel transaction pursuant to the provisions of Article 1 or 4 of this Chapter directly or may authorize any person qualified as prescribed in subsection (l) of this section to act as agent for the issuance of vessel transactions subject to the requirements set forth in this Chapter. Upon acceptance of this authorization, an agent's actions in issuing any vessel transaction pursuant to this Chapter shall be valid as if issued directly by the Commission. As compensation for services rendered to the Commission and to the~~

~~general public, the agent shall receive the following specified commission from the statutory fee for each listed transaction:~~

~~(1) Renewal of vessel registration – $1.25.~~

~~(2) Transfer of ownership and registration of a vessel – $3.00.~~

~~(3) Issuance of new certificate of vessel number and registration – $3.00.~~

~~(4) Issuance of duplicate vessel registration – $0.50.~~

~~(5) Issuance, transfer, duplication, or lien recordation of vessel title – $3.00.~~

~~It is a Class 1 misdemeanor for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services.~~

(f) Records. – All records of the ~~Wildlife Resources~~ Commission made or kept pursuant to this section shall be public records.

(g) Award of Certificates. – Each certificate of number awarded pursuant to this Chapter, unless sooner terminated or discontinued in accordance with the provisions of this Chapter, shall continue in full force and effect to and including the last day of the ~~same~~ month during which the ~~same~~ certificate was awarded after the lapse of one year in the case of a one-year certificate or three years in the case of a three-year certificate. ~~In addition to the year of expiration, the validation decal required by subsection (a) of this section shall indicate the last month during which the certificate is valid.~~ No person shall willfully remove a validation decal from any vessel during the continuance of its validity or alter, counterfeit, or otherwise tamper with a validation decal attached to any vessel for the purpose of changing or obscuring the indicated date of expiration of the certificate of number of ~~such~~ the vessel.

(h) Renewal of Certificates. – ~~Each~~ An owner of a vessel awarded a certificate of number ~~awarded~~ pursuant to this Chapter ~~must be renewed~~ shall renew the certificate on or before the first day of the month ~~next succeeding that during~~ after which the ~~same~~ certificate expires; otherwise, ~~such~~ the certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the ~~Wildlife Resources~~ Commission and shall be accompanied by a fee of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period; provided, there shall be no fee required for a period of one year for renewal of certificates of number ~~which~~ that have been previously issued to commercial fishing vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section.

(i) Transfer of Partial Interest. – The owner shall furnish the ~~Wildlife Resources~~ Commission notice of the transfer of ~~all or~~ any part of ~~his~~ the owner's interest other than the creation of a security interest in a vessel numbered in this State pursuant to subsections (a) and (b) of this section ~~or of the destruction or abandonment of such vessel,~~ within 15 days ~~thereof. Such transfer, destruction, or abandonment shall terminate the certificate of number for such vessel except that, in the case of a transfer of a part interest which does~~ of the transfer. A transfer of partial interest in a vessel shall not affect the owner's right to operate ~~such~~ the vessel, nor shall a ~~such~~ transfer of partial interest in a vessel ~~shall not~~ terminate the certificate of number.

(i1) Destroyed or Junked Vessels. – The owner of any destroyed or junked vessel shall furnish the Commission notice of the destruction or junking of that vessel within 15 days of its occurrence. Destruction or junking terminates the certificate of number and renders the hull identification number invalid for that vessel.

(i2) Abandonment. – A person may acquire ownership of an abandoned vessel by providing proof to the Commission that the lawful owner has actually abandoned the vessel. The Commission shall adopt rules by which a person seeking to acquire ownership may demonstrate that the vessel is actually abandoned. At a minimum, the rules shall provide for a reasonable attempt to locate the lawful owner and, if the owner is located, notice by the claimant of an intention to claim ownership of the vessel.

(j) ~~Any holder of a certificate of number shall notify the Wildlife Resources Commission within 15 days if his address no longer conforms to the address appearing on the certificate, and shall, as a part of such notification, furnish the Commission his new address. The Commission may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.~~Change of Address. – Whenever any person, after applying for or obtaining the certificate of number of a vessel, moves from the address shown in the application or upon the certificate of number, that person shall notify the Commission of the change of address within 30 days of moving in a form acceptable to the Commission. The Commission shall charge any person who fails to comply with this section within the time prescribed a fee of five dollars ($5.00). A certificate of number shall not be renewed or reissued for any vessel that has an address change until the Commission receives notice of the change of address and the fee, if applicable, is paid.

(j1) Duplicate Certificates. – The Commission shall issue a duplicate certificate of number for a vessel upon application by the person entitled to hold the certificate, if the Commission is satisfied that the original certificate of number has been lost, stolen, mutilated, or destroyed, or has become illegible. The Commission shall charge a fee of five dollars ($5.00) for issuance of each duplicate certificate.

(k) Display. – No number other than the identification number ~~awarded to a vessel~~ set forth in the certificate of number or granted reciprocity pursuant to this Chapter shall be painted, attached, or otherwise displayed on either side of the bow of ~~such~~ a vessel, except the validation decal required by subsection (a) of this section.

~~(l) When certificates of number are to be issued by agents as provided by subsection (c) of this section, the Wildlife Resources Commission may establish administrative guidelines that prescribe:~~

~~(1) The qualifications of agents;~~

~~(2) The duties of agents;~~

~~(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number;~~

~~(4) Requirements for security bonds in amounts sufficient to protect the State against loss of public funds or documents;~~

~~(5) Methods and procedures, including submission of the kinds and amounts of evidence deemed sufficient to relieve an agent of responsibility for losses due to occurrences beyond the agent's control; and~~

~~(6) Any other reasonable requirement or condition deemed necessary and desirable to expedite and control the issuance of certificates of boat number by agents.~~

~~In accordance with administrative guidelines developed pursuant to this section, the executive director may:~~

~~(1) Select and appoint agents in the areas most convenient to the boating public and limit the number of agents in any one area if necessary for efficiency of operation;~~

~~(2) Require prompt and accurate reporting and remittance of public funds or documents by agents;~~

~~(3) Conduct periodic and special audits of accounts;~~

~~(4) Terminate the authorization of any agent found to be in noncompliance with administrative guidelines or directives of the Commission or when State funds or property are reasonably believed to be in jeopardy; and~~

~~(5) Demand the immediate surrender of all accounts, forms, certificates, decals, records, and State funds and property in the event of the termination of an agency.~~

~~A person who is denied the authority to act as an agent for the issuance of certificates of number and validation decals or whose authority to do so is revoked may not commence a contested case under G.S. 150B-23. If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.~~

"**§ 75A-5.1. Commercial fishing vessels; renewal of identification number.**

(a) The owner of any commercial fishing vessel that is registered under the provisions of G.S. 113-168.6 may renew the certificate of number of the vessel free of charge for a one-year period when the owner has complied with all of the conditions of this section.

(b) As used in this section, "commercial fishing vessel" is a vessel used in a commercial fishing operation, as defined in G.S. 113-168.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the vessel shall ~~submit, and the Wildlife Resources Commission shall require:~~submit both of the following to the Commission:

(1) The regular application for renewal of the certificate of number of the vessel, as provided by G.S. ~~75A-5; and~~75A-5.

(2) ~~A statement, on a form to be supplied by the Commission, and signed by the applicant, that the vessel for which the application for renewal is made is a commercial fishing vessel; and~~Satisfactory proof that the vessel owner possesses a valid commercial fishing vessel registration.

~~(3) A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing vessel registration fee imposed by G.S. 113-168.6 has been paid for the vessel for the period during which the application for renewal of the certificate of number is submitted.~~

(d) Any person who ~~shall~~ willfully ~~give~~ gives false information upon ~~the~~ an application or ~~the~~ statement required by this section or who ~~shall falsify~~falsifies any ~~registration~~ certificate of number fee receipt required by this section ~~shall be~~is guilty of a Class 1 misdemeanor.

"**§ 75A-5.2. Vessel agents.**

(a) In order to facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Commission, and to facilitate vessel transactions, the Commission may conduct vessel transactions through any of the following:

(1) Vessel agents.
(2) The Commission's headquarters.
(3) Employees of the Commission.
(4) Two or more of those sources simultaneously.

(b) When there are substantial reasons for differing treatment, the Commission may conduct vessel transactions by one method in one locality and by another method in another locality.

(c) As compensation for services rendered to the Commission and to the general public, vessel agents shall receive the following specified commission from the statutory fee for each listed transaction:

(1) Renewal of certificate of number – $1.25.
(2) Transfer of ownership and certificate of number – $3.00.
(3) Issuance of new certificate of number – $3.00.
(4) Issuance of duplicate certificate of number – $0.50.
(5) Issuance of duplicate certificate of title – $0.50.
(6) Issuance or transfer of certificate of title – $3.00.

(d) When certificates of number are to be issued by vessel agents as provided by subsection (a) of this section, the Commission may adopt rules to provide for any of the following:

(1) Qualifications of the vessel agents.
(2) Duties of the vessel agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number.

(4) Types and amounts of evidence that a vessel agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.

(5) Any other reasonable requirement or condition that the Commission deems necessary to expedite and control the issuance of certificates of number by vessel agents.

(e) The Commission may adopt rules to authorize the Director to take any of the following actions related to vessel agents:

(1) Select and appoint vessel agents in the areas most convenient to the boating public.

(2) Limit the number of vessel agents in any one area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by vessel agents.

(4) Conduct periodic and special audits of accounts.

(5) Suspend or terminate the authorization of any vessel agent found to be noncompliant with rules adopted by the Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, supplies, records, and State funds and property, issued by or belonging to the Commission, in the event of the termination of a license agent.

(f) The Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to conduct vessel transactions as a vessel agent of the Commission.

(g) If any check or bank account draft of any vessel agent for the issuance of certificates of number shall be returned by the banking facility upon which the same is drawn for lack of funds, the vessel agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Vessel agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

(h) It is a Class 1 misdemeanor for a vessel agent to do any of the following:

(1) Withhold or misappropriate funds generated from vessel transactions.

(2) Falsify records of vessel transactions.

(3) Willfully and knowingly assist or allow a person to obtain a certificate of number or certificate of title for which the person is ineligible.

(4) Willfully issue a backdated certificate of number or certificate of title.

(5) Willfully include false information or omit material information on vessel transaction forms and records regarding either:

a. A person's entitlement to a particular certificate of number or certificate of title.

b. The applicability or term of a particular certificate of number.

(6) Charge or accept any fee, remuneration, or other item of value that exceeds the fee amounts provided by statute.

(7) Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

"**§ 75A-6. Classification; rules.**

(a) ~~Motorboats~~ Vessels subject to the provisions of this Chapter shall be divided into ~~four classes~~ five categories as follows:

(1) Class A. Less than 16 feet in length.

(2) Class 1. Sixteen feet or over and less than 26 feet in length.

(3) Class 2. Twenty-six feet or over and less than 40 feet in length.

(4) Class 3. Forty feet or ~~over.~~ over and not more than 65 feet in length.

(5) Class 4. More than 65 feet in length.

(b) through (e) Repealed by Session Laws 1993, c. 361, s. 2.

~~(f) Every motorboat shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Wildlife Resources Commission for each person on board, so placed as to be readily accessible: Provided, that every motorboat carrying passengers for hire shall carry so placed as to be readily accessible at least one life preserver of the sort prescribed by the regulations of the Commission for each person on board.~~

~~(g) Every motorboat shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the Wildlife Resources Commission, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.~~

~~(h) The provisions of subsection (g) of this section shall not apply to motorboats while competing in any race conducted pursuant to G.S. 75A-14 or, if such boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.~~

~~(i) Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the Wildlife Resources Commission.~~

~~(j) Every such motorboat and every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the Wildlife Resources Commission properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.~~

(k) Repealed by Session Laws 1993, c. 361, s. 2.

(l) No person shall operate or give permission for the operation of a vessel ~~which~~ that is not equipped as required by this ~~section or modification thereof.~~section.

(m) ~~In the event that any of the regulations of subsections (a), (f), (g), (h), (i), (j), and (l) of this section are in conflict with the equipment regulations of the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto, the Wildlife~~

~~Resources~~ The Commission ~~is hereby granted the authority to~~ may adopt ~~such regulations as are necessary~~rules to conform ~~with~~ to the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto.

(n) All ~~boats~~ vessels propelled by machinery of 10 hp or ~~less, which~~less that are operated on the public waters of this ~~State,~~State shall carry at least one ~~life preserver, or~~personal flotation device, life belt, ~~or~~ ring buoy, or other device of the sort prescribed by ~~the regulations~~rules of the ~~Wildlife Resources~~ Commission for each person on board, and from one-half hour after sunset to one-half hour before sunrise shall carry a white light in the stern or shall have on board a hand flashlight in good working condition, which light shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision.

(o) The Commission for Health Services shall adopt rules establishing standards for ~~the approval of~~ sewage treatment devices and holding tanks for marine toilets installed in ~~boats~~ vessels operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of the State. ~~No~~ The Commission shall not issue a certificate of number for any vessel operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of this State that is equipped with a marine toilet ~~shall be registered by the Wildlife Resources Commission~~ unless ~~such~~ the vessel is provided with a sewage treatment device or holding tank approved by the Commission for Health Services. All vessels operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of the State that are equipped with a marine toilet shall ~~be required to~~ provide a sewage treatment device or holding tank approved by the Commission for Health Services. ~~The~~ Wildlife protectors ~~of the Wildlife Resources Commission shall~~ may inspect vessels on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters to determine if approved treatment devices or holding tanks are properly installed and if they are operating in a satisfactory manner. A vessel registered, ~~documented~~ documented, or otherwise licensed in another state and equipped with a marine toilet not prohibited in such state may be operated on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission, without regard to the provisions of this subsection while making an interstate trip.

"**§ 75A-6.1. Navigation rules.**

(a) Every vessel operated on the waters of this State that is required to obtain an identification number pursuant to this ~~Chapter or~~ Chapter, has a valid marine document issued by the federal Bureau of Customs or any federal agency successor to it, or issued pursuant to a federally approved numbering system of another state shall comply with the navigation rules, including requirements for navigational lights, sound-signaling devices, and other equipment, contained in the Inland Navigational Rules Act of 1980, codified as amended at 33 U.S.C. §§ 2001-2038, 2071-2073 (1993) and rules adopted pursuant thereto, see 33 C.F.R. Part 84 (1992).

(b) The ~~Wildlife Resources~~ Commission is responsible for the enforcement of the rules specified in subsection (a) of this section. The rules specified in subsection (a) of

this section are also enforceable by all peace officers with general subject matter jurisdiction.

(c) Violation of the navigation rules specified in subsection (a) of this section shall constitute a Class 3 misdemeanor and is punishable only by a fine not to exceed one hundred dollars ($100.00).

"**§ 75A-7. Exemption from numbering requirements.**

(a) A vessel shall not be required to be numbered under this Chapter if it is:

(1) A vessel ~~which~~ that is required to be awarded ~~a~~ an identification number pursuant to federal law or a federally approved numbering system of another state, and for which ~~a~~ an identification number has been so awarded: Provided, that any such ~~boat~~ vessel shall not have been within this State for a period in excess of 90 consecutive days.

(2) A vessel from a country other than the United States temporarily using the waters of this State.

(3) A vessel whose owner is the United States, a state or a subdivision thereof.

(4) A ship's lifeboat.

(5) A vessel ~~which~~ that has a valid marine document issued by the federal Bureau of Customs ~~of the United States government~~ or any federal agency successor thereto.

(6) A sailboat of not more than 14 feet on the load water line (LWL).

(7) A vessel with no means of propulsion other than drifting or manual paddling, poling, or rowing.

(b) The ~~Wildlife Resources~~ Commission is hereby empowered to permit the voluntary numbering of vessels owned by the United States, a state or a subdivision thereof.

(c) Those vessels owned by the United States, a state or a subdivision thereof and those owned by nonprofit rescue squads may be assigned a certificate of number bearing no expiration date but which shall be stamped with the word "permanent" and shall not be renewable so long as the vessel remains the property of the governmental entity or nonprofit rescue squad. If the ownership of any such ~~boat~~ vessel is transferred from one governmental entity to another or to a nonprofit rescue squad or if a ~~boat~~ vessel owned by a nonprofit rescue squad is transferred to another nonprofit rescue squad or governmental entity, the Commission shall issue a new permanent ~~certificate may be issued~~ certificate of number, displaying the same identification number, without charge to the successor entity. When any such ~~boat~~ vessel is sold to a private owner or is otherwise transferred to private ownership, the applicable certificate of number shall be deemed to have expired immediately prior to ~~such~~ the transfer. Prior to further use on the waters of this State, the new owner shall obtain ~~either a temporary certificate of number or a regular~~ a certificate of number pursuant to the provisions of this Chapter. The provisions of this subsection applicable to ~~motorboats~~ a vessel owned by a nonprofit rescue ~~squads~~ squad apply only to ~~those~~ a vessel operated exclusively for rescue purposes, including rescue training.

"**§ 75A-8. ~~Boat~~ Vessel liveries.**

~~It shall be unlawful for the~~An owner of a ~~boat~~ vessel livery ~~to~~ shall not rent a vessel to any person unless the provisions of this Chapter have been complied with. ~~It shall be the duty of owners~~An owner of ~~boat liveries to~~ a vessel livery shall equip all vessels rented as required by this Chapter.

"§ 75A-9. Muffling devices.

(a) ~~The exhaust of every~~Every internal combustion engine used on ~~any motorboat~~ a vessel shall ~~be effectively muffled by~~ have effective muffling equipment ~~so constructed~~ installed and used on the exhaust to muffle the noise ~~of the exhaust~~ in a reasonable manner. The use of cutouts is ~~prohibited, except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race.~~prohibited.

(b) Every internal combustion engine with an open-air exhaust that is used on a vessel that has a capacity of operating at more than 4,000 revolutions per minute shall have effective muffling equipment installed and used on each exhaust manifold stack. This subsection shall not apply to a licensed commercial fishing vessel.

(c) This section shall not apply to vessels competing in a regatta or race approved by the United States Coast Guard, for such vessels while on trial runs during a period not to exceed 48 hours immediately preceding the regatta or race, and for such vessels while competing in official trials for speed records during a period not to exceed 48 hours immediately following the regatta or race.

~~"§ 75A-9.1. Muffling devices - Motorboats.~~

~~Every internal combustion engine with an open-air exhaust which is used on any motorboat and which has a capacity of operating at more than 4000 revolutions per minute shall have effective muffling equipment installed on each exhaust manifold stack except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such motorboats while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race. This Article shall not apply to licensed commercial fishing boats.~~

"§ 75A-10. Operating ~~boat~~ vessel or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.

(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device on the waters of this State in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall manipulate any water skis, surfboard, nonmotorized vessel, or similar device on the waters of this State while under the influence of an impairing substance.

(b1) No person shall operate any ~~motorboat or motor~~ vessel while underway on the waters of this State:

(1) While under the influence of an impairing substance, or

(2) After having consumed sufficient alcohol that ~~he~~ the person has, at any relevant time after the boating, an alcohol concentration of 0.08 or more.

(b2) The fact that a person charged with violating this subsection is or has been legally entitled to use alcohol or a drug is not a defense to a charge under ~~this subsection or subsection (b) above.~~ subsections (b) and (b1) of this section. The relevant definitions contained in G.S. 20-4.01 shall apply to ~~this subsection and subsection (b) above.~~ subsections (b), (b1), and (b2) of this section.

(b3) A person who violates a provision of subsection (a), (b), or (b1) of this section is guilty of a Class 2 misdemeanor.

(c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(e) A person who willfully violates subsection (d) of this section is guilty of a Class 1 misdemeanor. A person who willfully violates subsection (d) of this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation.

"**§ 75A-10.1. Family purpose doctrine applicable.**

The family purpose doctrine, as applicable in this State to tort cases arising from the operation of motor vehicles, shall apply to tort cases arising from the operation of motorboats and vessels as those terms are defined in this Chapter.

"**§ 75A-10.2. Proof of ownership of ~~motorboat.~~ vessel.**

(a) In all actions to recover damages for injury to the person or to property or for the death of a person, arising out of an accident or collision involving ~~motorboats or vessels as said terms are described in G.S. 75A-2,~~ a vessel, proof of ownership of such ~~motorboat or~~ vessel at the time of ~~such~~ the accident or collision shall be prima facie evidence that ~~said motorboat or~~ the vessel was being operated and used with the authority, consent and knowledge of the owner in the very transaction out of which ~~said~~ the injury or cause of action arose.

(b) Proof of the certificate of number stating the identification number awarded to the ~~motorboat or~~ vessel in the name of any person, ~~firm~~ firm, or corporation as required by this Chapter, or proof of the licensing, registration, or documentation of ~~said motorboat or~~ the vessel as required by other state or federal law in the name of any person, ~~firm~~ firm, or corporation, shall for the purpose of any such action, be prima

facie evidence of ownership and that ~~said motorboat or~~ the vessel was then being operated by and under the control of a person for whose conduct the owner was legally responsible, for the owner's benefit, and within the course and scope of ~~his~~ the operator's employment.

"**§ 75A-11. Duty of operator involved in collision, ~~accident or other casualty.~~accident, casualty, or other occurrence.**

(a) ~~It shall be the duty of the~~For the purposes of this section, the term 'occurrence' means a collision, accident, casualty, or other similar occurrence involving a vessel. The operator of a vessel involved in ~~a collision, accident, or other casualty,~~ an occurrence, so far as ~~he can~~the operator is able to do so without serious danger to ~~his own~~the operator's vessel, crew, and passengers (if any), ~~to~~ shall render persons affected by the ~~collision, accident, or other casualty such~~ occurrence any assistance as may be practicable and ~~as may be~~ necessary in order to save them from or minimize any danger caused by the ~~collision, accident, or other casualty,~~occurrence, and also to give ~~his~~ the operator's name, ~~address~~ address, and identification of ~~his~~ the operator's vessel in writing to any person injured and to the owner of any property damaged in the ~~collision, accident, or other casualty.~~occurrence.

(b) ~~In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty~~If an occurrence results in ~~death~~ the death, injury, or disappearance indicating death or injury, ~~or injury to~~ of a person or damage to ~~property in excess of five hundred dollars ($500.00), shall, within 10 days,~~ a vessel or other property of two thousand dollars ($2,000) or more, or if there is complete loss of any vessel, the operator of the vessel shall file with the ~~Wildlife Resources~~ Commission a full description of the ~~collision, accident, or other casualty,~~ occurrence, including ~~such~~ any information ~~as said~~ the agency may, by ~~regulation,~~rule, require. If an occurrence results in death, disappearance, or injury, the operator of the vessel shall file the report with the Commission within 48 hours of the occurrence. If the occurrence results in vessel or property damage, or complete loss of any vessel, the operator of the vessel shall file the report with the Commission within 10 days of the occurrence. When the operator of the vessel cannot submit the report, the owner of the vessel shall submit the report. ~~Such report~~Reports filed pursuant to this subsection shall not be admissible as evidence.

(c) When, as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel, the operator of the vessel shall, without delay and by the most expeditious means available, notify the nearest law enforcement agency of all of the following:

(1) The date, time, and exact location of the occurrence.
(2) The name of each person who died or disappeared.
(3) The certificate of number and name of the vessel.
(4) The name and address of the vessel owner or owners and the vessel operator.

(d) If the operator of the vessel cannot give notice required by this section, each person on board the vessel shall notify the law enforcement agency or determine that notice has been given. Upon receiving notice under this section, a law enforcement

agency shall immediately provide the Commission and the United States Coast Guard with the information required by this section.

"§ 75A-12. Furnishing information to agency of United States.

In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the ~~Wildlife Resources~~ Commission pursuant to G.S. 75A-11(b) shall be transmitted to ~~said~~ the requesting official or agency of the United States.

"§ 75A-13. Water skis, surfboards, etc.

(a) No person shall operate a vessel on any water of this State for towing a person or persons on water skis, ~~or~~ a surfboard, or similar device ~~unless there~~unless at least one of the following conditions is met:

(1) There is in ~~such a~~the vessel a person, in addition to the operator, in a position to observe the progress of the person or persons being ~~towed or unless the skiers~~towed.

(2) The persons being towed wear a ~~life preserver or unless the boat~~ personal flotation device.

(3) The vessel is equipped with a rear view mirror.

(b) No person shall operate a vessel on any water of this State towing a person or persons on water skis, a surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

(c) The provisions of subsections (a) and (b) of this section do not apply to a performer engaged in a professional ~~exhibition or a person or persons engaged in an activity authorized under G.S. 75A-14.~~exhibition.

(d) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon to collide with any object or person.

"§ 75A-13.1. Skin and scuba divers.

(a) No person shall engage in skin diving or scuba diving in the waters of this State ~~which~~ that are open to boating, or assist in such diving, without displaying a diver's flag from a mast, buoy, or other structure at the place of diving; and no person shall display such flag except when diving operations are under way or in preparation.

(b) The diver's flag shall be square, not less than 12 inches on a side, and shall be of red background with a diagonal white stripe, of a width equal to one fifth of the flag's height, running from the upper corner adjacent to the mast downward to the opposite outside corner.

(c) No operator of a vessel under way in the waters of this State shall permit ~~such~~ the vessel to approach closer than 50 feet to any structure from which a diver's flag is then being displayed, except where ~~such~~ the flag is so positioned as to constitute an unreasonable obstruction to navigation; and no person shall engage in skin diving or scuba diving or display a diver's flag in any locality ~~at which the same~~ that will unreasonably obstruct vessels from making legitimate navigational use of the water.

(d) A person who violates a provision of this section is guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed twenty-five dollars ($25.00).

"§ 75A-13.2: Repealed by Session Laws 1999-447, s. 3.

"§ 75A-13.3. Personal watercraft.

(a) No person shall operate a personal watercraft on the waters of this State at any time between sunset and sunrise. For purposes of this section, "personal watercraft" means a small vessel ~~which~~ that uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(a1) No person shall operate a personal watercraft on the waters of this State at greater than no-wake speed within 100 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel, unless the personal watercraft is operating in a narrow channel. No person shall operate a personal watercraft in a narrow channel at greater than no-wake speed within 50 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least 12 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a ~~boater~~ boating safety certification card issued by the ~~Wildlife Resources~~ Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the ~~Wildlife Resources~~ Commission or local law enforcement agency.

(b1) A person under 16 years of age who operates a personal watercraft in violation of the provisions of subsection (b) of this section is guilty of an infraction as provided in G.S. 14-3.1.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) ~~It shall be unlawful for any~~No person, firm, or corporation ~~to~~ shall engage in the business of renting personal watercraft to the public for operation by the rentee unless ~~such~~ the person, firm, or corporation has secured insurance for ~~his own~~ the

liability of the person, firm, or corporation and that of ~~his~~ the rentee, in such an amount as is hereinafter provided, from an insurance company duly authorized to sell liability insurance in this State. Each ~~such~~ personal watercraft rented must be covered by a policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars ($300,000) per occurrence.

(c2) A vessel livery that fails to carry liability insurance in violation of subsection (c1) of this section is guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000).

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind ~~such~~ the vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water ~~skis~~ skis, a surfboard, or ~~other devices~~ similar device unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and ~~include:~~ include any of the following:

(1) Unreasonably or unnecessarily weaving through congested vessel ~~traffic;~~ traffic.

(2) Jumping the wake of another vessel within 100 feet of ~~such~~ the other vessel or when visibility around ~~such~~ the other vessel is ~~obstructed;~~ obstructed.

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision;~~collision.

(4) Repealed by Session Laws 2000-52, s. 2.

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

(f1) For purposes of this section, "narrow channel" means a segment of the waters of the State 300 feet or less in width.

(g) Repealed by Session Laws 1999-447, s. 1.

(h) Nothing in this section prohibits units of local government, marine commissions, or local lake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section. Whenever a unit of local government, marine commission, or local lake authority regulates personal watercraft pursuant to this subsection, it shall conspicuously post signs that are reasonably calculated to provide notice to personal watercraft users of the stricter regulations.

"§ 75A-14: Repealed by Session Laws 1999-248, s. 4.

"§ 75A-14.1. Lake Norman No-Wake Zone.

It is unlawful to operate a vessel at greater than no-wake speed within 50 yards of a ~~boat~~ vessel launching area, bridge, dock, pier, marina, ~~boat~~ vessel storage structure, or ~~boat~~ vessel service area on the waters of Lake Norman. ~~No-wake speed is idle speed or slow speed creating no appreciable wake.~~

"§ 75A-15. Rules on water safety; adoption of the Uniform Waterway Marking System.

(a) In accordance with subsection (b) of this section, the ~~Wildlife Resources~~ Commission is empowered to ~~make~~ adopt rules, for the local water in question, as to:

(1) Operation of vessels, including restrictions concerning speed zones, and type of activity conducted.

(2) Promotion of boating and water safety generally by occupants of vessels, swimmers, fishermen, and others using the water.

(3) Placement and maintenance of navigation aids and markers, in conformity with governing provisions of law.

Prior to ~~making~~ the adoption of any rules, the Commission shall investigate the water recreation and safety needs of the local water in question. In ~~making such~~ conducting the investigation, the Commission in its discretion may hold public hearings on the rules proposed and the general needs of the local water in question. After ~~such~~ completion of the investigation and application of standards, the Commission may in its discretion ~~pass~~ adopt the rules requested, ~~pass~~ adopt them in an amended form, or refuse to ~~pass~~ adopt them. After ~~passage,~~adoption, the Commission may amend or repeal the rules after first holding a public hearing.

(b) Any subdivision of this State may, but only after public notice, make formal application to the ~~Wildlife Resources~~ Commission for rules on waters within the subdivision's territorial limits as to the matters listed in subsection (a) of this section. The ~~Wildlife Resources~~ Commission ~~may,~~may adopt rules applicable to local areas of water defined by the Commission that are found to be heavily used for water recreation purposes by persons from other areas of the State and as to which there is not coordinated local interest in regulation.

(b1) The ~~Wildlife Resources~~ Commission may adopt rules ~~prohibiting~~ to prohibit entry of vessels into public swimming areas and ~~establishing~~ to establish speed zones at public ~~boat~~ vessel launching ramps, marinas, or ~~boat~~ vessel service areas and on other congested water areas where there are demonstrated water safety hazards. Enforcement of ~~such rules~~ rules adopted pursuant to this subsection shall be dependent upon placement and maintenance of regulatory markers in accordance with the Uniform State Waterway Marking System by ~~such agency~~the Commission or ~~agencies as may be~~an agency designated by the ~~Wildlife Resources~~ Commission.

(c) The Uniform State Waterway Marking System as approved by the Advisory Panel of State Officials to the Merchant Marine Council, United States Coast Guard, in October 1961 is hereby adopted for use on the waters of North Carolina. The ~~Wildlife Resources~~ Commission is authorized to ~~pass~~ adopt rules implementing the marking system and may:

(1) Modify provisions as necessary to meet the special water recreational and safety needs of this State, provided that ~~such~~ the modifications do not depart in any essential manner from the uniform standards being adopted in other states.

(2) Modify provisions as necessary to conform with amendments to the marking system that may be proposed for adoption by the states.

(3) Enact supplementary standards regarding design, construction, placement, and maintenance of markers.

(4) Enact clarifying rules as to matters not covered with precision in the report of the Advisory Panel of State Officials.

(5) Enact implementing rules as to matters left to State discretion in the report of the Advisory Panel of State Officials.

(6) Enact rules forbidding or restricting the placement of markers either throughout the State or in certain classes or areas of waters without prior permission having been obtained from the Commission or some agency or official designated by the Commission.

(c1) It is unlawful to place or maintain any marker of the sort covered by the marking system in the waters of North Carolina that does not conform to or is in violation of the marking system and the implementing rules of the Commission.

(d) Rules enacted under the authority of subsections ~~(a)~~(a), (b), and ~~(b)~~(b1) of this section shall supersede all local rules in conflict or incompatible with such rules. As used in this subsection, "local rules" shall include provisions relating to boating, water safety, or other recreational use of local waters in special local, or private acts, in ordinances or rules of local governing bodies, or in ordinances or rules of local water authorities. Except as may be authorized in subsections ~~(a)~~(a), (b), and ~~(b)~~(b1) of this section, no local rules may be made respecting the Uniform State Waterway Marking System and its implementation or respecting supplemental safety equipment on vessels.

(e) The ~~Wildlife Resources~~ Commission may adopt rules prohibiting entry or use by vessels or swimmers of waters of the State immediately surrounding impoundment structures and powerhouses associated with electric generating facilities that are found to pose a hazard to water safety. This subsection shall not apply to the Person-Caswell Lake Authority, Carolina Power and Light Company Lake (Hyco).

"**§ 75A-16. Repealed by Session Laws 1979, c. 830, s. 9, effective July 1, 1980.**

"**§ 75A-16.1. Boating safety course.**

(a) The Commission shall institute and coordinate a statewide course of instruction in boating safety, and in so doing may cooperate with any political subdivision of the State or with any reputable organization having as one of its objectives the promotion of boating safety.

(b) The Commission shall designate those persons or agencies authorized to conduct the course of instruction, and this designation shall be valid until revoked by the Commission. Within 30 days of completion of a course of instruction, a designated person or agency shall submit to the Commission a list of the names of all persons who successfully completed the course of instruction conducted by the designated person or agency.

(c) The Commission may conduct the course in boating safety using Commission personnel or other persons at times or in areas in which competent agencies are unable or unwilling to meet the demand for instruction.

(d) The Commission shall issue a boating safety certification card to each person who successfully completes the course of instruction.

(e) The Commission shall adopt rules to provide for the course of instruction and the issuance of boating safety certification cards consistent with the purposes of this section.

(f) Any person who presents a fictitious boating safety certification card or who attempts to obtain a boating safety certification card through fraud is guilty of a Class 2 misdemeanor.

"**§ 75A-17. Enforcement of Chapter.**

(a) Every wildlife protector and every other law-enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this Chapter and in the exercise thereof shall have authority to stop any vessel subject to this ~~Chapter; and,~~Chapter. Wildlife protectors or other law-enforcement officers of this

State, after having identified ~~himself in his official capacity,~~ themselves as law enforcement officers, shall have authority to board and inspect any vessel subject to this Chapter.

(b) In order to secure broader enforcement of the provisions of this Chapter, the ~~Wildlife Resources~~ Commission is authorized to enter into an agreement with the Department of Environment and Natural Resources whereby the enforcement personnel of the Department shall assume responsibility for enforcing the provisions of this Chapter in the territory and area normally policed by ~~such~~ enforcement personnel of the Commission and whereby the ~~Wildlife Resources~~ Commission shall contribute a share of the expense of such personnel according to a ratio of time and effort expended by them in enforcing the provisions of this Chapter, when ~~such~~ the ratio has been agreed upon by both of the contracting agencies. ~~Such~~ The agreement may be modified from time to time as conditions may warrant.

(c) Law enforcement vessels may use a flashing blue light on the waters of this State whenever they are engaged in law enforcement or public safety activities. The use of a blue light by any other vessel is prohibited. A person other than a law enforcement officer who activates, installs, or operates a flashing blue light on a vessel other than a law enforcement vessel is guilty of a Class 1 misdemeanor.

(d) A siren may not be used on any vessel other than an official law enforcement vessel or other official emergency response vessel.

(e) Vessels operated on the waters of this State shall stop when directed to do so by a law enforcement officer. When stopped, vessels shall remain at idle speed, or shall maneuver in such a way as to permit the officer to come alongside the vessel. Law enforcement officers may direct vessels to stop by using a flashing blue light, a siren, or an oral command by officers in uniform. A person who violates this subsection is guilty of a Class 2 misdemeanor.

(f) Vessels operated on the waters of this State shall slow to a no-wake speed when passing within 50 yards of a law enforcement vessel that is displaying a flashing blue light. A person who violates this subsection is guilty of a Class 3 misdemeanor.

"**§ 75A-18. Penalties.**

(a) Except as otherwise provided, ~~any~~ a person who violates ~~any~~ a provision of this Article or who violates ~~any~~ a rule ~~or regulation~~ adopted under authority of this Chapter ~~shall be~~ is guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed two hundred and fifty dollars ($250.00) for each ~~such~~ violation. ~~The~~ This limitation ~~prescribed by the preceding sentence~~ shall not apply in ~~any~~ a case where a more severe penalty ~~may be~~ is prescribed in ~~any of said sections.~~ this Chapter.

~~(b) Any person who violates any provision of G.S. 75A-10(a), (b), or (b1) shall be guilty of a Class 2 misdemeanor.~~

~~(c) Any person who violates any provision of G.S. 75A-13.1 shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall only be fined no more than twenty-five dollars ($25.00).~~

~~(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000).~~

~~(d) A person who:~~

~~(1) Willfully violates G.S. 75A-10(d) is guilty of a Class 1 misdemeanor.~~

~~(2) Willfully violates G.S. 75A-10(d) and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation.~~

~~(e) A person under 16 years of age who operates a personal watercraft in violation of the provisions of G.S. 75A-13.3 is guilty of an infraction as provided in G.S. 14-3.1.~~

"§ 75A-19. Operation of ~~watercraft~~ vessels by manufacturers, dealers, etc.

Notwithstanding any other provisions of this Chapter, the ~~Wildlife Resources~~ Commission may ~~promulgate such~~ adopt rules ~~and regulations~~ regarding the operation of ~~watercraft~~ vessels by manufacturers, distributors, dealers, and demonstrators as the Commission may deem necessary and proper."

SECTION 2. Article 4 of Chapter 75A of the General Statutes reads as rewritten:

"Article 4.

"~~Watercraft~~ Vessel Titling Act.

"§ 75A-32. Short title.

This Article shall be known as the ~~Watercraft~~ Vessel Titling Act.

"§ 75A-33. Definitions.

~~As used in this Article, unless the context clearly requires a different meaning:~~

~~(1) "Commission" means the North Carolina Wildlife Resources Commission.~~

~~(2) "Watercraft" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.~~

The definitions set forth in G.S. 75A-2 shall apply to this Article, unless the context clearly requires a different meaning.

"§ 75A-34. Who may apply for certificate of title; authority of employees of Commission.

(a) Any owner of ~~any watercraft in this State, which is not titled elsewhere, may~~ a motorized vessel or sailboat 14 feet or longer or any personal watercraft, as defined in G.S. 75A-13.3(a), that is applying for a certificate of number for the first time in this State pursuant to G.S. 75A-5(a), and any new owner of a motorized vessel or sailboat 14 feet or longer or any personal watercraft to whom ownership is being transferred under G.S. 75A-5(c) shall apply to the Commission for a certificate of ~~title.~~ title for that vessel. Any other vessel may be titled in this State at the owner's option. A vessel may not be titled in this State if it is titled in another state, unless the current title is surrendered along with the application for a certificate of title in this State. The Commission shall issue a certificate of title upon reasonable evidence of ownership, which may be established by ~~affidavits, bills of sale, or other similar documents.~~ affidavit, bill of sale, manufacturer's statement of origin, certificate of title in this State,

certificate of number or title from another state, or other document satisfactory to the Commission. Only one certificate of title may be issued for any vessel in this State. A vessel may not be titled in this State if it is documented with the United States Coast Guard. The Commission shall issue a certificate of title upon receipt of a completed application, along with the appropriate fee and reasonable evidence of ownership. The Commission shall require a manufacturer's statement of origin for all new vessels being issued a certificate of number and a certificate of title for the first time. The Commission may request a pencil tracing of the hull identification number (serial number) for vessels being transferred, in order to positively identify the vessel before issuance of a certificate of title for that vessel.

(b) Employees of the Commission are vested with the power to administer oaths and to take acknowledgements and affidavits incidental to the administration and enforcement of this section. They shall receive no compensation for these services.

"§ 75A-35. Form and contents of application.

(a) ~~Every application~~ The owner or the owner's attorney shall apply for a certificate of title for a vessel. ~~shall be made by the owner or his duly authorized attorney in fact, and~~The application shall contain the name, residence, and mailing address of the owner, the county where the vessel is taxed, ~~a statement of the applicant's title and~~ proof of ownership, and a statement of all liens or encumbrances upon the ~~watercraft~~ vessel in the order of their ~~priority, and the~~ priority. The application shall also contain the names and addresses of all persons having any interest in the ~~watercraft and the nature of the interest.~~ vessel.

(b) Every application for a certificate of title for a vessel shall contain a brief description of the ~~watercraft~~ vessel to be ~~registered,~~ titled, including the name of the manufacturer, ~~State identification~~ certificate of number, hull identification number, length, type, and principal material of construction, model year, ~~date of purchase, identification of the motor (including manufacturer's name and serial number, except on motors of 25 horsepower or less), and the name and address of the person from whom the watercraft was purchased.~~ and purchase information. It shall also include the name and address of the previous owner or owners from whom the vessel was obtained. If the vessel has an outboard motor of greater than 25 horsepower, the application shall also contain identification of the motor, including the serial number and manufacturer. The application shall be made on forms prescribed and furnished by the Commission and shall contain other information as may be required by the Commission.

"§ 75A-36. Notice by owner of change of address.

Whenever any person, after applying for or obtaining the certificate of title of a ~~watercraft,~~ vessel, moves from the address shown ~~in~~ on the application or ~~upon the~~ certificate of title, that person shall, within 30 ~~days,~~days of moving, notify the Commission in writing of ~~his~~ the change of ~~address.~~address on a form acceptable to the Commission.

~~A~~ The Commission shall charge a fee of ten dollars ($10.00) ~~shall be imposed~~ upon anyone failing to comply with this section within the time prescribed. The Commission shall not reissue a title for any vessel that has an address change until the Commission has received the notice of the change of address and the fee, if applicable, is paid.

"§ 75A-37. Certificate of title as evidence; duration; transfer of title.

(a) A certificate of title is prima facie evidence of the ownership of a ~~watercraft.~~ vessel. A certificate of title shall ~~be~~ remain in force for the life of the ~~watercraft so long as the certificate is owned or held by the legal holder.~~ vessel.

(b) Upon the sale, assignment, or transfer of a ~~watercraft which has been issued a certificate of title under this Article by the legal holder of the certificate, the certificate of title may, at the option of the purchaser or transferee, be delivered to the purchaser or transferee with an assignment on the certificate showing title in the purchaser or transferee. Otherwise, the certificate shall be returned to the Commission for cancellation.~~ vessel for which a certificate of title has been issued under this Article, the legal holder of the certificate of title shall deliver it to the purchaser or transferee. The assignment on the certificate must be completed showing transfer of ownership to the purchaser or transferee and settlement of all outstanding liens and encumbrances. The new owner shall submit the assigned certificate of title to the Commission, accompanied by evidence satisfactory to the Commission that all outstanding liens have been released, with the application for transfer of title. The application shall contain all the information required by the Commission for the transfer in order to identify the vessel and the new owner. The application shall show any and all new liens and encumbrances on the vessel, in order of priority, incurred by the owner. The nature of the new liens and encumbrances shall also be given, along with the name and address of all secured parties.

"§ 75A-38. Commission's records; fees.

(a) The Commission shall maintain a record of any title it issues.

(b) The Commission shall charge a fee of twenty dollars ($20.00) ~~for~~ to issue ~~of each certificate of title, and~~ a new or transfer certificate of title. The Commission shall charge a fee of ten dollars ($10.00) for each ~~transfer of title, duplicate title, or~~ duplicate title it issues and for the recording of a supplemental lien.

"§ 75A-39. Duplicate certificate of title.

The Commission may issue a duplicate certificate of title plainly marked "duplicate" across its face upon application by the person entitled to hold the certificate if the Commission is satisfied that the original certificate has been lost, stolen, mutilated, destroyed, or has become illegible. Mutilated or illegible certificates shall be returned to the Commission with the application for a duplicate. If a duplicate certificate of title has been issued and the lost or stolen original is recovered, the original shall be promptly surrendered to the ~~Commission for cancellation.~~ Commission. A duplicate certificate of title, not bearing the word "duplicate" across its face, shall be issued for anyone having an address change or name change so long as the original title is surrendered and the appropriate fees paid as provided in G.S. 75A-38(b). If the original certificate of title is not surrendered to the Commission, the duplicate certificate of title shall be plainly marked "duplicate" across its face.

"§ 75A-40. Certificate to show security interests.

The Commission, after receiving an application for a certificate of title ~~to a watercraft,~~ for a vessel, shall, upon issuing the certificate of title to the owner, show

upon the face of the certificate of title all security interests in the order of their priority as shown in the application.

"§ 75A-41. Security interests subsequently created.

Except for security interests in ~~watercraft~~ vessels that are inventory held for sale, security interests created in ~~watercraft~~ vessels by the voluntary act of the owner after the original issue of title to the owner must be shown on the certificate of title. In such cases, the owner shall file an application with the Commission on a ~~blank~~ form furnished for that purpose, setting forth ~~the~~ all security interests and other information as the Commission requires. The Commission, if satisfied that it is proper that the ~~same~~ security interests be ~~recorded and~~ recorded, shall upon surrender of the certificate of title covering the ~~watercraft, shall thereupon~~ vessel, issue a new certificate of title showing ~~their~~ any security interests in the order of the priority according to the date of the filing of the application. For the purpose of recording the subsequent security interest, the Commission may require any secured party to deliver the certificate of title to the Commission. The newly issued certificate shall be sent or delivered to the secured party ~~from whom the prior certificate was obtained.~~ of first priority listed on the certificate of title.

"§ 75A-42. Certificate as notice of security interest.

A certificate of title, when issued by the Commission showing a security interest, shall be deemed adequate notice to the State, creditors, and purchasers that a security interest in the ~~watercraft exists and the~~ vessel exists. No other recording or filing of the creation or reservation of a security interest in the county or city wherein the purchaser or debtor resides or elsewhere is ~~not~~ necessary and shall not be required. ~~Watercraft,~~ Vessels, other than those that are inventory held for sale, for which a certificate of title is currently in ~~effect~~ effect, shall be exempt from the provisions of G.S. 25-9-309, 25-9-310, 25-9-312, 25-9-320, 25-9-322, 25-9-323, 25-9-324, 25-9-331, 25-9-404, 25-9-405, 25-9-406, and 25-9-501 to 25-9-526 for so long as the certificate of title remains in effect.

"§ 75A-43. Security interest may be filed within 30 days after purchase.

If application for the recordation of a security interest to be placed upon a ~~watercraft~~ vessel is filed in the principal office of the Commission within 30 days from the date of the applicant's purchase of the ~~watercraft,~~ vessel, it shall be valid to all persons, including the State, as if the recordation had been done on the day the security interest was acquired.

"§ 75A-44. Priority of security interests shown on certificates.

Except for security interests in ~~watercraft~~ vessels that are inventory held for sale, security interests shown upon the certificates of title issued by the Commission pursuant to applications for certificates shall have priority over any other liens or security interests against the ~~watercraft~~ vessel however created and recorded, except for a mechanics lien for repairs, provided that the mechanic furnishes the holder of any recorded lien who may request it with an itemized sworn statement of the work done and materials supplied for which the lien is claimed.

"§ 75A-45. Legal holder of certificate of title subject to security interest.

The certificate of title of a ~~watercraft~~ vessel shall be delivered to the person holding the security interest having first priority upon the ~~watercraft~~ vessel and retained by that person until the entire amount of the security interest is fully paid by the owner of the ~~watercraft.~~ vessel. The certificate of title shall then be delivered to the secured party next in order of priority and so on, or, if none, then to the owner of the ~~watercraft.~~ vessel.

"§ 75A-46. Release of security interest shown on certificate of title.

An owner, upon securing the release of any security interest upon a ~~watercraft~~ vessel shown upon the certificate of title issued for the ~~watercraft,~~ vessel, may exhibit the documents evidencing the release, signed by the person or persons making the release, and the certificate of title to the Commission. When it is impossible to secure the release from the secured party, the owner may exhibit to the Commission any available evidence showing that the debt secured has been satisfied, together with a statement by the owner under oath that the debt has been paid. ~~When~~ If the Commission ~~is satisfied as to the genuineness and regularity of the satisfied debt,~~ determines that the secured debt has been satisfied in full, the Commission shall issue to the owner either a new certificate of title in proper form or an endorsement or rider showing the release of the security interest which the Commission shall attach to the outstanding certificate of title.

"§ 75A-47. Surrender of certificate required when security interest paid.

It is unlawful and constitutes a Class 1 misdemeanor for a secured party who holds a certificate of title as provided in this Article to refuse or fail to surrender the certificate of title to the person legally entitled to it within 10 days after ~~his~~ the security interest has been paid and satisfied.

"§ 75A-48. Levy of execution, etc.

A levy made by virtue of an execution or other proper court order, upon a ~~watercraft~~ vessel for which a certificate of title has been issued by the Commission, shall constitute a lien, subsequent to security interests previously recorded by the Commission and subsequent to security interests in inventory held for sale and perfected as otherwise permitted by law, if and when the officer making the levy reports to the Commission at its principal office, on forms provided by the Commission, that the levy has been made and that the ~~watercraft~~ vessel levied upon has been seized by and is in the custody of the officer. Should the lien thereafter be satisfied or should the ~~watercraft~~ vessel levied upon and seized thereafter be released by the officer, ~~he~~ the officer shall immediately report that fact to the Commission at its principal office. ~~Any owner who, after~~ After a levy and seizure by an officer and before the officer reports the levy and seizure to the Commission, any person who fraudulently ~~assigns or transfers his title to or interest in the watercraft, or~~ assigns, transfers, causes the certificate of title to be assigned or transferred, or causes a security interest to be shown upon ~~such~~ the certificate of title, is guilty of a Class 1 misdemeanor.

"§ 75A-49. Registration prima facie evidence of ownership; rebuttal.

~~Issuance of registration under the provisions of this Chapter shall be prima facie evidence of ownership of a watercraft and entitlement to a certificate of title under the provisions of this Article, but the registration and certificate of title shall be subject to rebuttal.~~ A valid certificate of number issued under the provisions of this Chapter, or

any similar document issued under the jurisdiction of any other state or country, shall be prima facie evidence of ownership of a vessel and entitlement to a certificate of title under the provisions of this Article, but ownership established by such documents shall be subject to rebuttal."

SECTION 3. This act becomes effective January 1, 2006, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1692
PROPOSED COMMITTEE SUBSTITUTE S1692-CSRBx-47 [v.3]

5/31/2006 12:54:57 PM

Short Title: Sales Tax on R&D Equipment. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE TAX ON SALES OF EQUIPMENT USED FOR RESEARCH AND DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-187.51B reads as rewritten:

"**§ 105-187.51B. Tax imposed on ~~recycling equipment.~~ certain recyclers and research and development companies**

(a) Tax. – A privilege tax is imposed on ~~a~~ the following:

(1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

~~(1)~~a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

~~(2)~~ b. Port and dock facilities.

~~(3)~~ c. Rail equipment.

~~(4)~~ d. Material handling equipment.

(2) A research and development company in the physical, engineering, and life sciences that is included in Industry Group 541710 of NAICS, as defined in G.S. 105-129.2, and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.

b. Is used by the company in the research and development of tangible personal property.

c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.

(b) Rate. – The tax is one percent (1%) of the sales price of the equipment or other tangible personal property. The maximum tax is eighty dollars ($80.00) per article."

SECTION 2. This act becomes effective January 1, 2007.

SENATE BILL 1692:
Sales Tax on R&D Equipment

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 31, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition S1692-CSRB		Committee Counsel

SUMMARY: ***Senate Bill 1692 would exempt research and development equipment from the 7% State and local sales tax rate and in its place would impose a 1% privilege tax, with an $80 cap, on it. The bill would become effective January 1, 2007.[1] The Proposed Committee Substitute clarifies that the exemption from sales tax and the lower rate of tax applies only to equipment that can be capitalized by the taxpayer for income tax purposes under the Internal Revenue Code.***

CURRENT LAW: Equipment purchased by a manufacturing company, including research and development equipment, is taxed at a 1% rate with an $80 cap per article. Prior to January 1, 2006, mill machinery was subject to a 1% State sales tax with an $80 cap per article. Last session, to comply with the uniform rate requirements of the Streamlined Sales and Use Tax Agreement, the General Assembly exempted mill machinery from the sales tax and began imposing a 1% privilege tax with an $80 cap on it. Research and development equipment purchased by other types of taxpayers is subject to the 7% State and local sales tax rate.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 1692 would tax research and development equipment purchased and used for the research and development of tangible personal property in the same manner as research and development equipment purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.

Equipment purchased by a manufacturing industry or plant is subject to a privilege tax at the rate of 1% with an $80 cap per article. Senate Bill 1692 would subject research and development equipment purchased by other companies for research and development to the same tax. Property subject to the privilege tax under Article 5F of Chapter 105 of the General Statutes is exempt from the State and local sales tax.

EFFECTIVE DATE: The bill would become effective January 1, 2007.

S1692e1-SMRB-CSRB

[1] HB 2728 is a companion bill to SB 1692. HB 2728 is in House Finance.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 31, 2006

TO: Senate Finance Committee

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: Senate Bill 1692 – Senate Finance PCS

FISCAL IMPACT (millions)

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
State	(4.1)	(7.9)	(8.4)	(9.0)	(9.7)
Local	(2.3)	(4.9)	(5.3)	(5.6)	(6.0)
POSITIONS (cumulative):					

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

EFFECTIVE DATE: January 1, 2007.

BILL SUMMARY: Under current law the purchase of mill machinery, including some research and development equipment, is taxed at a rate of 1%, with an $80.00 cap per item. These items are taxed under the new 5F privilege tax. Research and development equipment purchases made by private sector organizations that are not involved in manufacturing are taxed at the full, general rate of 7.0% (6.5% after June 30, 2007). Nonprofit organizations involved in Research and Development, such as research hospitals and universities, are taxed at the full 7.0% rate of tax, but can apply for an annual or semi-annual sales tax refund. The legislation changes these statutes by exempting all equipment purchased for by qualifying research and development companies from the sales tax, but levies the 5F privilege tax of 1% tax, with an $80.00 cap per item. Supplies used

in research and development would continue to be taxable at the full rate. In order to qualify for the special tax treatment the company and the equipment purchased must met the following four part test:

1. The item is purchased by a research and development company in the physical, engineering, and life sciences, and is included in Industry Sector 541710 of NAICS.
2. The item is equipment, a part, or accessory attached to the equipment.
3. The item would be mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry, or plant that conducts research and also manufactures.
4. The item is depreciable under the Code.

ASSUMPTIONS AND METHODOLOGY: Because of limited specific data on R&D purchases by qualifying organizations, two methods are used to develop a fiscal estimate.

Employment Based Estimate: In 2005 the North Carolina Biosciences Organization (NCBio) in conjunction with Fiscal Research, surveyed selected members of their organization who were likely in the targeted NAICS code concerning their level of employment and their expenditures on research and development equipment. The results of the survey indicate that these businesses spend an average of $15,065 per employee on potentially qualifying equipment in 2004. Data from the Employment Securities Commission indicates that in 2005 the number of individuals employed by firms whose primary NAICS code was 541710 was 12,885. Multiplying the estimated number of employees in qualifying businesses by the average expenditure per employee as reported in the survey, suggest total potential qualifying purchases in North Carolina of $194.1 million in 2005.

Data from the National Science Foundation indicates that, on a national basis, total industry related research and development expenditures have grown an average of 7.08% per year, for the past six years. Using this number as a proxy for future growth suggests the following amount will be expended on qualifying purchases:

Year	R & D Equipment Expenditures
2005	194,112,525
2006	207,855,692
2007	222,571,875
2008	238,329,963
2009	255,203,725
2010	273,272,149
2011	292,619,817

Adjusting for fiscal years, and applying the appropriate rate of tax, suggests the following potential annual fiscal impact:

Fiscal Year	Equipment Expenditures	State	Local
2005-06	200,984,108	9,044,285	5,024,603
2006-07	215,213,783	9,684,620	5,380,345
2007-08	230,450,919	9,218,037	5,761,273
2008-09	246,766,844	9,870,674	6,169,171
2009-10	264,237,937	10,569,517	6,605,948
2010-11	282,945,983	11,317,839	7,073,650

National R&D Expenditure Based Estimate: The National Science Foundation indicates the following amounts were expended for all research and development in North Carolina:

Year	R & D total expenses by Industry
1997	3,478,000,000
1998	3,350,000,000
1999	3,934,000,000
2000	3,641,000,000
Average	3,600,750,000

Using the average National Science Foundation reported growth in research and development expenditures (7.08% per year over six years) as a proxy for North Carolina increases in research and development expenditures suggests the following total R & D expenditures in the state:

Year	R & D total expenses by Industry
2005	5,125,809,852
2006	5,488,717,190
2007	5,877,318,367
2008	6,293,432,507
2009	6,739,007,529
2010	7,216,129,262
2011	7,727,031,214

There is very little data on how much of total research and development expenses are related to equipment. PAREXEL's Pharmaceutical R&D Statistical Sourcebook 2004/05 suggests that Canadian pharmaceutical manufacturers expend about 3.4% of their research and development dollars on capital equipment. Using this number as a proxy for North Carolina equipment expenditures, and applying the appropriate tax rates, suggests the following revenue losses for the State and local governments:

Fiscal Year	Equipment Expenditures	State Tax	Local Tax
2005-06	180,446,960	8,120,113	4,511,174
2006-07	193,222,604	8,695,017	4,830,565
2007-08	206,902,765	8,276,111	5,172,569
2008-09	221,551,481	8,862,059	5,538,787
2009-10	237,237,325	9,489,493	5,930,933
2010-11	254,033,728	10,161,349	6,350,843

These numbers assume the items are exempted from tax. However, the legislation exempts them from sales tax, but applies a 1% tax, with an $80 per item tax. No data is available to determine what proportion of the above numbers will actually be returned to the General Fund under the new tax. For purposes of this fiscal note it is assumed that 10% of the total is returned to the general fund under the new tax.

An average of the estimates developed under both simulations, once adjusted for the new tax revenue, is used as the fiscal impact.

SOURCES OF DATA: Internal Revenue Service, National Science Foundation, PAREXEL's Pharmaceutical R&D Statistical Sourcebook 2004/05, "Patentees Research and Development Expenditure in Canada", Journal of Pharmacy and Pharmaceutical Science, 2002.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1330

Committee Substitute Favorable 8/23/05
Third Edition Engrossed 8/23/05
Senate Health Care Committee Substitute Adopted 5/18/06

Short Title: Authorize Licensure/Anesthesiologist Asst's. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA MEDICAL BOARD TO LICENSE AND REGULATE ANESTHESIOLOGIST ASSISTANTS.

Whereas, there is a documented shortage of anesthesia providers in North Carolina; and

Whereas, anesthesiologist assistants are licensed by many states to provide anesthesia services under the supervision of an anesthesiologist; and

Whereas, licensure of anesthesiologist assistants in North Carolina would help alleviate the existing shortage of anesthesia providers in this State; and

Whereas, anesthesiologist assistants have excellent clinical safety records, are highly trained, and are authorized to provide anesthesia services under such federal programs as Medicare, Medicaid, TriCare, and the Veterans Administration; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-11 is amended by adding a new subsection to read:

"(a1) Each applicant for licensure as an anesthesiologist assistant in the State shall satisfy the North Carolina Medical Board that the applicant is of good moral character and meets the other qualifications for the issuance of a license before a license is granted by the Board to the applicant."

SECTION 2. G.S. 90-15 reads as rewritten:

"**§ 90-15. License fee; salaries, fees, and expenses of Board.**

Each applicant for a license by examination shall pay to the North Carolina Medical Board a fee which shall be prescribed by the Board in an amount not exceeding the sum of four hundred dollars ($400.00) plus the cost of test materials before being admitted to the examination. Whenever a license is granted without examination, as authorized in G.S. 90-13, the applicant shall pay to the Board a fee in an amount to be prescribed by the Board not in excess of two hundred fifty dollars ($250.00). Whenever a limited

license is granted as provided in G.S. 90-12, the applicant shall pay to the Board a fee not to exceed one hundred fifty dollars ($150.00), except where a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training is granted, the applicant shall pay a fee of twenty-five dollars ($25.00), and where a limited license to practice medicine and surgery only at clinics that specialize in the treatment of indigent patients is granted, the applicant shall not pay a fee. A fee of twenty-five dollars ($25.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the North Carolina Medical Board, to be held in a fund for the use of the Board. The compensation and expenses of the members and officers of the Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of the fund, upon the warrant of the Board. The per diem compensation of Board members shall not exceed two hundred dollars ($200.00) per day per member for time spent in the performance and discharge of duties as a member. Any unexpended sum or sums of money remaining in the treasury of the Board at the expiration of the terms of office of the members of the Board shall be paid over to their successors in office.

For the initial and annual registration of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount.

For the initial and annual registration of an anesthesiologist assistant, the Board may require the payment of a fee not to exceed one hundred fifty dollars ($150.00)."

SECTION 3. G.S. 90-18(c) is amended by adding a new subdivision to read:

"(c) The following shall not constitute practicing medicine or surgery as defined in subsection (b) of this section:

...

(20) The provision of anesthesia services by a licensed anesthesiologist assistant under the supervision of an anesthesiologist licensed under Article 1 of this Chapter."

SECTION 4. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-18.5. Limitations on anesthesiologist assistants.**

(a) Any person who is licensed under the provisions of G.S. 90-11 to perform medical acts, tasks, and functions as an assistant to an anesthesiologist licensed under Article 1 of this Chapter may use the title 'anesthesiologist assistant'. Any other person who uses the title in any form or holds himself or herself out to be an anesthesiologist assistant or to be so licensed shall be deemed to be in violation of this Article. A student in any anesthesiologist assistant training program shall be identified as a 'student anesthesiologist assistant' or an 'anesthesiologist assistant student', but under no circumstances shall the student use or permit to be used on the student's behalf, the terms 'intern', 'resident', or 'fellow'.

(b) Anesthesiologist assistants are authorized to provide anesthesia services under the supervision of an anesthesiologist licensed under Article 1 of this Chapter, including the development and implementation of an anesthesia care plan for a patient, under the following conditions:

(1) The North Carolina Medical Board has adopted regulations governing the provision of anesthesia services by an anesthesiologist assistant under the supervision of an anesthesiologist licensed under Article 1 of this Chapter with such limitations as the Board may determine to be in the best interest of patient health and safety.

(2) The anesthesiologist assistant holds a current license issued by the Board.

(c) The North Carolina Medical Board shall adopt rules to implement this section."

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

HOUSE BILL 1330:
Authorize Licensure/Anesthesiologist Asst's

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 31, 2006
Introduced by:	Rep. Jeffus	**Summary by:**	Cindy Avrette
Version:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 1330 would authorize the North Carolina Medical Board to license and regulate anesthesiologist assistants.

CURRENT LAW: Anesthesiologist assistants are not currently licensed in North Carolina and are unable to practice in North Carolina because to do so would be to practice medicine without a license.

BILL ANALYSIS: House Bill 1330 would implement the following changes to Article 1 of Chapter 90 of the General Statutes – Practice of Medicine:

- Require applicants for licensure as anesthesiology assistants to be 'of good moral character' and to meet qualifications for the issuance of a license as set by the North Carolina Medical Board.
- Set the initial and annual registration fee paid to the North Carolina Medical Board by anesthesiology assistants at no more than one hundred fifty dollars ($150).
- Include the provision of anesthesia services by a licensed anesthesiologist assistant under the supervision of a licensed anesthesiologist among those activities that are statutorily carved out from consideration as constituting the practice of medicine (G.S. 90-18(c)).
- Insert a new section G.S. 90-18.5. Limitations on anesthesiologist assistants, that includes the following provisions:
    - Restrict the use of the title 'anesthesiologist assistant' to only persons licensed under G.S. 90-11.
    - Authorize anesthesiologist assistants to provide anesthesia services under the supervision of a licensed anesthesiologist so long as the North Carolina Medical Board has adopted regulations governing the practice and the anesthesiologist assistant holds a current license issued by the Board.
    - Direct the North Carolina Medical Board to adopt rules to implement the section (G.S. 90-18.5).

EFFECTIVE DATE: The act would be effective when it became law.

BACKGROUND: Federal law recognizes anesthesiology assistants as qualified providers eligible for reimbursement from Medicare and Medicaid. Currently nine states and the District of Columbia license anesthesiology assistants to provide anesthesia services under the supervision of a licensed anesthesiologist.

The Legislative Committee on New Licensing Boards recommends the licensing of anesthesiologist assistants.

Ben Popkin, counsel to the Senate Committee on Health Care, substantially contributed to this summary.

H1330e4-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1330 (Fourth Edition)

SHORT TITLE: Authorize Licensure/Anesthesiologist Asst's.

SPONSOR(S): Representative Jeffus

FISCAL IMPACT

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

(in dollars)

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No Impact to General Fund**				
North Carolina Medical Board	$3,000	$4,000	$5,000	$6,000	$7,000
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Medical Board

EFFECTIVE DATE: When law.

BILL SUMMARY: House Bill 1330 allows for the licensure of anesthesiologist assistants, establishes an initial and annual registration fee of $150 for anesthesiologist assistants, and includes other regulatory provisions regarding anesthesiologist assistants.

ASSUMPTIONS AND METHODOLOGY: Anesthesiologist assistants (AAs) are allied health professionals who work under the direction of licensed anesthesiologists to develop and implement anesthesia care plans. They possess a premedical background, a baccalaureate degree, and are required to complete a comprehensive didactic and clinical program at the graduate school level.

Under current law, AAs cannot practice in North Carolina, but they currently practice in sixteen other states. States in which AAs work by license, regulation, and/or certification include Alabama, Florida, Georgia, Kentucky, Missouri, New Mexico (in university hospital settings),

Ohio, South Carolina, and Vermont. States in which AAs are granted practice privilege through physician delegation include Colorado, the District of Columbia, Michigan, New Hampshire, Texas, West Virginia, and Wisconsin. Nationwide, there are approximately 700 practicing AAs and three graduate-level education and certification programs for AAs that turn out approximately 100 graduates per year.

The NC Association of Anesthesiologists anticipates approximately 30 AAs would seek licensure in North Carolina in 2006-07 and approximately 10 per year in subsequent years. The NC Medical Board anticipates the actual registration fee for AAs will be set by rule to approximate the current fee for physician's assistants ($100). The chart below shows estimated fee revenues resulting from House Bill 1330.

House Bill 1330, Schedule of Proposed Fees				
	Registration Fee		Number of AAs	Total Fees by Type
	Maximum	Actual		
Initial registration	$150	$100	30	$3,000
Annual registration	$150	$100	10	$1,000

The following chart shows projected fee revenues for the NC Medical Board based on the actual fee amounts shown above. The projection assumes 10 new AAs will come to work in North Carolina each year. The base registration (30 in FY 2006-07) and annual growth rate are based on discussions with representation for the NC Society of Anesthesiologists.

House Bill 1330, Projected Fee Revenues by Fiscal Year					
	2006-07	2007-08	2008-09	2009-10	2010-11
Initial registration	30	10	10	10	10
Annual registration	0	30	40	50	60
Total registrations	30	40	50	60	70
Total fee revenues	**$ 3,000**	**$ 4,000**	**$ 5,000**	**$ 6,000**	**$ 7,000**

SOURCES OF DATA: NC Society of Anesthesiologists; NC Medical Board; American Society of Anesthesiologists

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY: Lynn Muchmore

DATE: May 30, 2006

Official Fiscal Research Division Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1213
PROPOSED COMMITTEE SUBSTITUTE S1213-CSSV-70 [v.3]

5/31/2006 10:11:58 AM

Short Title: Film Incentive Changes. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE TAX CREDIT FOR PRODUCTION COMPANIES TO THE STANDARD TAX TREATMENT WITH RESPECT TO THE DEDUCTION OF BUSINESS EXPENSES AND TO MAKE TECHNICAL CHANGES TO THAT CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.5(a)(18) is repealed.

SECTION 2. G.S. 105-130.47(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~ in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~ taken at least thirty days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~ following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~ wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 3. G.S. 105-130.47(i) is repealed.

SECTION 4. G.S. 105-134.6(c)(9) is repealed.

SECTION 5. G.S. 105-151.29(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~ in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~ taken at least thirty days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~ following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount

included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~ wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 6. G.S. 105-151.29(i) is repealed.

SECTION 7. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer."

SECTION 8. Section 7 of this act is effective when it becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1213

Short Title:	Film Incentive Changes.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Finance.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE TAX CREDIT FOR PRODUCTION COMPANIES TO THE STANDARD TAX TREATMENT WITH RESPECT TO THE DEDUCTION OF BUSINESS EXPENSES AND TO MAKE TECHNICAL CHANGES TO THAT CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.5(a)(18) is repealed.

SECTION 2. G.S. 105-130.47(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) for services with respect to a single production.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event shall not include commercial advertising, an episodic television series, a television pilot, music video, motion picture, or documentary production where any sporting events are presented through archived historical footage or similar footage depicting earlier live sporting events that originated more than thirty days before the time of such usage.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount

included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company,~~wages, other than amounts paid to a highly compensated individual, on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 3. G.S. 105-130.47(i) is repealed.

SECTION 4. G.S. 105-134.6(c)(9) is repealed.

SECTION 5. G.S. 105-151.29(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) for services with respect to a single production.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event shall not include commercial advertising, an episodic television series, a television pilot, music video, motion picture, or documentary production where any sporting events are presented through archived historical footage or similar footage depicting earlier live sporting events that originated more than thirty days before the time of such usage.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company.~~wages, other than amounts paid to a highly compensated individual, on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 6. G.S. 105-151.29(i) is repealed.

SECTION 7. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State

may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer."

SECTION 8. Section 7 of this act is effective when it becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 2006.

SENATE BILL 1213:
Film Incentive Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 31, 2006
Introduced by:	Sen. Boseman	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S1213-CSSV-70		Committee Counsel

SUMMARY: ***Senate Bill 1213 eliminates the prohibition against claiming both a deduction and a credit for the same qualifying expenses with regard to the film incentives credit, authorizes the Department of Revenue to disclose to a taxpayer claiming the credit the information used by the Secretary to adjust the amount of the credit, clarifies that indirect payments to individuals through loan-out companies and employee leasing companies are treated the same as direct payments to individuals by a production company, and makes other technical changes.***

CURRENT LAW: In last year's budget, the General Assembly enacted the Film Industry Jobs Incentive. This incentive is a refundable income tax credit equal to 15% of the qualifying expenses spent by a production company[1] in connection with a production. In order to qualify for the credit, the production company must have qualifying expenses of at least $250,000 with respect to the production.[2] The credit expires for qualifying expenses occurring on or after January 1, 2010. The incentive is targeted at feature films, episodic television series, and commercial advertising.

There are several significant limitations on the credit. First, the amount of the credit with respect to a feature film production is capped at $7.5 million. Second, the production may not be any of the following: political advertising, television production of a news program or live sporting event, a radio production, or a production containing obscene material.[3] Third, the production company may not claim both the credit and a deduction with respect to the same expenses. If the production company chooses to claim a credit, it must add back to taxable income, to the extent not included in taxable income, the qualifying expenses that form the basis of the credit.

In order to obtain the credit, the taxpayer must provide on its return a detailed accounting of the qualifying expenses. Qualifying expenses are the total amount spent in North Carolina for:

- Goods and services purchased by a production company in connection with a production. For goods with a purchase price of $25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.
- Compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. Any amounts paid to an individual whose compensation is in excess of $1,000,000 with respect to a single production cannot be included as a qualifying expense.

---

1 A production company is a person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or education purposes.

2 In the case of an episodic television series, an entire season of episodes is considered one production.

3 G.S. 14-190.1 defines 'obscene material' as material that meets all of the following conditions: the material depicts or describes in a patently offensive way sexual conduct; the average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; the material lacks serious literary, artistic, political, or scientific value; and the material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

The credit may be claimed for the taxable year in which the production activities are completed. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. If the credit exceeds the amount of tax imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. A pass-through entity is considered a taxpayer for purposes of claiming this credit; therefore, it does not distribute the credit among its owners.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 1213 does the following:

- Repeals G.S. 105-130.5(a)(18), G.S. 105-134.6(c)(9), G.S. 105-130.47(i), and G.S. 105-151.29(i), which would eliminate the prohibition against claiming both a deduction and a credit for the same qualifying expense.
- Amends the definition of 'highly compensated individual' by adding the requirement the individual receive, ***directly or indirectly,*** compensation in excess of $1 million dollars, with respect to a single production, ***for personal services.*** Under current law, amounts paid to a highly compensated individual for anything may not be included as a qualifying expense. The purpose of this change is to clarify that the term "highly compensated individual" is designed to cover actors who receive compensation either directly from the production company or through a third party such as an employee leasing company or a personal service company. It would not include an individual who receives $1 million in compensation for goods or other types of services.
- Removes the requirement that a production company be the one to withhold tax from compensation in order for payments of compensation and wages to be eligible as a "qualifying expense." This change is intended to clarify that wages and compensation, other than amounts paid to a highly compensated individual, are a qualifying expense even though the production company is not the entity making payment directly to the individual or withholding taxes.
- Amends the tax secrecy statute to authorize the Department of Revenue to disclose to a taxpayer claiming the tax credit for qualifying expenses of a production company the information used by the Secretary to adjust the amount of credit claimed by the taxpayer. This change would become effective when the bill becomes law.
- Makes technical and stylistic changes.

EFFECTIVE DATE: The amendment to the tax secrecy provision becomes effective when the bill becomes law. The remainder of the bill is effective for taxable years beginning on or after January 1, 2006.

S1213e1-CSSV-70-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1213 (First Edition)

SHORT TITLE: Film Incentive Changes.

SPONSOR(S): Senator Boseman

FISCAL IMPACT ($ MILLION)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
State General Fund	-7.7	-8.1	-8.5	-9.0	-9.5
EXPENDITURES:					
POSITIONS (cumulative):					

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

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

BACKGROUND INFORMATION: The 2005 General Assembly enacted legislation that allows an income tax credit for 15% of the qualifying production expenses of film and television production companies that spend at least $250,000 on a production in North Carolina. The credit is limited to $7.5 million per feature film and is refundable in cases where the credit exceeds tax liability. Finally, the bill disallowed the credit for expenses incurred for compensation paid to an "individual" in excess of $1 million.

To prevent a doubling up of the tax benefit on the same expenses, the legislation required that companies add back to taxable income the amount of the expenses for which the credit was claimed. However, corporate income tax law already has a general provision requiring taxpayers to add back the amount of a credit to net taxable income. Thus, having an add back for the credit plus an add back for the expense base over-adjusts for the value of the film industry tax credit.

BILL SUMMARY: (1) Makes an exception to the general tax law add back rule for the film industry credit. (2) Clarifies that the expense limit of $1 million for the salary of an employee applies to a production company that hires an actor receiving a salary from another company ("loan-out company").

ASSUMPTIONS AND METHODOLOGY: During the 2005 discussions on the original credit the Department of Commerce provided North Carolina actual expenditure data on five different types of film and television productions that have taken place in recent years, including: (1) cable movie; (2) small feature film; (3) medium feature; (4) episodic television; and (5) television

commercial. The expenditure data was broken down into a number of categories. In addition, the Department's material simulated the potential number of productions for each category for January 2005-June 2007. The simulation was based on discussions with the state film office and other industry specialists in the State regarding recent experience and expectations about the next couple of years

The Department of Commerce, based on new discussions with regional film representatives in the state and the Director of the State Film Office, has revised their estimate of production activity for the industry for the 2006 tax year. The calculations set out below use the revised activity level to calculate the current law credit cost

	($ Million)
Eligible Spending	$112.00
15% Tax Credit Cost	16.80
Less: Credit Add-Back	-1.16*
Tentative Net Credit Cost	$15.64
Less: Expense Base Add-Back	-7.73**
Final Net Credit Cost	$7.91

*Credit amount multiplied by 6.9% corporate income tax rate.
**Expense base multiplied by 6.9% corporate income tax rate.

The annual impact of the bill for the 2006 tax year is equal to the "Expense Base Add Back" number shown in the above calculation. For future years, the credit is expected to grow at the same rate as state personal income. The forecast for this variable comes from Moody's Economy.com, a nationwide forecasting firm used by Fiscal Research for national and state economic forecasts. For the purpose of this analysis, it is assumed that the tax year impact of the proposed change matches up with the fiscal year ending six months after the end of the tax year. Thus, the full impact of the change for the 2006 tax year would be in the 2006-07 fiscal year. This rationale was based on the fact that the small amount of the credit would suggest that taxpayers are unlikely to reduce their quarterly estimated payments sent in during the tax year. Instead, the relief will be taken in the form of lower final income tax payments or higher tax refunds, both of which occur in the months just following the end of the tax year.

SOURCES OF DATA: North Carolina Department of Commerce

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division



DATE: May 30, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1283

Short Title:	Franchise Tax Base Calculation.	(Public)
Sponsors:	Senators Hartsell, Dalton, Hoyle, and Kerr.	
Referred to:	Finance.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE TREATMENT OF DEFERRED TAX ASSETS IN THE COMPUTATION OF THE FRANCHISE TAX CAPITAL BASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-122(b) reads as rewritten:

"(b) Determination of Capital Base. – ~~Every such~~ A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, ~~surplus~~ surplus, and undivided ~~profits; no reservation or allocation~~ profits. No reservation or allocation from surplus or undivided profits ~~shall be~~ is allowed ~~other than for~~ except as provided below:

(1) Definite ~~definite~~ and accrued legal ~~liabilities, except as herein provided;~~liabilities.

(2) ~~taxes~~ Taxes accrued, dividends ~~declared~~ declared, and reserves for depreciation of tangible assets as permitted for income tax ~~purposes shall be treated as deductible liabilities. There shall also be treated as a deductible liability reserves for the entire cost~~ purposes.

(3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).

(4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local

air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.

(5) ~~The~~ Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources certifying that the Department of Environment and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment.

(6) ~~The~~ Reserves for the cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

(7) ~~Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof.~~ The cost of treasury stock.

(8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year

of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, ~~surplus~~ surplus, and undivided profits all indebtedness owed to a parent, ~~subsidiary~~ subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. ~~The term "indebtedness" as used in this paragraph includes all loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations. The terms "parent," "subsidiary," and "affiliate" as used in this paragraph shall have the meaning specified in G.S. 105-130.6.~~ If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, ~~subsidiary~~ subsidiary, or affiliate, the debtor corporation, which is required under this ~~paragraph~~ subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the ~~said~~ creditor corporation, may deduct from the debt ~~thus~~ included a proportionate part determined on the basis of the ratio of ~~such~~ the borrowed capital ~~as above specified~~ of the creditor corporation to the total assets of the ~~said~~ creditor corporation. If ~~Further, in case~~ the creditor corporation ~~as above specified~~ is also taxable under the provisions of this section, ~~such~~ the creditor corporation ~~shall be~~ is allowed to deduct from the total of its capital, ~~surplus~~ surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that ~~such~~ the debt has been included in the tax base of ~~said~~ the parent, ~~subsidiary~~ subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

The following definitions apply in this subsection:

(1) Affiliate. – The same meaning as specified in G.S. 105-130.6.

(2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.

(3) Parent. – The same meaning as specified in G.S. 105-130.6.

(4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

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

SENATE BILL 1283:
Franchise Tax Base Calculation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 31, 2006
Introduced by:	Sen. Hartsell	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1283 seeks to clarify the treatment of deferred tax assets in the computation of the franchise tax capital base. The bill is a recommendation of the Revenue Laws Study Committee. It would become effective when it becomes law.

BILL ANALYSIS: North Carolina imposes a franchise tax at the rate of $1.50 per $1,000 of the total amount of a corporation's capital stock, surplus, and undivided profits (hereinafter referred to as the corporation's capital base). The corporation's capital base may not be less than 55% of the appraised value of all the real and tangible personal property owned by the corporation in the State nor less than its total actual investment in tangible property in the State.

Most public corporations compute their capital base for financial reporting purposes. Public corporations must comply with the requirements of the Financial Accounting Standards Board (FASB) when reporting the results of their operations and financial positions. Under FASB, corporations are required to accrue certain liabilities and the related deferred tax assets which are applicable to those accrued liabilities in order to accurately reflect the financial position of the corporation.

A corporation's determination of its capital base for purposes of the franchise tax is not the same as the calculation of its capital base for financial reporting purposes. The calculation of its capital base for franchise tax purposes is determined by G.S. 105-122(b), not by the requirements of FASB. The statute refers to book value as 'issued and outstanding capital stock, surplus, and undivided profits.' This is similar to net book value with certain adjustments. The principal adjustment is for contingent or deferred liabilities.

Deferred tax assets and deferred tax liabilities are accounts carried on the books of a corporation for financial reporting purposes. They represent timing differences in the recognition of income and deductions for income tax purposes and for financial accounting purposes. Deferred tax liability typically arises where income has been recognized on the corporation's books but not for tax purposes. For example, where a gain is reflected on the books but reported for tax purposes on the installment basis.

- Under FASB, deferred tax liabilities are recognized as liabilities for accounting purposes.
- Deferred liabilities are not recognized for franchise tax purposes because they are not 'definite and accrued'. Therefore, deferred tax liabilities must be added back to a corporation's capital base for franchise tax purposes.
- Frequently, a taxpayer that has a deferred liability will also have a deferred tax asset. The issue is whether the deferred liability that must be added-back can be reduced by the amount of the deferred tax asset. In 1996, the Department of Revenue issued a TAM (technical advice memorandum) that permitted the netting of deferred liability accounts and deferred tax asset accounts. The TAM provided that the deferred tax asset account had to be clearly identified with the deferred tax liability account and the deferred tax asset could not reduce the related deferred liability below zero (0).

The statute, the 1996 TAM, and GAAP differ on how to account for deferred tax assets. The purpose of this bill is to determine how deferred tax assets should be treated for franchise tax purposes and to state that treatment clearly in the statute.

The franchise tax statute begins the calculation of a corporation's franchise tax capital base with the '*total amount of its issued stock, surplus, and undivided profit*'. The statute provides that '*no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided: taxes accrued, dividends declared and reserves for depreciation of tangible assets as permitted for income tax purposes shall be treated as deductible liabilities.*'

In 1992, FASB Statement No. 109 established financial accounting and reporting standards for the effects of income taxes that result from an enterprise's activities during the current and preceding years. The statement resulted in deferred tax assets being separately stated from deferred tax liabilities. When the two accounts were netted, a smaller net tax liability account was added-back to the franchise tax base. When the accounts had to be separately stated, the Department did not permit the netting of the two accounts. This resulted in the add-back of the deferred tax liability unreduced by the amount of the deferred tax asset.

Taxpayers having deferred tax asset accounts contended that they should be allowed to reduce their capital stock bases by the balances in those accounts. Since the asset and liability accounts are reciprocal concepts, they argued that it was inequitable to include a deferred tax liability in the capital stock base without decreasing it by the deferred tax asset.

In response to taxpayer concerns, the Department of Revenue issued TAM-CF-96-1 in August of 1996. The TAM appears to contradict the plain meaning of the statute because it permits the deferred liability accounts to be reduced by deferred tax asset accounts.[1] In explaining the change, the TAM states that a more equitable and consistent position is to recognize that net worth is incorrectly stated when the total amount of a deferred liability is included without a netting adjustment for the deferred tax benefit resulting directly from such liability. The TAM provides that the inclusion of a deferred liability in the computation of the net worth base should permit an offset or adjustment for the deferred tax asset required to be computed under the accounting standards without regard to how the deferred tax asset is reflected on the financial statement.

The FASB change in 1992 concerned the accounting for income taxes. Arguably, the TAM written in 1996 attempted to address the accounting changes precipitated by that FASB change. The wording of the TAM, however, refers to deferred liabilities as a whole instead of just deferred tax liabilities. Any deferred liability may create a corresponding deferred tax asset. Taxpayers contend that the TAM permits them to reduce the amount of any deferred liability required to be added back to its net book value for franchise tax purposes by the amount of a deferred tax asset. Examples of the types of contingent and deferred liabilities that have been reduced include post retirement benefits, loan loss reserves, credit card reserves, and litigation reserves.

Senate Bill 1283 would change the law to allow deferred tax liabilities to be reduced by their corresponding deferred tax assets.

S1283e1-SMRB

[1] The TAM became effective for tax years ending on or after July 1, 1996.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1283 (First Edition)

SHORT TITLE: Franchise Tax Base Calculation.

SPONSOR(S): Senator Hartsell

FISCAL IMPACT

Yes (X)	No ( )	No Estimate Available ( )		
FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	See "Assumptions and Methodology"			
EXPENDITURES:				

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

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: Since August 1, 1996 the Department of Revenue has been allowing taxpayers, when calculating their franchise tax base, to reduce, but not below zero, a deferred liability by the deferred tax asset amount that resulted when the deferred liability was required under financial accounting standards. The current management of the Department of Revenue feels that the Department did not have the statutory authority to make such a ruling in 1996 and some taxpayers are challenging some of the specifics of the ruling. The proposal attempts to clarify the issue by allowing deferred tax liabilities to be reduced by their corresponding tax assets, but not below zero.

ASSUMPTIONS AND METHODOLOGY: Discussions with the Department of Revenue indicate that the impact of the change will be fairly small.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 25, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1283

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

S1283-ARB-59 [v.1]

Date _____,2006

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

Senator Hartsell

moves to amend the bill on page 3, line 36, by rewriting the line to read:

"**SECTION 2.** This act becomes effective for taxable years beginning on or after January 1, 2007."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1809*
PROPOSED COMMITTEE SUBSTITUTE S1809-CSLYx-67 [v.1]

5/26/2006 12:04:52 PM

Short Title: University Indebtedness Projects. (Public)

Sponsors:

Referred to:

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND TO MAKE REVISIONS TO PREVIOUSLY AUTHORIZED INDEBTEDNESS FOR VARIOUS CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

PART I. SELF-LIQUIDATING PROJECTS

SECTION 1.1. The purpose of this part is: (i) to authorize the construction or acquisition by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in the part for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund.

SECTION 1.2. The capital improvements projects, and their respective costs, authorized by this part to be constructed or otherwise acquired and financed as provided in Section 1.1 of this part, including by revenue bonds, by special obligation bonds as authorized in Section 1.5 of this part, or by both, are as follows:

Appalachian State University
Central Dining Facility – Phase II $4,850,000

East Carolina University
Mendenhall Student Center and Ledonia Wright Cultural Center –

Expansion and Renovation	$39,000,000
Todd Dining Hall – Renovation	$2,100,000
Brody School of Medicine – Renovations	$1,200,000
Brody School of Medicine – Health Science Campus – Renovations	$6,000,000
Elizabeth City State University	
Residence Hall – Heating, Ventilating, and Air Conditioning Improvements	$1,500,000
North Carolina State University	
Derr Track – Renovation and Expansion – Phase II	$2,500,000
Partners VI Building and Parking Deck	$40,000,000
Centennial Campus Infrastructure	$10,000,000
The University of North Carolina at Chapel Hill	
Food Service Facilities – Renovation and Expansion	$3,500,000
Science Complex – Phase II	$92,200,000
Carmichael Auditorium – Renovation and Expansion	$15,000,000
Research Resource Facility – Phase II	$12,400,000
Residence Halls – Improvements	$2,000,000
Woollen Gymnasium – Renovation	$4,500,000
Boshamer Baseball Stadium – Improvements	$14,000,000
Cogeneration Warehouse	$500,000
Steam Infrastructure Improvements	$55,700,000
Electrical Infrastructure Improvements	$29,530,000
Bell Tower Development – Phase I	$10,000,000
Global Education & International Studies Center – Improvements	$2,500,000
The University of North Carolina at Charlotte	
Prospector Hall – Renovation – Phase II	$4,000,000
Residence Halls – Phase IX	$38,800,000
The University of North Carolina at Greensboro	
Residence Hall – Acquisition	$29,500,000
The University of North Carolina at Wilmington	
Residence Halls – Improvements	$4,900,000
Western Carolina University	
Residence Hall – Renovation and Expansion	$1,000,000
Winston-Salem State University	
Residence Hall – Renovation	$4,500,000

SECTION 1.3. The following capital improvements projects are authorized by the Board of Governors as supplements to previously approved projects, and their respective costs are authorized by this part to be constructed and financed as provided in Section 1.1 of this part, including by revenue bonds, by special obligation bonds as authorized in Section 1.5 of this part, or by both:

North Carolina State University
- Residence Halls – Renovation – Supplement $11,500,000
- Thompson Theater – Renovation and Expansion – Supplement $4,500,000

The University of North Carolina at Chapel Hill
- Residence Halls – Improvements – Supplement $2,500,000
- Botanical Garden Visitor Education Center – Supplement $5,000,000
- Educational Foundation Office Building – Supplement $12,000,000
- Cobb Residence Hall – Renovation – Supplement $5,116,000
- Residence College – Phase II – Supplement $8,000,000
- Rizzo Center – Expansion – Supplement $5,300,000

The University of North Carolina at Charlotte
- Student Union – Supplement $10,000,000

The University of North Carolina at Greensboro
- Parking Deck Addition – Supplement $1,000,000

The University of North Carolina at Pembroke
- University Center Expansion – Supplement $2,000,000

The University of North Carolina at Wilmington
- University Union Building – Expansion and Renovation – Supplement $12,000,000

Western Carolina University
- Dodson Cafeteria Replacement – Supplement $12,250,000
- New Student Recreation Center – Supplement $6,200,000

SECTION 1.4. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this part. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 1.5. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects

authorized by Sections 1.2 and 1.3 of this part. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 1.2 and 1.3 of this part plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 1.4 of this part.

SECTION 1.6. With respect to The University of North Carolina at Chapel Hill's Research Resources Facility capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution.

SECTION 1.7. With respect to the forty-seven million five hundred twenty-two thousand dollars ($47,522,000) Major Infrastructure Improvements capital project at the University of North Carolina at Chapel Hill that was previously approved in S.L. 2005-324, the institution may accomplish a portion thereof by payment to Duke Power Company LLC to acquire distribution capacity in improvements to be constructed by Duke Power Company LLC to three electrical substations located on the institution's property and by negotiating and executing any rights-of-way, easements, leases, and any other required agreements with Duke Power Company LLC necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such negotiation and execution of such rights-of-way, easements, leases, or other required agreements therefor.

SECTION 1.8. With respect to the thirty million dollars ($30,000,000) Student Housing project at North Carolina Central University that was previously approved in S.L. 2005-324, the institution may construct one or more new or purchase one or more existing buildings to meet its need for student housing.

PART II. REVISE UNIVERSITY SPECIAL INDEBTEDNESS

SECTION 2.1. Section 1.1 of S.L. 2004-179, as amended by Section 30.3A of S.L. 2005-276, reads as rewritten:

"**SECTION 1.1.** In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the following maximum aggregate principal amounts to finance the costs of the following projects. The table below provides the maximum principal amounts. The first column is the aggregate maximum principal amount. The second column is the maximum portion of this amount that can be issued or incurred before July 1, 2005. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of these projects.

Aggregate Maximum	Maximum before 7/1/05	Project
$180,000,000	$110,000,000	Acquiring, constructing, and equipping a new cancer rehabilitation and treatment center, a nearby physicians' office building, and a

		walkway between the two, all to be located at the University of North Carolina Hospitals at Chapel Hill.
60,000,000	30,000,000	Acquiring, constructing, and equipping the North Carolina Cardiovascular Diseases Institute at East Carolina University.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Bioinformatics Center at the University of North Carolina at Charlotte.
28,000,000	25,000,000	Acquiring, constructing, and equipping a stand-alone facility to house the new Pharmacy School program to be located at Elizabeth City State University, and interim temporary facilities to house the program during construction of the facility.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Center for Health Promotion and Partnerships at the University of North Carolina at Asheville.
10,000,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction for the Southeastern North Carolina Nursing Education and Research Center at Fayetteville State University.
10,000,000	10,000,000	~~Land acquisition, site~~Site preparation, ~~and~~ engineering, architectural, and other consulting ~~services for facilities for development of the~~services, and the construction of a research building on the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.
10,000,000	10,000,000	Land acquisition, site preparation, ~~and~~ engineering, architectural, and other consulting ~~services for an Optometry School facility~~services, and construction of a Nursing and Allied Health Building at the University of North Carolina at Pembroke.
10,000,000	10,000,000	To Western Carolina University for land acquisition, site preparation, ~~and~~ engineering, architectural, and other consulting ~~services~~ services, and construction of a building for

		Western Carolina University and the Mountain Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.
10,000,000	10,000,000	~~Property acquisition in Piedmont Triad Research Park for Winston-Salem State University programming related to biotechnology education and research; and land~~Land acquisition, site preparation, ~~and~~ engineering, architectural, and other consulting ~~services for~~services, and construction of a Center for Design Innovation in the Piedmont Triad Research Park to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts.
TOTAL:		
$388,000,000	$265,000,000"	

PART III. REVISE UNIVERSITY GENERAL OBLIGATION INDEBTEDNESS

SECTION 3.1. Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at North Carolina State University by reducing the scope of "Williams Hall Laboratory Building-Comprehensive Renovation." The unused funds from "Williams Hall Laboratory Building-Comprehensive Renovation" should be transferred to the following projects listed under the section entitled North Carolina State University: "Polk Hall Laboratory Building-Comprehensive Renovation," "1911 Classroom Building-Comprehensive Renovation," and "Park Shops-Comprehensive Renovation and Use Conversion for General Academic Use." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under North Carolina State University by:

(1) Reducing the portion to "Williams Hall Laboratory Building-Comprehensive Renovation" by six million four hundred forty-five thousand dollars ($6,445,000) so that it reads six million four hundred twenty thousand five hundred dollars ($6,420,500),

(2) Increasing the portion to "Polk Hall Laboratory Building -Comprehensive Renovation" by one hundred one thousand three hundred sixty-two dollars ($101,362) so that it reads fifteen million one hundred fifty-four thousand three hundred sixty-two dollars ($15,154,362),

(3) Increasing the portion to "1911 Classroom Building Comprehensive Renovation" by two million six hundred sixty-three thousand seven hundred and fifty-seven dollars ($2,663,757) so that it reads nine million six hundred thirty-five thousand seven hundred fifty-seven dollars ($9,635,757),

(4) Increasing the portion to "Park Shops – Comprehensive Renovation and Use Conversion for General Academic Use" by three million six hundred seventy-nine thousand eight hundred and eighty-one dollars ($3,679,881) so that it reads nine million nine hundred ninety thousand five hundred eighty-one dollars ($9,990,581).

SECTION 3.2. Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at the University of North Carolina at Chapel Hill by reducing the scope of "Caldwell and Howell Halls-Comprehensive Renovation of Classrooms and Lecture Halls" and by reducing the scope of "Hill and Davie Halls-Comprehensive Renovation of Classrooms and Lecture Halls." The unused monies from "Caldwell and Howell Halls-Comprehensive Renovation of Classrooms and Lecture Halls" should be transferred to "Hamilton Hall-Comprehensive Renovation of Classrooms and Lecture Halls." The unused monies from "Hill and Davie Halls-Comprehensive Renovation of Classrooms and Lecture Halls" should be transferred to "Greenlaw Hall-Comprehensive Renovation of Classrooms and Lecture Halls." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under the University of North Carolina at Chapel Hill by:

(1) Reducing the portion to "Caldwell and Howell Halls – Comprehensive Renovation of Classrooms and Lecture Halls" by eight hundred forty-five thousand two hundred and forty-six dollars ($845,246) so that it reads eight hundred eighty-six thousand seven hundred fifty-four dollars ($886,754),

(2) Reducing the portion to "Hill and Davie Halls – Comprehensive Renovation of Classrooms and Lecture Halls" by one million three hundred twenty-four thousand seven hundred and twenty-nine dollars ($1,324,729) so that it reads six hundred twenty-four thousand two hundred seventy-one dollars ($624,271),

(3) Increasing the portion to "Hamilton Hall – Comprehensive Renovation of Classrooms and Lecture Halls" by eight hundred forty-five thousand two hundred forty-six dollars ($845,246) so that it reads two million three hundred eighty-four thousand two hundred forty-six dollars ($2,384,246),

(4) Increasing the portion to "Greenlaw Hall – Comprehensive Renovation of Classrooms and Lecture Halls" by one million three hundred twenty-four thousand seven hundred twenty-nine dollars ($1,324,729) so that it reads three million one hundred forty-nine thousand seven hundred twenty-nine dollars ($3,149,729).

SECTION 3.3. Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at Western Carolina University by reducing the scope of "Forsyth Classroom and Computer Labs Renovation," and by transferring the unused funds to "Stillwell Lab Building-Comprehensive Renovation" Section 2(a) of S.L. 2000-3 is therefore amended in the portion under Western Carolina University by:

(1) Reducing the portion to "Forsyth Classroom and Computer Labs Renovation" by three million two hundred thousand dollars ($3,200,000) so that it reads three million eight hundred sixty-four thousand dollars ($3,864,000),

(2) Increasing the portion to "Stillwell Lab Building-Comprehensive Renovation" by three million two hundred thousand dollars ($3,200,000) so that it reads eighteen million two hundred fifty-seven thousand five hundred dollars ($18,257,500).

SECTION 3.4. Nothing in this part is intended to supersede any other requirement of law or policy for approval of the substituted capital improvement projects.

PART IV. EFFECTIVE DATE

SECTION 4.1. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1809*

Short Title:	University Self-Liquidating Projects.	(Public)
Sponsors:	Senators Kerr; Albertson, Atwater, Bingham, Blake, Clodfelter, Dorsett, East, Forrester, Hartsell, Hoyle, Jenkins, Malone, Miller, Purcell, Stevens, and Swindell.	
Referred to:	Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is: (i) to authorize the construction or acquisition by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund.

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed or otherwise acquired and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 5 of this act, or by both, are as follows:

Appalachian State University
- Central Dining Facility – Phase II $4,850,000

East Carolina University
- Mendenhall Student Center and Ledonia Wright Cultural Center – Expansion and Renovation $39,000,000
- Todd Dining Hall – Renovation $2,100,000
- Brody School of Medicine – Renovations $1,200,000
- Brody School of Medicine – Health Science Campus – Renovations $6,000,000

Elizabeth City State University
Residence Hall – Heating, Ventilating, and Air Conditioning Improvements $1,500,000

North Carolina State University
Derr Track – Renovation and Expansion – Phase II $2,500,000
Partners VI Building and Parking Deck $40,000,000
Centennial Campus Infrastructure $10,000,000

The University of North Carolina at Chapel Hill
Food Service Facilities – Renovation and Expansion $3,500,000
Science Complex – Phase II $92,200,000
Carmichael Auditorium – Renovation and Expansion $15,000,000
Research Resource Facility – Phase II $12,400,000
Residence Halls – Improvements $2,000,000
Woollen Gymnasium – Renovation $4,500,000
Boshamer Baseball Stadium – Improvements $14,000,000
Cogeneration Warehouse $500,000
Steam Infrastructure Improvements $55,700,000
Electrical Infrastructure Improvements $29,530,000
Bell Tower Development – Phase I $10,000,000
Global Education & International Studies Center – Improvements $2,500,000

The University of North Carolina at Charlotte
Prospector Hall – Renovation – Phase II $4,000,000
Residence Halls – Phase IX $38,800,000

The University of North Carolina at Greensboro
Residence Hall – Acquisition $29,500,000

The University of North Carolina at Wilmington
Residence Halls – Improvements $4,900,000

Western Carolina University
Residence Hall – Renovation and Expansion $1,000,000

Winston-Salem State University
Residence Hall – Renovation $4,500,000

SECTION 3. The following capital improvements projects are authorized by the Board of Governors as supplements to previously approved projects, and their respective costs are authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 5 of this act, or by both:

North Carolina State University
Residence Halls – Renovation – Supplement $11,500,000
Thompson Theater – Renovation and Expansion – Supplement $4,500,000

The University of North Carolina at Chapel Hill
Residence Halls – Improvements – Supplement $2,500,000
Botanical Garden Visitor Education Center – Supplement $5,000,000
Educational Foundation Office Building – Supplement $12,000,000
Cobb Residence Hall – Renovation – Supplement $5,116,000
Residence College – Phase II – Supplement $8,000,000
Rizzo Center – Expansion – Supplement $5,300,000

The University of North Carolina at Charlotte
Student Union – Supplement $10,000,000

The University of North Carolina at Greensboro
Parking Deck Addition – Supplement $1,000,000

The University of North Carolina at Pembroke
University Center Expansion – Supplement $2,000,000

The University of North Carolina at Wilmington
University Union Building – Expansion and Renovation – Supplement $12,000,000

Western Carolina University
Dodson Cafeteria Replacement – Supplement $12,250,000
New Student Recreation Center – Supplement $6,200,000

SECTION 4. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 5. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 2 and 3 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 2 and 3 of this act plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 4 of this act.

SECTION 6. With respect to The University of North Carolina at Chapel Hill's Research Resources Facility capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution.

SECTION 7. With respect to the forty-seven million five hundred twenty-two thousand dollars ($47,522,000) Major Infrastructure Improvements capital project at the University of North Carolina at Chapel Hill that was previously approved in S.L. 2005-324, the institution may accomplish a portion thereof by payment to Duke Power Company LLC to acquire distribution capacity in improvements to be constructed by Duke Power Company LLC to three electrical substations located on the institution's property and by negotiating and executing any rights-of-way, easements, leases, and any other required agreements with Duke Power Company LLC necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such negotiation and execution of such rights-of-way, easements, leases, or other required agreements therefor.

SECTION 8. With respect to the thirty million dollars ($30,000,000) Student Housing project at North Carolina Central University that was previously approved in S.L. 2005-324, the institution may construct one or more new or purchase one or more existing buildings to meet its need for student housing.

SECTION 9. This act is effective when it becomes law.

SENATE BILL 1809:
University Self-Liquidating Projects

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	May 31, 2006
Introduced by:	Sen. Kerr	**Summary by:**	Canaan Huie
Version:	PCS to First Edition S1809-CSLYx-67		Committee Counsel

SUMMARY: ***This bill authorizes new self-liquidating indebtedness projects for constituent institutions of The University of North Carolina and makes modifications to existing authorizations for self-liquidating indebtedness projects, special indebtedness projects, and general obligation indebtedness projects. This bill would become effective when it become law.***

CURRENT LAW: *Special Indebtedness.* In 2004, the General Assembly voted to authorize the issuance of up to $388 million of special indebtedness to finance various projects at constituent institutions of The University of North Carolina. Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that may be secured only by an interest in State property being acquired or improved. There is no pledge of the State's faith and credit or taxing power to secure the debt. Thus, voter approval is not necessary for the borrowing. If the State defaulted on its repayments, no deficiency judgment could be rendered against the State, but the State property that serves as security could be disposed of to generate funds to satisfy the debt. The State could choose not to appropriate funds to repay the debt, but such a decision would have negative consequences for the State's credit rating.

The term "special indebtedness" is employed to cover the three forms that this type of debt can take: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and bonds. The particular form to be used for a given project will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of special indebtedness may be the least expensive and most practical for the State to utilize. Article 9 of Chapter 142 of the General Statutes prohibits the issuance of special indebtedness except for projects specifically authorized by the General Assembly.

Before special indebtedness may be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the details of the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

General Obligation Indebtedness. In 2000, the General Assembly voted to authorize the issuance of up to $2.5 billion of general obligation indebtedness to finance various projects at constituent institutions of The University of North Carolina. Pursuant to constitutional requirements, the issuance of the debt was approved by a referendum of the voters in the November 2000 elections.

The university improvement general obligation bonds are used for construction, improvement, and acquisition of capital facilities for constituent and affiliated institutions of The University of North Carolina, including the Center for Public Television, the UNC Health Care System, the School of Science and Mathematics, and the North Carolina Arboretum. The full faith and credit and the taxing power of the State secure the general obligation bonds. These general obligation bonds are to be repaid from the General Fund. The maximum maturity on the bonds is 25 years.

BILL ANALYSIS: The bill is divided into three substantive parts. Part I of the bill deals with self-liquidating indebtedness, Part II deals with special indebtedness, and Part III deals with general obligation indebtedness.

Part I. Self-liquidating Projects. The Board of Governors of The University of North Carolina can issue two types of self-liquidating bonds: revenue bonds and special obligation bonds. Tax revenues may not be used to pay back either type of bond. Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for the types of projects enumerated in the Article. The types of projects for which revenue bonds may be issued include educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, parking decks, etc. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. Article 21B of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for projects at the Centennial Campus, the Horace Williams Campus, and Millennial Campuses. The revenue bonds are payable from rentals, charges, fees, and other income generated by the facility. Article 3 of Chapter 116D of the General Statutes authorizes the Board of Governors to issue special obligation bonds payable with any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, but not including tuition payments or appropriations from the General Fund from State revenues. In this instance, the bond proceeds could be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions.

The purpose of Part I of this bill is to authorize the construction and financing of the capital improvements projects at various constituent institutions of The University of North Carolina. The projects authorized in this part may not be financed with funds appropriated from the State's General Fund, but may be financed with gifts, grants, receipts, self-liquidating indebtedness, other funds available to the constituent institutions, or a combination of any of those financing methods. The new self-liquidating projects that the Board of Governors may finance with revenue bonds, special obligation bonds, or both are listed in Section 1.2 of the part. Section 1.3 authorizes revenue bonds and special obligation bonds to be used for eight capital improvements projects for which indebtedness financing was previously authorized. This part provides additional options for financing the projects.

Section 1.4 authorizes the Director of the Budget, at the request of the Board of Governors, to authorize cost increases or decreases, or changes in the method of financing for the projects authorized by the act. The Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations, but consultation is not required.

The current law governing UNC special obligation bonds requires that the specific projects and their costs be set forth in legislation approved by the General Assembly and that the maximum amount of special obligation bonds to be issued to finance the specific projects listed be stated. Sections 1.2 and 1.3 set forth the specific projects and their costs. Section 1.5 expressly states that the maximum principal amount of special obligation bonds to be issued shall not exceed the amounts listed in Sections 1.2 and 1.3 plus 5% for related additional costs for which bond proceeds are routinely used, such as issuance expenses, funding of reserve funds, and capitalized interest.

Sections 1.6 through 1.8 make some modifications to general law with respect to specific projects at the University of North Carolina at Chapel Hill and North Carolina Central University.

Part II. Revise University Special Indebtedness. This part makes some modifications to the allocations of the University special indebtedness approved by the General Assembly in 2004. This part makes the following changes:

- Clarifies that amounts allocated to the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro may be used for construction of a research building.
- Changes the project at the University of North Carolina at Pembroke from an Optometry School facility to a Nursing and Allied Health building.
- Clarifies that amounts allocated to Western Carolina University may be used for construction of the North Carolina Center of Health and Aging.
- Clarifies that amounts allocated to Winston-Salem State University and the North Carolina School of the Arts may be used for construction of the Center for Design Innovation in the Piedmont Triad Research Park.

Part III. Revise University General Obligation Indebtedness. This part makes revisions to the allocations of the general obligation bonds authorized in 2000. The original legislation in 2000 contained specific allocations of bond proceeds for named projects at each of the constituent institutions of The University of North Carolina. That legislation expressly reserved the right for the General Assembly to change those allocations over time. In each of the years since the bonds were authorized, those allocations have been modified.

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

S1809e1-SMLY-CSLYx-67

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 31, 2006

TO: Senate Committee on Finance

FROM: Jim Klingler
Fiscal Research Division

RE: UNC Self-Liquidating Projects-SB 1809 (PCS)

FISCAL IMPACT ($Thousands)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Various	See Assumptions and Methodology				
EXPENDITURES:					
General Fund					
Part I. Self-Liquidating				$5,013	$5,186
Part II. UNC Special Indebtedness		Up to $94	$256 - $667	$639 - $1,439	$646 - $1,454
Part III. UNC G.O. Indebtedness	No General Fund impact				
Various Receipt Supported	See Assumptions and Methodology				
POSITIONS (cumulative):		6.5	15.1	73.6	73.6

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: University of North Carolina Board of Governors

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

BILL SUMMARY:

Part I. Self-Liquidating Projects

The proposed committee substitute for Senate Bill 1809 authorizes the financing of the following capital improvement projects with funds available from sources other than the General Fund, including self-liquidating indebtedness. For the list of projects, please see Chart 1 in the Assumptions and Methodology Section of this memorandum.

Section 1.4 authorizes the University of North Carolina Board of Governors to adjust capital project budgets with the approval of the Director of the Budget and the consultation of the Joint Legislative Committee on Governmental Operations

Section 1.5 authorizes the University, with approval from the Director of the Budget, to issue special obligation bonds to fund the proposed capital projects. Authorized debt is limited to the project cost listed in the bill plus 5% for issuance expenses, project reserves, and inflation.

Section 1.6 extends the authority to issue special obligation bonds for the construction of the Research Resource Facility at the University of North Carolina at Chapel Hill regardless of the location of the facility.

Section 1.7 authorizes the University to purchase additional electrical capacity for the University of North Carolina at Chapel Hill through a contract with Duke Power Company. This authorization would amend the Major Infrastructure Improvements capital project approved in Session Law 2005-324. Through this arrangement, Duke Power would make necessary improvements to increase capacity at three electrical substations located on the UNC-Chapel Hill's campus.

Section 1.8 extends North Carolina Central University's authority under Session Law 2005-324 to include the purchase of existing buildings to be converted to student housing. S.L. 2005-324 currently authorizes the University to construct new student housing.

Part II. Revise University Special Indebtedness

Revises Session Law 2004-179 as amended by Section 30.3A of Session Law 2005-276. This revision authorizes the Treasurer, with approval from the Council of State, to issue special indebtedness in accordance with G.S. 142-83 for land acquisition, planning, design, site preparation, and construction of the following capital improvement projects:

- The Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro
- The Nursing and Allied Health Building at the University of North Carolina at Pembroke
- The North Carolina Center for Health and Aging of Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium
- The Center for Design Innovation of Winston Salem State University and the North Carolina School of the Arts.

Currently, S.L. 2004-179 only authorizes special indebtedness for land acquisition, planning, design, and site preparation for the projects listed above. This revision would no longer permit the issuance of special indebtedness to develop a School of Optometry at the University of North Carolina at Pembroke or facilities to support biotechnology research and education at Winston Salem State University.

Part III. Revise University General Obligation Indebtedness

Revises the project budgets of certain capital improvement projects authorized in Session Law 2000-3, the Michael K. Hooker Higher Education Facilities Financing Act.

Section 3.1 reduces the project budget for the "Williams Hall Laboratory Building-Comprehensive Renovation" at **North Carolina State University** by $6,445,000 and increases the project budgets of (i) the "Polk Hall Laboratory Building-Comprehensive Renovation" by $101,362; (ii) the "1911 Classroom Building Comprehensive Renovation" by $2,663,757; and (iii) the "Park Shops-Comprehensive Renovation and Use Conversion for General Academic Use" by $3,679,881.

Section 3.2 reduces the project budgets for the "Caldwell and Howell Halls-Comprehensive Renovation of Classrooms and Lecture Halls" by $845,246 and the "Hill and Davie Halls- Comprehensive Renovation of Classrooms and Lecture Halls" by $1,324,729 at the **University of North Carolina at Chapel Hill** and increases the project budgets of (i) the "Hamilton Hall- Comprehensive Renovation of Classrooms and Lecture Halls" by $845,246; and (ii) the Greenlaw Hall- Comprehensive Renovation of Classrooms and Lecture Halls" by $1,324,729.

Section 3.3 reduces the project budget for the "Forsyth Classroom and Computer Labs Renovation" by $3,200,000 at Western Carolina University and increases the project budget for the "Stillwell Lab Building-Comprehensive Renovation" by $3,200,000.

ASSUMPTIONS AND METHODOLOGY:

Part I. Self-Liquidating Projects

Chart 1 on Page 3 lists each self-liquidating capital improvement project proposed by the Board of Governors of the University of North Carolina for FY 2006-07. There are 27 new capital improvement projects totaling $431,680,000 in improvements. The Board also requests the authority to fund $97,366,000 in supplements to 14 previously authorized self-liquidating capital projects. Six proposed projects will increase student fees to cover debt service payments. Three new projects at the University of North Carolina at Chapel Hill would require General Fund support for increased operating costs. Financial data for these charts was provided by the Division of Finance, University of North Carolina General Administration.

Chart 1

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
Appalachian State University	Central Dining Facility - Phase II	$4,850,000	Food Service Receipts		$48,314	Food Service Receipts
East Carolina University	Mendenhall Center/ Wright Center Expansion and Renovation	$39,000,000	Debt Service Fee	$150/year	$402,269	Student Activities Receipts
East Carolina University	Todd Dining Hall	$2,100,000	Food Service Receipts			
East Carolina University	Brody School of Medicine - Renovations	$1,200,000	Medicare Receipts			
East Carolina University	Brody School of Medicine - Health Science Campus Renovations	$6,000,000	Medicare Receipts and Medicare Practice Plan Receipts			

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
Elizabeth City State University	Residence Hall - Heating, Ventilating, and Air Conditioning Improvements	$1,500,000	Housing Receipts			
North Carolina State University	Derr Track - Renovation and Expansion - Phase II	$2,500,000	Debt Service Fee	$15/year	$52,223	Athletic Receipts
North Carolina State University	Partners VI Building and Parking Deck	$40,000,000	Centennial Campus Receipts		$1,319,392	Centennial Campus Receipts
North Carolina State University	Centennial Campus Infrastructure	$10,000,000	Centennial Campus Receipts			
University of North Carolina at Chapel Hill	Food Services Facilities – Renovation and Expansion	$3,500,000	Food Service Receipts			
University of North Carolina at Chapel Hill	Science Complex – Phase II	$92,200,000	Facilities and Administrative Receipts		$3,138,323	General Fund
University of North Carolina at Chapel Hill	Carmichael Auditorium – Renovation and Expansion	$15,000,000	Student Fees and Gifts		$262,658	General Fund
University of North Carolina at Chapel Hill	Research Resource Facility – Phase II	$12,400,000	Facilities and Administrative Receipts		$1,611,990	General Fund
University of North Carolina at Chapel Hill	Residence Halls Improvements	$2,000,000	Housing Receipts			
University of North Carolina at Chapel Hill	Woollen Gymnasium Renovation	$4,500,000	Student Fees			
University of North Carolina at Chapel Hill	Boshamer Baseball Stadium Improvements	$14,000,000	Private Gifts			

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
University of North Carolina at Chapel Hill	Cogeneration Warehouse	$500,000	Utility Receipts			
University of North Carolina at Chapel Hill	Steam Infrastructure Improvements	$55,700,000	Utility Receipts			
University of North Carolina at Chapel Hill	Electrical Infrastructure Improvements	$29,530,000	Utility Receipts			
University of North Carolina at Chapel Hill	Bell Tower Development Phase I	$10,000,000	Facilities and Administrative Receipts			
University of North Carolina at Chapel Hill	Global Education and International Studies Center Improvements	$2,500,000	Private Gifts			
University of North Carolina at Charlotte	Prospector Hall Renovation Phase II	$4,000,000	Food Service Receipts		$107,310	Food Service Receipts
University of North Carolina at Charlotte	Residence Halls Phase IX	$38,800,000	Housing Receipts		$1,199,654	Housing Receipts
University of North Carolina at Greensboro	Residence Hall Acquisition	$29,500,000	Housing and Parking Receipts		$960,562	Housing and Parking Receipts
University of North Carolina at Wilmington	Residence Halls Improvements	$4,900,000	Housing Receipts			
Western Carolina University	Residence Hall Renovation and Expansion	$1,000,000	Housing Receipts			
Winston Salem State University	Residence Hall Renovation	$4,500,000	Housing Receipts			

Supplemental Funding for Previously Authorized Projects

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
North Carolina State University	Residence Halls Renovation	$11,500,000	Housing Receipts			
North Carolina State University	Thompson Theater Renovation and Expansion	$4,500,000	Debt Service Fee	$20/year	$105,426	Student Activities Receipts
University of North Carolina at Chapel Hill	Residence Halls Improvements	$2,500,000	Housing Receipts			
University of North Carolina at Chapel Hill	Botanical Garden Visitor Education Center	$5,000,000	Private Gifts			
University of North Carolina at Chapel Hill	Educational Foundation Office Building	$12,000,000	Private Gifts		$387,976	Gifts and Athletic Receipts
University of North Carolina at Chapel Hill	Cobb Residence Hall Renovation	$5,116,000	Housing Receipts			
University of North Carolina at Chapel Hill	Residence College Phase II	$8,000,000	Housing Receipts			
University of North Carolina at Chapel Hill	Rizzo Center Expansion	$5,300,000	Rizzo Center Receipts			
University of North Carolina at Charlotte	Student Union	$10,000,000	Auxiliary Receipts			
University of North Carolina at Greensboro	Parking Deck Addition	$1,000,000	Parking Receipts			
University of North Carolina at Pembroke	University Center Expansion	$2,000,000	Debt Service Fee	$20/year		

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
University of North Carolina at Wilmington	University Union Building Expansion and Renovation	$12,000,000	Debt Service Fee			
Western Carolina University	Dodson Cafeteria Replacement	$12,250,000	Debt Service Fee	$113/year		
Western Carolina University	New Student Recreation Center	$6,200,000	Debt Service Fee	$74/year		

Cost of new capital improvement projects = $431,680,000
Cost of supplements to previously authorized projects = $97,366,000
Cost of capital improvements for all projects = $529,046,000

Inflation - General Fund operating expenditures were inflated by calculating a straight line dollar increase measured from the first year of operation and escalated using the 20-year average operating expenditure estimate provided by the University of North Carolina General Administration.

Indebtedness Funding Methods:
Chart 2 summarizes the total debt authority proposed by Senate Bill 1809 and the source of funds identified to service the proposed debt.

Chart 2	
Sources of Funding	**Principal**
Facilities and Administrative Receipts	$102,200,000
Utility Receipts	$85,730,000
Debt Service Fees	$78,450,000
Housing Receipts	$73,916,000
Centennial Campus Receipts	$50,000,000
House and Parking Receipts	$29,500,000
Student Fees	$19,500,000
Auxiliary Receipts	$10,000,000
Dining Receipts	$9,600,000
Medicare Education Receipts	$7,200,000
Rizzo Center Receipts	$5,300,000
Parking Receipts	$1,000,000

Part II. Revise University Special Indebtedness

The proposed revision to Session Law 2004-179 expands the authorized capital expenditures to include the construction of four new facilities in the University system. The revision also replaces the proposed School of Optometry at the University of North Carolina at Pembroke with a proposed School of Nursing. Under current law, the State Treasurer, with the approval of the Council of State, can issue special indebtedness for land acquisition, planning, design, and site preparation for three of the four capital projects proposed in this PCS. While this PCS expands the debt authorization of S.L. 2004-179 to include construction expenditures, this PCS does not increase the authorized debt amount for these projects. **Without an increase in the debt authority, no impact to General Fund debt service payments is anticipated.**

By authorizing the construction of these facilities, the proposed revision to S.L. 2004-179 will result in an increased operating impact. Each of the proposed facilities fulfills an academic purpose and the University anticipates a General Fund operating impact for each of the facilities. Please see Chart 3 for detail information for each proposed project. Financial data for this chart was provided by the Division of Finance, University of North Carolina General Administration.

Chart 3

Campus	Project	Total Project Cost	Source of Funds	Annual Operating Costs	Source of Operating Costs
Western Carolina University / UNC-Asheville / Mountain Area Health Education Consortium	Center for Health and Aging	$20,382,000	General Fund supported COPs ($10,000,000)/ MAHEC Funding	$420,114	General Fund and other sources. General Fund support to be determined
UNC-Greensboro / NC Agricultural & Technical University	Millennial Campus Research Building	$10,000,000	General Fund supported COPs	$376,086	General Fund and other sources. General Fund support to be determined
University of North Carolina at Pembroke	Nursing and Allied Health Building	$10,000,000	General Fund supported COPs	$351,849	$351,849
Winston Salem State University / NC School of the Arts	Center for Design Innovation	$10,000,000	General Fund supported COPs	$287,424	$287,424

Inflation - General Fund operating expenditures were inflated by 1% per year. Similar facilities proposed as self-liquidating projects in Part I of this PCS were estimated to have operating budgets that increased by roughly 1% per year. This inflation factor was applied to the four proposed projects in Part II of this PCS.

Part III. Revise University General Obligation Indebtedness

According to the Division of Finance for the University of North Carolina General Administration, **no General Fund operating impact** is anticipated from the proposed modifications to Session Law 2000-3.

SOURCES OF DATA: The University of North Carolina General Administration

TECHNICAL CONSIDERATIONS: None

SENATE FINANCE COMMITTEE
Wednesday, June 7, 2006 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 7, 2006, in room 544 of the Legislative Office Building. Thirty-three members of the committee were present. Senator David Hoyle presided. Trey Motley of Wake County, Laura Byrd of Wilkes County, Caroline Allen of Rock Hill, SC and Bear Brooks of Union County served as pages.

SB 1852 – Incorporate Midway.

Senator Bingham was recognized to explain the bill. Senator Apodaca motioned for a favorable report and the motioned passed. A copy of the bill, summary, and fiscal note are attached.

SB 1328 – Regulate Golf Carts/Saluda & Faison.

Senator Apodaca was recognized and motioned to adopt the proposed committee substitute for discussion. The motion carried. Senator Tillman moved for a favorable report and the motion carried. A copy of the proposed committee substitute and explanation are attached.

SB 1804 – Tryon/Boiling Springs Occupancy Tax.

Senator Apodaca was recognized and motioned to adopt the proposed committee substitute for discussion. The motion carried. Senator Smith moved for a favorable report and the motion carried. A copy of the proposed committee substitute and explanation are attached.

SB 1905 – Asheville Annexation.

Senator Apodaca was recognized to explain the bill. Senator Clodfelter motioned for a favorable report and the motioned passed. A copy of the bill and fiscal note are attached.

HB 474 – Mill Rehabilitation Tax Credit.

Representatives Ross and Howard were recognized to explain the proposed committee substitute. Sen. Apodaca motioned to adopt the PCS for discussion and the motion carried. Myrick Howard, Preservation North Carolina president, was recognized to answer questions. The bill was pulled from the agenda to allow for further research. A copy of the bill, the proposed committee substitute, the summary and the fiscal note are attached.

1892 – IRC Update.

Representative Wainwright was recognized to explain the bill. Senator Dannelly made a motion for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note are attached.

HB 1938 – Amend Taxation of Logging Machinery.

Representative Wainwright was recognized to explain the bill. Senator Brock made a motion for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note are attached.

HB 1898 – S Corp Income Tax Adjustments.

Representative Wainwright was recognized to explain the bill. Senator Dannelly made a motion for a favorable report and the motion carried. A copy of the bill and the summary are attached.

SB 1734 – Harrisburg Deannexation.

Senator Hartsell was recognized to explain the bill. Senator Dannelly made a motion for a favorable report and the motion carried. A copy of the bill and the summary are attached.

SB 1451 – Amend Delinquent Property Tax Collection.

Senator Hartsell was recognized to explain the bill. Senator Webster made a motion for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note are attached.

SB 1376 – Mt. Pleasant Deannexation.

This bill was removed from the agenda at Senator Hartsell's request.

SB 1526 – Reidsville Deannexation.

Senator Berger was recognized to explain the bill. Senator Albertson made a motion for a favorable report and the motion carried. A copy of the bill and the summary are attached.

SB 1541 – Tabor City Subdivisions.

This bill was removed from the agenda at Senator Soles' request.

SB 1428 – Burgaw Satellite Annexations.

Senator Soles was recognized and motioned to adopt the proposed committee substitute for discussion. The motion carried. Senator Smith offered an amendment to the PCS and motioned for it approval. The motion carried. Senator Stevens moved for a favorable report and the motion carried. A copy of the proposed committee substitute, the amendment, and the summary are attached.

SB 1372 – Property Tax Due Date Change.
Senator Kerr was recognized to explain the bill. Senator Tillman made a motion for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note are attached.

HB 1915 – SSTA Sales Tax Defn/Sales Tax Payments.

Senator Kerr was recognized to explain the proposed committee substitute. Senator Hoyle motioned to adopt the proposed committee substitute for discussion. The motion carried. Cindy Avrette, a staff attorney with the Research Division, and Sabra Faires, the Senate Tax Counsel, were recognized to answer questions. Senator Dannelly moved for a favorable report and the motion carried. A copy of the proposed committee substitute, the summary, and the fiscal note are attached.

SB 2011 – Railroad Cars Sales Tax Changes.

Senator Hoyle was recognized to explain the bill. Senator Dannelly made a motion for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note are attached.

The meeting adjourned at 1:58 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Thursday, June 08, 2006

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

FAVORABLE

S.B. **1372** Property Tax Due Date Change.
Sequential Referral: None
Recommended Referral: None

S.B. **1451** Amend Delinquent Property Tax Collection.
Sequential Referral: None
Recommended Referral: None

S.B. **1526** Reidsville Deannexation.
Sequential Referral: None
Recommended Referral: None

S.B. **1734** Harrisburg Deannexation.
Sequential Referral: None
Recommended Referral: None

S.B. **1852** Incorporate Midway.
Sequential Referral: None
Recommended Referral: None

S.B. **1905** Asheville Annexation.
Sequential Referral: None
Recommended Referral: None

S.B. **2011** Railroad Cars Sales Tax Changes.
Sequential Referral: None
Recommended Referral: None

H.B. **1892** IRC Update.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1898** S Corp Income Tax Adjustments.
Sequential Referral: None
Recommended Referral: None

H.B. **1938** Amend Taxation of Logging Machinery.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1328** Regulation of Golf Carts in Saluda.
Draft Number: 65604
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1428** Burgaw Satellite Annexations.
Draft Number: 65603
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1804** Tryon Occupancy Tax.
Draft Number: 85470
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

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

H.B. **1915** SSTA Sales Tax Defn/Sales Tax Payments.
Draft Number: 50730
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 14

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 7, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mitch Peele	NC Farm Bureau
SCOTT MARTIN	TOWN OF DALLAS
Rick Coleman	Town of Dallas
Fran Watson	Town of Dallas
Steve Miller	Town of Dallas
Lydia Varn	NC Assoc. of County Comissioners
Ronnie Williams	Town of Garner
RODNEY DICKERSON	TOWN OF GARNER
RICK BAIR	NC RURAL CENTER
Kathleen Edwards	UNC-CH Daily Bulletin
Mark Biberdorf	Town of Fletcher

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 7, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Pete Rodda	Forsyth Co
Jim Blackburn	NC Association of County Commissioners
Stephen Lenzi	NCAR
Chris Brown	NCFA
Lane Pearson	Pres. NC
Myrick Howard	Pres. NC
TOM NIEMANN	NIEMANN CAPITAL, LLC
Elizabeth Swing	NC DENR
Lennie Collins	NC DOR
Greg Rudd	NC DOR
David Baker	NC DOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 7, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Anna Mitchell	NC DOR
Andy Segal	NC DOR
Andy Ellen	NCRMA
PATRICK HANNAH	DURHAM CHAMBER
Amy Schulder	Hobbs & Co
Jeff Mixon	Civitas
JOYCE POPE	civitas
Angie Harris	Margin Taylor
DOUG HERRON	NC BAR ASSOC.
DAVID CARTNER	NC BAR ASSOC.
Estherine Davis	Electricities

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 7, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tyrone L. Fennell	Rose Hill commissioner
James Pittman	Rose Hill commissioner
Shelley Eason	Wake County
P. Carroll	SBER
Ken Melton	NC. D.O.R.
Karl Knupp	NC DOR
Bill Lee	Covenant
	NCATL
	RANC - SOSNC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

SENATE BILL 1852

Short Title: Incorporate Midway. (Local)

Sponsors: Senator Bingham.

Referred to: Finance.

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF MIDWAY.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Midway is enacted to read:

"CHARTER OF THE TOWN OF MIDWAY.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Midway are a body corporate and politic under the name 'Town of Midway'. The Town of Midway has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Midway are as follows:

Beginning at a point in the centerline intersection of Secondary Road # 1509 (Follansbee Road) and running thence in an easterly direction following the Forsyth County/Davidson County line to the southwest comer of PIN#6842-03-10-0045; thence in an easterly and northerly direction along the western boundary and in an easterly direction along the northern boundary of PIN#6842-03-10-0045; thence in an easterly direction along the northern boundary of PIN#6842-03-10-2004; thence in an easterly direction along the northern boundary of PIN#6842-03-10-4023; thence in an easterly direction across Secondary Road #3022 (Briarcreek Drive); thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6841-01-19-7907, (2) PIN#6841-01-19-8699, (3) PIN#6841-01-29-1926; thence in an easterly direction across Secondary Road # 1975 (Hayes Road); thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6841-01-29-6811, (2) PIN#6841-01-29-8897, (3) PIN#6841-01-29-9888; thence in a northerly direction along the western boundary and in an easterly direction along the northern boundary ofPIN#6842-03-302304; thence in an easterly direction along the northern boundary of the following 8 parcels, (1) PIN#6842-03-30-3899, (2)

PIN#6842-03-30-4898, (3) PIN#6842-03-30-6827, (4) PIN#6842-03-30-7817, (5) PIN#6842-03-30-7886, (6) PIN#6842-03-30-8886, (7)PIN# 6842-03-30-9896, (8) FIIM#6842-U3-4U-U8ys; thence in an easterly direction along the northern boundary of PIN#6842-03-40-2846 to the southwest comer of PIN#6842-03-41-3070; thence in a northerly direction along the western boundary and in an easterly direction along the northern boundary of PIN#6842-03-41-3070 to the centerline of Secondary Road #1706 (Old Lexington Road); thence continuing on from the centerline intersection of Old Lexington Road in a southerly direction along the eastern boundary of the following 10 parcels, (1) PIN#6842-03-40-4932, (2) PIN#6842-03-40-4769, (3) PIN#6842-03-40-5576, (4) PIN#6842-03-40-9411, (5) PIN#6842-03-40-7215, (6) PIN#6842-03-40-7143, (7) PIN#6842-03-40-7074, (8) PIN#6841-01-49-8923, (9) PIN#6841-01-49-8865, (10) PIN#6841-01-49-8793 to the centerline intersection of Secondary Road #1711 (Gumtree Road); thence continuing on from the centerline intersection of Gumtree Road in a westerly direction along the southern boundary of the following 3 parcels, (1) PIN#6841-01-49-8793, (2) PIN#6841-01-49-6962, (3) PIN#6841-01-49-6651 to the centerline intersection of Secondary Road #2962 (Ridgeview Drive); thence continuing on from the centerline intersection of Ridgeview Drive in a southerly direction along the eastern boundary of the following 7 parcels, (1) PIN#6841-01-49-5277, (2) PIN#6841-01-49-5140, (3) PIN#6841 -01 48-5977, (4) PIN#6841-01-48-5 894, (5) PIN#6841-01-48-6722, (6) PIN#6841-01-48-6631, (7) PIN#6841-01-48-6560; to the northeast corner of PIN#6841-01-48-8108; thence in a southerly direction along the eastern boundary of PIN#6841-01-48-8108 to the northern boundary of PIN#6841-01-47-8793; thence in an easterly and southerly direction along the northern and eastern boundary of PIN#6841-01-47-8793 to the northern boundary of PIN#6841-01-46-8 846; thence in an easterly, southerly and westerly direction along the boundary Of PIN#6841-01-46-8846 to the northeast comer of PIN#6841-01-46-9114; thence in a southerly direction along the eastern boundary of PIN#6841-01-46-9114 to the northern boundary of PIN#6841-02-55-2265; thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6841-02-55-2265, (2) PIN#6841-02-55-5263, (3) PIN#6841-02-55-6253; thence in an easterly direction across Secondary Road #2917 (Laura Drive); thence in an easterly direction along the northern boundary and in a southerly direction along the eastern boundary of PIN#6841-02-55-8267; thence in a southerly direction along the eastern boundary ofPIN#6841-02-55-8168 and PIN#6841-02-55-8069; thence in a southerly direction along the eastern boundary of PIN#6841-04-54-8865 to the northwest corner of PIN#6841-04-64-0811; thence in an easterly direction along the northern boundary of the following 7 parcels, (1) PIN#6841-0464-0811, (2) PIN#6841-04-64-1821, (3) PIN#6841-04-64-2831, (4) PIN#6841-04-64-3 841, (5) PIN#6841-04-64-6800, (6) PIN#6841-04-64-8704, (7) PIN#6841-04-74-0789 to the centerline' intersection of Secondary Road #1776 (Old Thomasville Road); thence continuing on from the centerline intersection of Old Thomasville Road in a southerly direction along the eastern boundary of PIN#6841-04-74-0789 and PIN#6841-04-74-2509 to the centerline intersection of Secondary Road # 1719 (Tom Livengood Road); thence continuing on from the centerline intersection of Tom Livengood Road in a southwesterly direction

along the eastern boundary of the following 10 parcels, (1) PIN#6841-04-74-2355, (2) PIN#6841-04-74-2117, (3) PIN#6841-04-74-1049, (4) PIN#6841-04-74-1025, (5) PIN#6841-04-73-0979,(6) PIN#6841-04-73-0912, (7) PIN#6841-04-63-9739, (8) PIN#6841-04-63-8656, (9) PIN#6841-04-63-7561, (10) PIN#6841-04-63-5289; thence across Secondary Road (Brookdale Drive) and continuing on from the centerline intersection of Tom Livengood Road in a southwesterly direction along the eastern boundary of the following 18 parcels, (1) PIN#6841-04-63-5037, (2) PIN#6841-04-62-5 83 7, (3) PIN#6841-04-62-5735, (4) PIN#6841-04-62-5 623, (5) PIN#6841-04-62-5501, (6) PIN#6841-04-62-4400, (7) PIN#6841-04-52-823 0, (8) PIN#6841-04-61-3700, (9) PIN#6841-04-61-2589, (10) PIN#6841-04-61-2456, (11) PIN#6841-04-61-2324, (12) PIN#6841-04-61-2201, (13) PIN#6841-04-52-8230, (14) PIN#6841-04-50-7908, (15) PIN#6841-04-50-5992, (16) PIN#6841-04-50-4876, (17) PIN#6841-04-50-3 862, (18) PIN#6841-04-50-1777 to the centerline intersection of Secondary Road # 1715 (Norman Shoaf Road); thence continuing on from the centerline intersection of Norman Shoaf Road in a southeasterly direction along the western boundary of PIN#6841-04-50-63 83; thence continuing on from the center line intersection of Norman Shoaf Road in a southeasterly direction intersecting PIN#6840-02-79-0248 and continuing in an easterly direction along the southern boundary of PIN#6 840-02-790248 to the northwest comer ofPIN#6840-02-77-5742; thence in a southerly, westerly, and easterly direction along the western and southern boundary of PIN#6840-02-77-5742 to the western comer of PIN#6840-02-77-5455; thence in a easterly direction along the northern boundary of PIN#6840-02-77-5455; thence in a southerly direction along the eastern boundary of PIN#6840-02-77-7311; thence in a southerly direction along the eastern boundary of PIN#6840-02-76-7881 to the centerline intersection of Secondary Road #1720 (Spry Road); thence continuing on from the centerline intersection of Spry Road in a westerly direction along the northern boundary of PIN#6840-02-76-9255; thence in a southerly direction along the western boundary of PIN#6840-02-76-9255; thence in a southerly direction along the western boundary of PIN#6840-02-75-9770; thence in a southerly direction along the western boundary of PIN#6840-02-85-8453 to the northeast corner of PIN#6840-04-64-8862; thence in a westerly direction along the northern boundary of PIN#6840-04-64-8862 to the centerline intersection of Secondary Road # 1715 (Norman Shoaf Road); thence continuing on from the centerline intersection of Norman Shoaf Road in a southerly direction along the western boundary of PIN#6840-04-64-8862 and PIN#6840-04-64-6336 to the centerline intersection of Secondary Road # 1802 (Midway School Road); thence continuing on from the centerline intersection of Midway School Road in a westerly direction along the southern boundary of the following 16 parcels, (1) PIN#6840-04-64-2222, (2) PIN#6840-04-64-0223, (3) PIN#6840-04-54-8188, (4) PIN#6840-04-54-7111, (5) PIN#6840-04-54-5038, (6) PIN#6840-04-54-2564, (7) PIN#6840-04-54-1150, (8) PIN#6840-03-44-8062, (9) PIN#6840-03-43-5929, (10) PIN#6840-03-43-4765, (11) PIN#6840-03-43-2782, (12) PIN#6840-03-43-1648, (13) PIN#6840-03-43-0622, (14) PIN#6840-03-33-9549, (15) PIN#6840-03-33-8556, (16) PIN# 6840-03-33-7552; thence in a westerly direction across Secondary Road # 1945 (Gardner Court); thence continuing on from the

centerline intersection of Midway School Road in a westerly direction along the southern boundary of the following 10 parcels, (1) PIN#6840-03-33-4454, (2) PIN#6840-03-33-4454, (3) PIN#6840-03-33-3258, (4) PIN#6840-03-33-2244, (5) PIN#6840-03-33-1251, (6) PIN#6840-03-33-0473, (7) PIN#6840-03-23-9075, (8) PIN#6840-03-23-9018, (9) PIN#6840-03-23-7072, (10) PIN#6840-03-23-4099; thence in a westerly direction across PIN#6840-03-22-0626; thence in a westerly direction across Secondary Road # 18 03 (Ralph Craver Road); thence in a westerly direction across PIN#6840-03-22-0626; thence continuing on from the centerline intersection of Midway School Road in a westerly direction along the southern boundary of the following 7 parcels, (1) PIN#6840-03-13-8251, (2) PIN#6840-03-13-6851, (3) PIN#6840-03-13-5553, (4) PIN#6840-03-13-4662, (5) PIN#6840-03-13-6851, (6) PIN#6840-03-14-2040, (7) PIN#684003-14-1037 to the northeast corner of PIN#6840-03-03-6652; thence in a southerly, westerly, and northerly direction along the eastern, southern, and western boundary of PIN#6840-03-03-6652 to the southeast comer of PIN#6840-03-03-2805; thence in a westerly and northerly direction along the southern and western boundary of PIN#6840-03-03-2805 to the southeast corner of PIN#6830-04-93-9938; thence in a westerly direction along the southern boundary of PIN#6830-04-93-9938; thence in a westerly direction along the southern boundary of PIN#6830-04-93-6968 to the centerline intersection of Secondary Road #2932 (Old US Hwy 52); thence continuing on from the centerline intersection of Old US Hwy 52 in a southerly direction along the eastern boundary of the following 10 parcels, (1) PIN#683 0-04-94-3101, (2) PIN#6830-04-94-2062, (3) PIN#6830-04-93-2940, (4) PIN#6830-04-93-2735, (5) PIN#6830-04-93-1645, (6) PIN#6830-04-93-1515, (7) PIN#6830-04-83-8240, (8) PIN#6830-04-82-8747, (9) PIN#6830-04-82-7695, (10) PIN#6830-04-82-7590; thence in a southerly direction across Secondary Road # 1523 (Ralph Miller Road); thence continuing on from the centeriine intersection of Old US Hwy 52 in a southerly direction along the eastern boundary of PIN#6830-04-81-3918; thence in a westerly direction along the southern boundary of PIN#6830-04-81-3918; thence in a westerly direction along the southern boundary of the following 12 parcels, (1) PIN#6830-04-81-0812, (2) PIN#6830-04-81-3918, (3) PIN#6830-04-72-6182, (4) PIN#6830-04-72-4305, (5) PIN#6830-04-72-0268, (6) PIN#6830-04-62-9264, (7) PIN#683 0-04-62-8149, (8) PIN#6830-04-62-7149, (9) PIN#6830-04-62-6126, (10) PIN#6830-04-62-3192, (11) PIN#6830-04-62-0134, (12) PIN#683 0-04-52-7075; thence in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6830-04-52-7075, (2) PIN#6830-04-52-8118, (3) PIN#6830-04-52-7267, (4) PIN#6830-04.-52-7359, (5) PIN#6830-04-52-6499, (6) PIN#6830-04-52-6682; thence in a westerly direction across Secondary Road (Old Oak Court) to the southwest corner of PIN#6830-04-53-6120; thence in a northerly direction along the western boundary of the following 4 parcels, (1) PIN#6830-04-53-6120, (2) PIN#6830-04-53-8234, (3) PIN#683 0-04-53 7556, (4) PIN#6830-04-53-7813; thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6830-04-53-9934, (2) PIN#6830-04-63-1833, (3) PIN#6830-04-63-4616; thence in an easterly and northerly direction along the northern and western boundary of PIN#6830-04-73-4213; thence in an easterly direction along the northern boundary of PIN#6830-04-73-4213 and

PIN#6830-04-74-6129 to the southeast corner of PIN#6830-04-74-2712; thence in a northerly, easterly, and westerly direction along the eastern and northern boundary of PIN#6830-04-74-2712 to the northeast corner of PIN#6830-02-65-9329; thence to the centerline intersection of Secondary Road # 15 06 (Eller Road); thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of PIN#6830-02-66-7211 and PIN#6830-02-66-1859; thence in a westerly direction across US Hwy 52; thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of PIN#6830-01-46-8112; thence in a westerly direction across Secondary Road #1507 (David Smith Road); thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of the following 6 parcels, (1) PIN#6830-01-45-3888, (2) PIN#6830-01-45-2913, (3) PIN#6830-01-45-1903, (4) PIN#6830-01-45-0914, (5) PIN#6830-01-35-9914, (6) PIN#6830-01-35-8916; thence continuing on from the centerline intersection of Eller Road in a westerly direction across PIN#6830-03-34-1105; thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of the following 5 parcels, (1) PIN#6830-01-35-2729, (2) PIN#6830-01-3 5-0880, (3) PIN#6830-01-25-8894, (4) PIN#6830-01-26-6274, (5) PIN#6830-01-26-0321; thence continuing on from the centerline intersection of Eller Road in a westerly direction across PIN#6830-01-16-7699; thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary ofPIN#6830-01-16-3314 and PIN'#6830-01-16-2324; thence continuing on from the centerline intersection of Eller Road in a westerly direction across Secondary Road #3229 (Woodfield Drive); thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary and in a northerly direction along the western boundary of PIN#6830-01-16-0327; thence in a northerly direction along the western boundary of the following 4 parcels, (1) PIN#6830-01-16-0524, (2) PIN#683 0-01-16-0634, (3) PIN#6830-01-16-0735, (4) PIN#6830-01-16-0835; thence in a. northerly direction across Secondary Road #323 0 (Woodwind Drive); thence in a northerly direction along the western boundary of the following 2 parcels, (1) PIN#683 0-01-07-9199, (2). PIN#683 0-01-17-0404; thence in a northerly direction across Secondary Road #3225 (Meadolee Lane); thence in a northerly direction along the western boundary of PIN#6830-01-17-0708; thence in a northerly and easterly direction along the western and northern boundary ofPIN#6830-01-18-2180 to the southwest corner of PIN#6830-01-18-6453; thence in a northerly and easterly direction along the western and northern boundary of PIN#6830-01-18-6453 to the northwest comer of PIN#6830-01-18-8356; thence in an easterly direction along the northern boundary of the following 2 parcels, (1) PIN#6830-01-18-8356, (2) PIN#6830-01-18-9356; thence in an easterly direction across Secondary Road #3202 (Laurel Court); thence in an easterly direction along the northern boundary of the following 24 parcels, (1) PIN#6830-01-28-1306, (2) PIN#6830-01-28-2306, (3) PIN#6830-01-28-3314, (4) PIN#6830-01-28-4313, (5) PIN#6830-01-28-5313, (6) PIN#6830-01-28-6312, (7) PIN#6830-01-28-7312, (8) PIN#6830-01-28-8311, (9) PIN#6830-01-28-9311, (10) PIN#6830-01-3 8-0301, (II) PIN#6830-01-38-1310, (12) PIN#6830-01-38-2310, (13)

PIN#6830-01-38-3219, (14) PIN#6830-01-38-4219, (15) PIN#6830-01-38-5219, (16) PIN#6830-01-38-6331, (17) PIN#6830-01-38-73 80, (18) PIN#6830-01-3 8-9269, (19) PIN#6830-01-48-1227, (20) PIN#6830-01-48-2217,(21) PIN#6830-01-48-3217,(22) PIN#6830-01-48-4320, (23) PIN#6830-01-48-5320, (24) PIN#6830-01-48-6331; thence to the centerline intersection of Secondary Road #1507 (David Smith Road); thence continuing on from the centerline Intersection of David Smith Road in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6830-01-48-83 87, (2) PIN#6830-02-58-1504, (3) PIN#6830-01-48-9824, (4) PIN#6830-01 -49-9027, (5) PIN#6830-01-49-9324, (6) PIN#6830-01-49-9028; thence in a northerly direction across Secondary Road #1583 (Pin Oak Drive); thence continuing on from the centerline intersection of David Smith Road in a northerly direction along the western boundary of the following 3 parcels, (1) PIN#6831-04-50-2112, (2) PIN#6831-04-50-2475, (3) PIN#6831-04-50-2762 to the centerline intersection of Secondary Road #1508 (Hickory Tree Road); thence continuing on from the centerline intersection of Hickory Tree Road m a Northwesterly direction along the northeast boundary of PIN#6831-03-40-8970; thence Continuing on from the centerline intersection of Hickory Tree Road to the centerline intersection of Secondary Road # 1511 (Hartman Road); thence continuing on from the centerline intersection of Hartman Road in a westerly direction along the southern boundary of the following 8 parcels, (1) PIN#6831-03-31-3765, (2) PIN#6831-03-21-9893, (3) PIN#6831-03-21-7878, (4) PIN#6831-03-21-6970, (5) PIN#6831-03-20-1695, (6) PIN#6831-03-21-0993, (7) PIN#6831-03-22-6885, (8) PIN#6831-03-11-8939; thence continuing on from the centerline intersection of Hartman Road in a southerly direction to the northeast corner of PIN#6831-03-11-7756; thence in a southerly direction along the eastern boundary of PIN#6831-03-11-7756; thence in a southerly direction along the eastern boundary of PIN#6831-03-11-7655; thence in a southerly direction along the eastern boundary and in a westerly direction along the southern boundary of PIN#6831-03-11-7542 to the centerline intersection of Secondary Road (Midpines Drive); thence continuing on from the centerline intersection of Midpines Drive in a southerly direction along the eastern boundary of the following 3 parcels, (1) PIN#6831-03-11-5411, (2) PIN#6831-03-11-5300, (3) PIN#6831-03-11-4197; thence across Secondary Road (Sinkland Drive); thence continuing on from the centerline intersection of Midpines Drive in a southerly direction along the eastern boundary and in a westerly direction along the southern boundary ofPIN#6831-0310-5913; thence in a westerly direction along the southern boundary of the following 3 parcels, (1) PIN#6831-03-10-3983, (2). PIN#6831-03-10-2943, (3) PIN#6831-03-10-0993; thence in a westerly direction along the southern boundary and in a northerly direction along the western boundary of PIN#6831-03-00-9915; thence across Sinkland Drive to the southeast comer of PIN#6831-03-01-6275; thence in a westerly direction along the southern boundary of PIN#6831-03-01-6275 to the centerline intersection of Secondary Road #1505 (Payne Road); thence continuing on from the centerline intersection of Payne Road in a northerly direction along the western boundary of the following 5 parcels, (1) PIN#6831-03-01-6275, (2) PIN#6831-03-01-7418, (3) PIN#6831-03-01-7614, (4) PIN#6831-03-01-7726, (5) PIN#6831-03-02-7030 to the centerline intersection of

Secondary Road # 1511 (Hartman Road); thence continuing on from the centerline intersection of Hartman Road in a westerly direction along the southern boundary of PIN#6831-03-02-6411 to the centerline intersection of Secondary Road #15 10 (North Payne Road); thence continuing on from the centerline intersection of North Payne Road in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6831-03-02-6411, (2) PIN#6831-03-13-1651, (3) PIN#6831-03-03-6348, (4) PIN#6831-03-13-1651, (5)PIN#6831-03-04-8802, (6) PIN#6831-03-04-8901; thence across Secondary Road (Havenwood Drive); thence continuing on from the centerline intersection of North Payne Road in a northerly direction along the western boundary of the following 4 parcels, (1) PIN#6831-01-05-8017, (2) PIN#6831-01-05-8117, (3) PIN#6831-01-05-8227, (4) PIN#6831-01-05-8336; thence across Secondary Road (Cale Bradley Court); thence continuing on from the centerline intersection of North Payne Road in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6831-01-05-8541, (2) PIN#6831-01-05-8641, (3) PIN#6831-01-05-8741, (4) PIN#6831-01-05-8851, (5) PIN#6831-01-05-8951, (6) PIN#6831-01-06-8073; thence in an easterly direction along the northern boundary of PIN#6831-01-06-8073; thence across Secondary Road #1508 (Hickory Tree Road) to the southern comer of PIN#6831-01-06-9382; thence in a northerly direction along the eastern boundary ofPIN#6831-01-06-9382; thence in a northerly and easterly direction along the southern and eastern boundary of PIN#6831-01-17-4633 to the southwest comer of PIN#6831-01-48-3804; thence in an easterly direction along the southern boundary of PIN#6831-01-48-3804 to the centerline intersection of US Hwy 52; thence continuing on from the centerline intersection of US Hwy 52 in a northerly direction along the western boundary of the following 7 parcels, (1) PIN#6831-01-48-3804, (2) PIN#6831-01-49-3076, (3) PIN#6831-01-38-1662, (4) PIN#6831-01-49-2319, (5) PIN#6831-01-49-1574, (6) PIN#6831-01-49-1626, (7) PIN#6831-01-49-0891 to the centerline intersection of Secondary Road #1509 (Follansbee Road), which is the beginning.

All references to the PIN # herein are references to Davidson county tax map system as of April 11,2005. A copy shall be maintained in the records of the Town of Midway.

"Section 2.2. **Annexation.** (a) The Town of Midway shall not extend its boundaries into Forsyth County by annexation pursuant to Article 4A of Chapter 160A of the General Statutes.

(b) The Town of Midway shall not extend its boundaries into Davidson County by annexation to the west of Line B or to the north of Line C as shown on the map dated March 24, 2005, entitled "Proposed Midway Incorporation," as prepared by the City of Winston-Salem, unless the annexation is undertaken pursuant to an annexation agreement between the Town of Midway and the City of Winston-Salem.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Midway is the Mayor and Town Council, which shall have five members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 2007 provided for by Section 4.1 of this Charter, Norman Wilkes is hereby appointed Mayor and Larry Jenkins, Betty Nifong, Steve Stokes, Barbara Temple, and Carl Tuttle are appointed Council Members of the Town of Midway, and they shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial municipal election is held in 2007.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall serve four-year terms. In 2007, the two candidates receiving the highest numbers of votes shall be elected to four-year terms and the three candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2009, and quadrennially thereafter, three members shall be elected to four-year terms. In 2011, and quadrennially thereafter, two members shall be elected to four-year terms.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor. In 2007, and quadrennially thereafter, the Mayor shall be elected for a term of four years. The Mayor shall be the official head of Town government and shall preside at all meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Attorney.** The Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties as required by law or as directed by the Town Council. The Town Attorney shall serve at the pleasure of the Town Council.

"Section 5.3. **Town Clerk.** The Council shall appoint a Town Clerk who shall perform duties as required by law or as directed by the Town Council. The Town Clerk shall serve at the pleasure of the Council.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Commencement of Tax Collection.** From and after the effective date of this act, the citizens and property in the Town of Midway shall be subject to municipal taxes levied for the year beginning July 1, 2006, and for that purpose the Town shall obtain from Davidson County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2006.

"Section 6.2. **Budget.** The Town may adopt a budget ordinance for fiscal year 2006-2007 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2006-2007, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360. If the effective date of the incorporation is prior to July 1, 2006, the Town may adopt a budget ordinance for fiscal year 2005-2006 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as practical. No ad valorem taxes may be levied for the 2005-2006 fiscal year.

"Section 6.3. **Ad Valorem Taxes.** The Town Council shall not increase the ad valorem tax rate more than $0.10/$100.00 valuation in each fiscal year without the vote or consent of a majority of the qualified voters of the Town of Midway. The election on the question of increasing the ad valorem tax rate shall be conducted in accordance with G.S. 160A-209."

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

SENATE BILL 1852: Incorporate Midway

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Bingham	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1852 is a local bill that incorporated the Town of Midway in Davidson County and enacts a charter setting out the powers and duties of the Town. The Joint Legislative Commission on Municipal Incorporations recommended incorporation of the Town in its report on May 15, 2006. The Commission concluded that the proposed Town met the standards required by Article 20 of Chapter 120 of the General Statutes.***

BILL ANALYSIS: Senate Bill 1852 incorporates the Town of Midway under a mayor-council form of government. There will be five members of the Town Council and a Mayor. Prior to the 2007 municipal election, specifically named persons will serve as interim Mayor and Council Members. At the initial election, the members of the Town Council will be elected to staggered terms. The Mayor will serve a four-year term. Elections will be on a nonpartisan basis.

The maximum ad valorem tax rate will be 10¢ per $100 valuation. The rate may not be increased without the vote or consent of a majority of the qualified voters of the Town.

BACKGROUND: Article 20 of Chapter 120 of the General Statutes creates the Joint Legislative Commission on Municipal Incorporations and sets out the procedures for review of the statutory requirements for incorporation. The Commission, with the help of the Division of Community Assistance of the Department of Commerce, found that the proposed Town of Midway satisfied the following requirements:

- The petition must be signed by 15% of the registered voters in the proposed area, but by not less than 25 registered voters. The petition was signed by 1,632 qualified registered voters of the 3,135 registered voters eligible to sign the petition for incorporation according to the active voter registration records of the Davidson County Board of Elections.
- The petition contained the necessary information, including a plan to provide a reasonable level of services and an ad valorem tax levy of at least 5¢ per $100 valuation. The Town proposed to provide police protection, water distribution, street maintenance, and zoning services.
- The proposed area must have a permanent population of at least 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile. The Town of Midway contained a total population of 4,198 in the 2000 census. The Town is composed of an area of eight (8) square miles, resulting in a density of approximately 525 persons per square mile.
- At least 40% of the proposed area must be developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space. The Davidson County Planning Department estimates that over 50% of the 5,100 acres within the proposed boundaries of the Town of Midway have been developed.

Judy Collier, Research Assistant, substantially contributed to this summary.

S1852e1-SMSV

1. Sales Tax Revenue Change

Davidson County distributes sales tax revenues on a per capita basis. This analysis uses the 2004-05 actual sales tax distribution to show how the distribution would have changed had Midway been incorporated at that time.

Current

County	Municipalities	Population	% Population	Sales Tax Distribution
Davidson		151,935	74.9%	24,397,068
	Denton	1,478	0.7%	237,376
	High Point	1,301	0.6%	208,178
	Lexington	20,492	10.1%	3,290,342
	Thomasville	25,562	12.6%	4,104,136
	Wallburg	2,065	1.0%	301,252
	TOTAL	**202,833**		**32,538,353**

With Incorporation

County	Municipalities	Population	% Population	Sales Tax Distribution	Change
Davidson		151,935	74.9%	23,727,632	(669,436)
	Denton	1,478	0.7%	230,819	(6,557)
	High Point	1,301	0.6%	203,177	(5,001)
	Lexington	20,492	10.1%	3,200,228	(90,114)
	Thomasville	25,562	12.6%	3,992,008	(112,128)
	Wallburg	2,065	1.0%	322,490	21,238
	Midway	5,536	2.7%	862,000	862,000
	TOTAL	**208,369**		**32,538,353**	

2. Powell Bill Allocation Change

Annual state street aid (Powell Bill) allocations are made to incorporated municipalities which establish their eligibility and qualify as provided by G.S. 136-41.1 through 136-41.3. The total amount allocated is seventy-five percent (75%) on the basis of relative population and twenty-five percent (25%) on the basis of relative non-State System local street mileage.

For 2004-05, population-based allocations assumed a statewide qualifying municipal population of 4,425,528 and available funds of $102,638,075. This created a per capita distribution rate of $23.20.

Adding the population of the proposed town of Midway to the statewide total creates a new population of 102,643,611 and a new per capita distribution rate of $23.16. The rate change is too small to have a significant impact on the Powell Bill distributions to other Davidson County municipalities.

The attached report from the Department of Revenue estimates that the Town of Midway would receive $128,500 in Powell Bill funds based on population. The town does not

plan to maintain streets locally; therefore, there would be no additional allocation based on street miles.

3. Other Revenues

Municipalities receive an amount equal to approximately 3.09% of the gross receipts resulting from the sale of power and light within the respective municipality. In addition, municipalities receive a portion of the telecommunications sales tax and the piped natural gas tax. Municipalities receive a share of the excise tax on beer and wine if they hold a referendum approving the sale of beer and wine within the corporate limits.

The Department of Revenue has estimated the amount of revenue that the town of Midway would have received in FY 2004-05 from each of these taxes. This information is included in the attached report.

Prepared by:
Rodney Bizzell, Fiscal Research Division
Brian Slivka, Fiscal Research Division
May 12, 2006

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1328
PROPOSED COMMITTEE SUBSTITUTE S1328-CSSVf-75 [v.2]

6/6/2006 9:12:26 PM

Short Title: Regulate Golf Carts/Saluda & Faison. (Local)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF SALUDA AND THE TOWN OF FAISON TO REGULATE GOLF CARTS ON PUBLIC STREETS OR HIGHWAYS WITHIN THE CITY OR ON PROPERTY OWNED OR LEASED BY THE CITY.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Saluda and the Town of Faison only.

SECTION 2. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a town may, by ordinance, regulate the operation of golf carts on any public street or highway within the city limits, or on any property owned or leased by the city.

By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1328

Short Title:	Regulation of Golf Carts in Saluda.	(Local)
Sponsors:	Senator Apodaca.	
Referred to:	State and Local Government.	

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF SALUDA TO REGULATE GOLF CARTS ON PUBLIC STREETS OR HIGHWAYS WITHIN THE CITY OR ON PROPERTY OWNED OR LEASED BY THE CITY.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Saluda only.

SECTION 2. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a town may, by ordinance, regulate the operation of golf carts on any public street or highway within the city limits, or on any property owned or leased by the city.

By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

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

SENATE BILL 1328:
Regulate Golf Carts/Saluda & Faison

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Apodaca	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS for First Edition S1328-CSSVf-75		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1328 authorizes the City of Saluda and the Town of Faison to regulate the operation of golf carts on public streets or highways within the city, as well as on any property owned or leased by the city, and it allows the city to charge a fee for registration. The bill becomes effective when it becomes law.***

CURRENT LAW: Under current law, vehicles intended to be operated on the streets and highways of the State must be registered (G.S. 20-50). Golf carts may not be registered (G.S. 20-54), and therefore may not operate on the streets and highways.

G.S. 20-4.01.(12a) defines a golf cart as a vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 1328 applies to the City of Saluda and the Town of Faison only.

It allows the named municipalities to enact an ordinance to regulate the operation of golf carts on any public street or highway within the city limits, or on any property owned or leased by the city. With regard to golf carts, by ordinance, each town or city may:

- require registration,
- charge a fee for the registration,
- specify the persons authorized to operate,
- specify required equipment,
- specify load limits, and
- specify hours and methods of operation.

The bill becomes effective when it becomes law.

BACKGROUND:

- The General Assembly has enacted legislation for golf carts in the following locations: Lake Waccamaw (S.L. 2001-356), Cary (S.L. 2001-485), Whispering Pines (S.L. 2002-82), Seven Lakes (S.L. 2002-82), and Caswell Beach (S.L. 2005-58).
- The General Assembly has enacted legislation for golf carts and utility vehicles in: Beech Mountain (S.L. 2003-124) and Seven Devils (S.L. 2004-58).
- The General Assembly has enacted similar golf cart legislation allowing fees to be charged in: the Town of Lake Waccamaw (S.L. 2001-356); the Village of Bald Head Island (S.L. 2002-129); and the Towns of Elizabethtown, Rose Hill, and Bladenboro (S.L. 2005-11).

S1328e1-SMSV

**Theresa Matula, Committee Staff to the Senate State & Local Government Committee substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1804
PROPOSED COMMITTEE SUBSTITUTE S1804-CSSVx-73 [v.1]

6/6/2006 7:42:18 PM

Short Title: Tryon/Boiling Springs Occupancy Tax. (Local)

Sponsors:

Referred to:

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWNS OF TRYON AND BOILING SPRINGS TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

PART I. TRYON OCCUPANCY TAX

SECTION 1.1 Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of Tryon may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1(c) Distribution and Use of Tax Revenue. – The Town of Tryon shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Tryon Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Tryon and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

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

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

SECTION 1.2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this Part, it shall also adopt a resolution creating the Tryon Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in Section 1 of this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Tryon Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART II. BOILING SPRINGS OCCUPANCY TAX.

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Boiling Springs Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Boiling Springs shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Boiling Springs Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Boiling Springs and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

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

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

SECTION 2.2. Boiling Springs Tourism Development Authority. – (a) Appointment and Membership. – When the Boiling Springs Town Council adopts a resolution levying a room occupancy tax under this Part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Boiling Springs Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. ADMINISTRATIVE PROVISIONS

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

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

PART IV. EFFECTIVE DATE

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1804

Short Title:	Tryon Occupancy Tax.	(Local)
Sponsors:	Senator Apodaca.	
Referred to:	Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF TRYON TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of Tryon may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Tryon shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Tryon Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Tryon and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

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

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Tryon Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Tryon Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

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

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

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

SENATE BILL 1804:
Tryon/Boiling Springs Occupancy Tax

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Apodaca	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS for First Edition S1804-CSSVx-73		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1804 authorizes the Towns of Tryon and Boiling Springs to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.***

CURRENT LAW: The Town of Tryon is currently not authorized to levy a room occupancy tax. The town is located in Polk County, which was authorized to levy a 3% room occupancy tax in 1985. The county occupancy tax is administered by the county and is used for the promotion of travel and tourism.

The Town of Boiling Springs is not currently authorized to levy a room occupancy tax. The town is located in Cleveland County, which was authorized to levy a 3% occupancy tax in 1989. The county occupancy tax is administered by the county and may be used for any public purpose.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 1804 authorizes the Town of Tryon and the Town of Boiling Springs to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures.

These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

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

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

S1804e1-SMSV

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: Senator Apodaca

FROM: Rodney Bizzell
Fiscal Research Division

RE: Proposed Committee Substitute for Senate Bill 1804

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Town of Tryon	$20,000	$20,620	$21,094	$21,579	$22,075
Town of Boiling Springs	$14,783	$15,241	$15,591	$15,950	$16,317

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Tryon, Town of Boiling Springs

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
The Proposed Committee Substitute for Senate Bill 1804 authorizes the Towns of Tryon and Boiling Springs to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

ASSUMPTIONS AND METHODOLOGY:

Town of Tryon
The Town of Tryon has three bed and breakfasts and a conference center facility. The town estimates that the 3% occupancy tax would generate approximately $20,000 annually. The general Consumer Price Index is used to project revenues for future years.

Town of Boiling Springs
According to the Town of Boiling Springs, there is 1 motel in the city limits with approximately 50 rooms. Assuming an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $14,783 per year. Because no historic data is available, the general Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts.

SOURCES OF DATA: Town of Tryon, Town of Boiling Springs

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1905

Short Title:	Asheville Annexation.	(Local)
Sponsors:	Senators Apodaca and Nesbitt.	
Referred to:	Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

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

BEING ALL OF Lots 1, 3, 4 and 5 shown on a plat entitled "Hankins Properties, LLC" prepared by Ed Holmes & Associates, D. Brian Hughes, PLS, and recorded in Plat Book 100, Page 149 of the Buncombe County, North Carolina Register of Deeds Office, reference to which plat is hereby made for a more particular description of said lots.

SECTION 2. Hankins Properties, LLC, the owner of certain real property described in Section 1, and its successors and assigns, and pursuant to G.S. 160A-58.1(d) and G.S. 153A-344.1, has zoning vested rights in the real property described in Section 1 as follows:

(1) The two site specific development plans approved at the April 13, 2005, Buncombe County Zoning Board of Adjustment Hearing, the vested rights for these two plans will remain in effect until April 13, 2010.

(2) The two site specific development plans approved at the December 14, 2005, Buncombe County Zoning Board of Adjustment Hearing, the vested rights for these two plans will remain in effect until December 14, 2010.

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

SENATE BILL 1905: Asheville Annexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Apodaca	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: Senate Bill 1905 would annex certain described property into the City of Asheville and further sets out zoning vested rights of the owner of the described real property.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Nonvoluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS: Senate Bill 1905 would annex certain described property into the corporate limits of the City of Asheville and further sets out zoning vested rights of the owner of the described real property.

BACKGROUND: In the 2005 Session, Senate Bill 249, Asheville Satellite Annexations, a satellite annexation for a shopping center was passed and chaptered as Session Law 2005-85. Subsequently, it was discovered that a parcel of land that includes the Carrabba's location in the shopping center was somehow left out of that bill. The current bill, Senate Bill 1905, would effectively annex the property identified as the missing piece in the original bill, Senate Bill 249.

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

S1905e1-SMRE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 474*

Committee Substitute Favorable 8/23/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H474-CSLY-73 [v.4]

6/7/2006 11:17:09 AM

Short Title: Mill Rehabilitation Tax Credit. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC MILL FACILITIES AND TO PROVIDE AN ENHANCED HISTORIC REHABILITATION CREDIT FOR REHABILITATION EXPENSES WITH RESPECT TO A FACILITY THAT WAS ONCE A STATE-OWNED TRAINING SCHOOL FOR JUVENILE OFFENDERS.

The General Assembly of North Carolina enacts:

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

"Article 3H.

"Mill Rehabilitation Tax Credit.

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in G.S. 105-129.35.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was used as a manufacturing facility or as a warehouse for storing the manufactured items or raw materials or component parts used in the manufacturing process.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed three million dollars ($3,000,000) for the site as a whole.

(6) Enterprise tier area. – Defined in G.S. 105-129.3.

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

"**§ 105-129.71. Credit for income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For an eligible site located in an enterprise tier one, two, or three area, determined as of the time the date of certification, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For an eligible site located in an enterprise tier four or five area, determined as of the date of certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A

pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.72. Credit for non-income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. For an eligible site located in an enterprise tier one, two, or three area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in an enterprise tier four or five area.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allocable credit is allocated equally among the five years in which the credit is claimed.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.73. Tax credited; cap.**

(a) Taxes Credited. – The credits allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credits allowed by this Article against only one of the taxes against which it is allowed. The taxpayer must elect the tax against which a

credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years.

"**§ 105-129.74. Coordination with Article 3D of this Chapter.**

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A apply to this Article.

"**§ 105-129.75. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2011."

SECTION 2. G.S. 105-129.35(a) reads as rewritten:

"(a) Credit. – A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit equal to twenty percent (20%) of the expenditures that qualify for the federal credit. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection."

SECTION 3. G.S. 105-129.36(a) reads as rewritten:

"(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a State-certified historic structure located in this State is allowed a credit equal to thirty percent (30%) of the rehabilitation expenses. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars ($25,000) within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection."

SECTION 4. This act is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 474*
Committee Substitute Favorable 8/23/05

Short Title: Mill Rehabilitation Tax Credit. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC MILL FACILITIES.

Whereas, the State of North Carolina has lost more than 164,000 jobs in the textile industry during the past decade; and

Whereas, the State of North Carolina has also lost a large number of manufacturing jobs in other industries such as tobacco and furniture; and

Whereas, the losses of these manufacturing jobs have resulted in the vacancy of numerous mill buildings, many of which are historic; and

Whereas, a large vacant mill can be a cancer in a community if it remains vacant and unused, resulting in the deterioration of surrounding neighborhoods and commercial districts, crime, vandalism, vagrancy, arson, and a loss of community spirit; and

Whereas, renovated for new adaptive uses or for new industrial or business uses, a large old factory or mill can have significant environmental, economic development, cultural, tourism, tax base, and affordable housing benefits for a community; and

Whereas, the Historic Rehabilitation Tax Credits created by the North Carolina General Assembly in 1997 have proved to be successful in the revitalization of numerous major historic buildings; and

Whereas, additional incentives would help encourage the rehabilitation of the numerous industrial buildings that have been vacated in recent years, especially those in smaller towns and counties that have been hardest hit by the loss of manufacturing jobs; and

Whereas, the rehabilitation of historic buildings has been proven to be a successful economic development strategy for creating jobs and stimulating new investment; and

Whereas, Virginia and South Carolina have each adopted generous incentives for the rehabilitation of similar buildings that are resulting in new investment in their communities; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 3H.

"Mill Rehabilitation Tax Credit.

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in G.S. 105-129.35.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was designed for use or was used as a manufacturing facility or for purposes ancillary to manufacturing or as a facility for providing utility services.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the time at which the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed two million dollars ($2,000,000) for the site as a whole.

(6) Enterprise tier area. – Defined in G.S. 105-129.3.

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

"**§ 105-129.71. Credit for income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under

applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.72. Credit for non-income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to fifty percent (50%) of the rehabilitation expenses.

(2) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the

eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allocable credit is allocated equally among the five years in which the credit is claimed.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.73. Tax credited; cap.**

(a) Taxes Credited. – The credits allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credits allowed by this Article against only one of the taxes against which it is allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years.

"**§ 105-129.74. Coordination with Article 3D of this Chapter.**

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A apply to this Article.

"**§ 105-129.75. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2011."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after that date.

HOUSE BILL 474:
Mill Rehabilitation Tax Credit

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 6, 2006
Introduced by:	Reps. Ross, Howard, Brubaker, Goodwin	**Summary by:**	Y. Canaan Huie Committee Counsel
Version:	PCS to Second Edition H474-CSLY-73		

SUMMARY: ***House Bill 474 would provide a tax credit for rehabilitating vacant historic manufacturing sites if the taxpayer spends at least $3 million to rehabilitate the site. The credit is a percentage of the qualified rehabilitation expenditures and the percentage varies depending on the enterprise tier location of the site and the eligibility for the federal credit. The credit may be claimed against the franchise tax, the income tax, or the gross premiums tax, but may be taken against only one of these taxes.***

This PCS differs from the 2nd Edition of the bill in the following ways:

- ***The credit is allowed for manufacturing and associated warehouse facilities only. The 2nd Edition authorized the credits for manufacturing facilities, facilities ancillary to manufacturing, and utilities facilities.***
- ***The 2nd Edition authorized a credit for non-income producing facilities in enterprise tiers four and five whereas this PCS does not.***
- ***The PCS reduces the amount of the credit for non-income producing facilities in enterprise tiers one, two, and three from 50% to 40%.***
- ***The expenses threshold for the 2nd Edition was $2 million whereas it is $3 million for this PCS.***
- ***The PCS provides for a similar enhanced credit for facilities that at one time were State-owned training schools for juvenile offenders.***

CURRENT LAW: North Carolina allows a tax credit to taxpayers that qualify for the federal historic rehabilitation credit. The federal tax credit is available for rehabilitating only income-producing historic structures, and is equal to 20% of the rehabilitation expenses. The amount of the North Carolina credit is 20% of the expenses that qualify for the federal credit. North Carolina also allows an income tax credit of 30% of the expenses of rehabilitating an historic structure that is not income-producing, and thus not eligible for the federal income tax credit. To qualify for the credit for non-income producing historic structure, the taxpayer must spend more than $25,000 within a 24-month period. The North Carolina credit must be taken in installments over five years after the structure is placed in service. A pass-through entity may allocate the credit to an owner if an owner's adjusted basis in the pass-through entity is at least 40% of the amount allocated to that owner.

BILL ANALYSIS: House Bill 474 provides a credit to a taxpayer that rehabilitates a vacant historic manufacturing site and who spends at least $3 million to rehabilitate the site. The taxpayer must first provide the Secretary of Revenue with documents showing that the State Historic Preservation Officer certifies the site and rehabilitation and showing the amount of rehabilitation expenditures or expenses. The amount of the credit depends upon the enterprise tier in which the site is located and the eligibility for a federal credit as follows:

- 40% of qualified rehabilitation expenditures – if the site is located in enterprise tier one, two, or three area regardless of whether the taxpayer is allowed federal credit
- 30% of qualified rehab expenditures – if the site is located in enterprise tier four or five, and the taxpayer is allowed a federal credit.

If the credit is taken for income-producing property, it may be taken in the year the property is placed in service. If the credit is taken for non-income-producing property, the credit must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

The credit allowed may be claimed against the income tax, the franchise tax, or the gross premium tax. The taxpayer must elect the tax against which the credit will be claimed, and this election is binding.

The credit may not exceed the amount of the tax against which the credit is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by the taxpayer. Any unused portion of the credit may be carried forward for nine years.

A pass-through entity may allocate the credit among any of its owners without limitation so long as the owner's adjusted basis in the pass-through entity is at least 40% of the amount of credit allocated to the owner. An owner of a pass–through entity that qualifies for the credit will forfeit a portion of any credit the owner has received if both of the following conditions are met:

- The owner disposed of the interest within five years from the date the eligible site is placed into service.
- The owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed into service.

The forfeiture of an owner's interest is not required if the change in ownership is the result of the owner's death or the merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the entity, to the extent the entity does not receive cash or tangible property in the transaction. A taxpayer or owner of a pass-through entity that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest computed from the date the taxes would have been due if the credit had not been allowed.

Sections 2 and 3 of the bill authorize an enhanced historic rehabilitation credit for a facility that was once a State-owned training school for juvenile offenders. The amount of the credit such a facility would be eligible for would be increased to 40% of the qualified rehabilitation expenditures or rehabilitation expenses rather than 20% or 30%, respectively. This provision would allow for an enhanced credit for a rehabilitation of the facilities of the former Stonewall Jackson Manual Training and Industrial School in Cabarrus County.

EFFECTIVE DATE: House Bill 474 is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after July 1, 2006. The credit expires for expenses incurred on or after January 1, 2011.

H0474e2-SMLY-CSLY-73

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 6, 2006

TO: Representatives Brubaker, Howard, Ross, and Goodwin

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 474 (Proposed Committee Substitute to 2nd Edition)

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
			(in millions)		
REVENUES:					
General Fund	(2.8)	(8.3)	(14.7)	(10.8)	(6.7)
POSITIONS (cumulative):					

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

EFFECTIVE DATE: January 1, 2006

BILL SUMMARY: Current law allows a 20% tax credit for rehabilitation of income-producing historic properties and a 30% tax credit for rehabilitation of non-income-producing historic properties (G.S. 105-129.29 through 105-129.34, Historic Rehabilitation Tax Credits). The existing tax credit may be taken in five equal installments over a period of five years after the property is placed into service. House Bill 474 provides a larger tax credit for rehabilitation of qualified historic mill properties and a different schedule for investors to claim the credit. In

addition, the tax credit created by this bill varies by economic tier in order to provide additional incentive for mill rehabilitations in more distressed counties.

Historic mill renovations costing more than $3 million located in economic tiers 1, 2, or 3 (most distressed counties) may claim either a 40% tax credit for an income-producing property or a 50% tax credit for a non-income-producing property. Mill renovations costing more than $3 million in economic tiers 4 and 5 may claim either a 30% tax credit for income-producing properties or a 40% tax credit for non-income-producing properties. Regardless of tier, any income-producing mill rehabilitation (commercial space and rental apartments) may take the entire amount of the credit in the first year it is available with a nine-year carryover if the credit exceeds tax liability. Non-income-producing mill rehabilitations (residential condos) may take the credit in five equal installments with a nine-year carryover if the credit exceeds tax liability. In addition, a certified historic structure that at one time served as a State training school for juvenile offenders may claim a credit equal to 40% of its qualified rehabilitation expenditures regardless of whether is it converted into an income-producing or non-income-producing property.

This credit may not be claimed in addition to the Article 3D credit. The credit may be claimed against either the franchise tax, the income tax, or the gross premiums tax. The entire credit may be claimed in the taxable year in which the property is placed into service. Any unused portion of the credit may be carried forward for nine years.

The bill includes a five-year sunset. Qualified rehabilitation expenditures incurred on or after July 1, 2011, are not eligible for credits created by this bill.

ASSUMPTIONS AND METHODOLOGY: The chart below illustrates the differences in value of tax credits available for rehabilitated mills under current law (Article 3D) and HB 474.

Existing Article 3D Credit v. HB 474			
		Income-producing	Non-income-producing
Article 3D		20%	30%
HB 474	Tiers 1-3	40%	40%
	Tiers 4-5	30%	No credit given

Preservation NC estimates there are approximately 30 to 35 mill properties out of more than 200 eligible properties throughout North Carolina likely to be rehabilitated as a result of this tax credit. Since most major mill rehabilitations in urban counties have already been completed, the projection assumes the establishment of this credit will generate private investment in remaining eligible properties in upper economic tiers as well as some properties in lower economic tier counties through 2006-07 and 2007-08. By 2008-09, the projection assumes most properties undergoing renovation will be located in lower economic tier counties. The projection also assumes a 12-month lag between a project's construction and its placement in service.

The estimated first-year cost of House Bill 474 is based on the estimated actual investment in two income-producing properties in Durham, NC. These properties are part of the American Tobacco project and are expected to be completed and put in service in fall 2006 and spring 2007. The base expenditure data for this projection for 2007-08 and beyond was derived from actual mill

rehabilitation data for North Carolina between 2002-2004. Since most mill rehabilitation projects completed during those years were income-producing properties located in economic tiers 4 and 5, the location (economic tier) and type (income-producing or non-income-producing) of mill rehabilitation has been altered to reflect expectations for future investment. The following tables detail these assumptions.

Projected Number of Mill Rehabilitations by Economic Tier (by fiscal year)						
	2006-07	2007-08	2008-09	2009-10	2010-11	**All years**
Low tiers (1, 2, and 3)	0	4	5	5	4	**17**
High tiers (4 and 5)	2	3	1	1	1	**8**
Total	**2**	**7**	**6**	**6**	**5**	**26**

Projected Number of Mill Rehabilitations by Type (by fiscal year)						
	2005-06	2006-07	2007-08	2008-09	2009-10	**All years**
Income-producing	2	3	2	2	1	**10**
Non-income-producing	0	4	4	4	4	**16**
Total	**2**	**7**	**6**	**6**	**7**	**26**

The cost of individual mill rehabilitations in this projection ranges from $4.0 million to $25.6 million with most projects costing between $5 million and $15 million. Preservation NC believes there are only two non-renovated mill properties remaining that are likely to attract investors and will cost more than $20 million to rehabilitate. The projection assumes these two projects will be completed and placed into service in 2008-09 and 2009-10.

House Bill 474 would allow the tax credit for income-producing properties to be taken in full the year the property is placed into service. Preservation NC has indicated that although many individuals who develop historic mills for income-producing uses may be able to take most of their available credit in one year, most non-income-producing mill property owners will not. For this reason, the credit will be available to non-income-producing property owners over a period of 5 years, similar to the existing Article 3D credit.

HB 474 Impact (Proposed Credit less Existing Credit)					
	2006-07	2007-08	2008-09	2009-10	2010-11
HB 474 (proposed)	8,400,000	11,625,362	20,140,980	18,178,066	14,991,847
Article 3D (existing)	$ 5,600,000	$ 3,301,626	$ 5,462,509	$ 7,365,323	$ 8,245,807
Total fiscal impact	**2,800,000**	**8,323,736**	**14,678,472**	**10,812,743**	**6,746,041**

SOURCES OF DATA: Preservation NC, State Historic Preservation Office

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

H 1

HOUSE BILL 1892

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

May 11, 2006

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 105-159. Federal corrections.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE BILL 1892: IRC Update

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Reps. Wainwright, Luebke, Carney, Wilkins	**Summary by:**	Canaan Huie Committee Counsel
Version:	First Edition		

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

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

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

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

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

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

BILL ANALYSIS:

IRC Update

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- *Depreciation of natural gas distribution lines.* Under previous law, natural gas distribution lines installed by a gas company were depreciated over a 20-year period. This act allows natural gas depreciation lines placed in service between April 11, 2005, and January 1, 2011, to be depreciated over a 15-year period.

- *Depreciation of natural gas gathering pipelines.* Prior to the enactment of this act, there was a disagreement among the courts as to what asset class natural gas gathering pipelines owned by a nonproducer belonged. The IRS maintained, and this position was supported by the Tax Court, that these pipelines belonged to an asset class subject to depreciation over 15 years. The Courts of Appeals in the Sixth, Eighth, and Tenth Circuits, however, held that these pipelines belonged to an asset class subject to depreciation over 7 years. There was agreement that natural gas gathering pipelines owned by a producer were part of the asset class subject to depreciation over 7 years. This act clarifies that all natural gas gathering pipelines, regardless of ownership, are subject to depreciation over 7 years. This provision applies to natural gas gathering pipelines placed in service after April 11, 2005.

- *Geological and geophysical costs amortized over two years.* Geological and geophysical costs are those incurred for the purpose of accumulating data that serves as the basis for the decision about acquisition or retention of mineral rights by taxpayers in the business of exploring for minerals (including gas and oil). Courts have held these costs to be capital in nature and allocable to the property acquired or retained. If no property was acquired or retained, the costs were treated as a capital loss. This act provides that these costs, when incurred in the United States for oil or gas exploration, shall be amortized ratably over a 24-month period beginning on the mid-point of the taxable year in which the costs were incurred. The act does not affect the treatment of costs incurred outside of the United States or with respect to exploration for minerals other than oil or gas.

- *84-month amortization of air pollution control facilities.* Current law allows taxpayers to amortize a certified pollution control facility used in connection with a plant that was in operation before January 1, 1976, over a 60-month period. For certified pollution control facilities placed in service after April 11, 2005, this act eliminates the requirement that the property be used in connection with a plant that was in operation before 1976 if the plant is an electric generation plant that is primarily coal fired. For property that satisfies this criteria, the amortization period is 84-months. The act does not lengthen the amortization period for property that was covered by previous law, it provides a favored, though not as generously favored, method of depreciation for another class of property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

[4] "Capital gain property" means any capital asset or property used in the taxpayer's trade or business the sale which at its fair market value, at the time of contribution, would have resulted in a gain that would have been a long-term capital gain.

[5] The "contribution base" is the taxpayer's adjusted gross income computed without regard to any net operating loss carryback.

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

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

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

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

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

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

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

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

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

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

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

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

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

Miscellaneous Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Depreciation and expensing.

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

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

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

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

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

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

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

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

- *Deduction for demolition and clean-up costs.* Under general law, demolition costs are capitalized and added to the basis of the land on which the demolished building was located. The tax treatment of debris removal costs depends on the nature of the costs incurred. Debris removal costs that are in the nature of replacement must be capitalized and added to the basis of the property damaged. Other times, debris removal costs may be used to show a decrease in the fair market value of property which could be used to determine the amount of a casualty loss. This act allows a taxpayer to claim a current deduction for 50% of any qualified Gulf Opportunity Zone clean-up costs paid between August 25, 2005, and January 1, 2008. For the purposes of this provision, a "qualified Gulf Opportunity Zone clean-up cost" is an amount paid for the removal of debris, or the demolition of structures, on real property located in the GO Zone if the real property is either held by the taxpayer for use in a trade or business or is inventory in the hands of the taxpayer.
- *Environmental remediation costs.* Under previous law, a taxpayer may elect to deduct, rather than capitalize, certain environmental remediation expenditures incurred in connection with property used in a trade or business for the production of income. This provision expired for expenditures incurred after December 31, 2005. This act extends the expiration date for that provision until December 31, 2007 for qualified environmental remediation expenditures incurred in connection with a qualified site in the GO Zone. In addition, expenditures incurred on or after August 25, 2005, with respect to petroleum products in the GO Zone are included in the deduction.

Federal Determinations.

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

Filing period for nonresident aliens.

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

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

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

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

H1892e1-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1892 (First Edition)

SHORT TITLE: IRC Update.

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

FISCAL IMPACT (millions)

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

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

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

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

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

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

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

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

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

Millions

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

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

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

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

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

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

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

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

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

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

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

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Millsaps & Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 22, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

H 1

HOUSE BILL 1938

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

May 15, 2006

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"...

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

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

b. Attachments and repair parts for logging machinery.

c. Lubricants applied to logging machinery.

d. Fuel used to operate logging machinery.

..."

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

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

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

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

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

HOUSE BILL 1938:
Amend Taxation of Logging Machinery

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Reps. Wainwright, Church, McComas, Underhill	**Summary by:**	Trina Griffin Committee Counsel
Version:	First Edition		

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

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

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

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

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

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

shears, feller bunchers, winches, chain saws, tractors, axes, and mallets when the items are used to cut and transport timber to a wood products manufacturer.

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

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

Cindy Avrette, counsel to House Finance, contributed to this summary.

H1938e1-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1938 (First Edition)

SHORT TITLE: Amend Taxation of Logging Machinery.

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

FISCAL IMPACT

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

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

EFFECTIVE DATE: July 1, 2006

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

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

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

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

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

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

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

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

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Millsaps & Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 22, 2006

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1898

Committee Substitute Favorable 5/23/06

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

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

...

(3a) The amount by which a shareholder's share of S Corporation income is reduced under section 1366(f)(2) of the Code for the taxable year by

the amount of built-in gains tax imposed on the S Corporation under section 1374 of the Code.

..."

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

HOUSE BILL 1898:
S Corp Income Tax Adjustments

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Rep. Wilkins	**Summary by:**	Trina Griffin
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1898 would make corporate income tax adjustments inapplicable to S Corporations, effective beginning with the 2006 taxable year, as recommended by the Revenue Laws Study Committee. The bill provides one exception by requiring an add-back in the amount by which a shareholder's share of S Corporation income is reduced by the amount of built-in gains tax imposed on the S Corporation.***

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

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

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

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

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

The bill would, however, preserve an addition to federal taxable income for a shareholder's share of the built-in gains tax paid by the corporation at the federal level for purposes of determining State taxable income. This add-back is required under current law.

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

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

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

H1898e1-SMSV-CSSVx-66

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1734*

Short Title:	Harrisburg Deannexation.	(Local)
Sponsors:	Senator Hartsell.	
Referred to:	Finance.	

May 23, 2006

A BILL TO BE ENTITLED

AN ACT TO DEANNEX CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF HARRISBURG.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Harrisburg are reduced by excluding the following described property:

"Lying and being in No. 1 Township, Cabarrus County, North Carolina on the southeast side of Tom Query road and adjoining the lands of E. Kenneth Morris, Jeffery A. Marlow, Jerome F. Capel, and Leslie H. Pistone, and being more particularly described as follows:

'Beginning at a point of orientation being the intersection of Buckingham Place and Tom Query Road thence in a southwesterly direction for approximately 505' to the point of beginning being the corner of E. Kenneth Morris property (DB.548 Page 364) and on the existing right-of-way of Tom Query Road. Thence along the line of E. Kenneth Morris S 44-34-13 E 852.37' to a corner in the rear line of Jeffery A. Marlow (DB. 1274 Page 246 Lot 51 Huntwick Sect. III Mb. 20 Pg. 43). Thence along the rear lines of Jeffery A. Marlow, Jerome F. Capel (DB.#1427 Pg. 237 Lot 52 Huntwick Sect. III Mb. 20 Pg.#43) S 44-35-42 W 484.24' to a corner in the rear line of David S. Zicherman and the rear corner of Leslie H. Pistone (DB.554 Pg.#021) thence along the line of Leslie H. Pistone N 44-34-13 W 859.27' to a corner of Leslie H. Pistone and the right-of-way of Tom Query Road. Thence along the right-of-way of Tom Query Road N 45-24-41 E 484.19' to the point of Beginning. Containing 9.513 acres.'"

SECTION 2. This act becomes effective June 30, 2006.

SENATE BILL 1734:
Harrisburg Deannexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Hartsell	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1734 de-annexes approximately 9½ acres of property from the corporate limits of Harrisburg.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily, depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: Senate Bill de-annexes a 91/2-acre parcel of property from the corporate limits of Harrisburg.

BACKGROUND: Effective July 13, 1998, the Town of Harrisburg annexed a 9.513 acre parcel of land on the southeast side of Tom Query Road owned by Big Pasture, Inc. pursuant to a voluntary annexation petition submitted under signature of John R. Whitley, Whitley & Co., as owner of the property, when the company did not actually own the property but was under contract to purchase the property. The property was unoccupied at the time of annexation. After the annexation, Whitley & Co. did not purchase the property and the closing never took place.

The current owner does not want to be in the town and has requested that the property be de-annexed from the corporate limits of Harrisburg. The Town is amenable to de-annexing the property.

EFFECTIVE DATE: This act would become effective June 30, 2006.

Judy Collier, Research Assistant, substantially contributed to this summary.

S1734e1-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1451

Short Title:	Amend Delinquent Property Tax Collection.	(Public)
Sponsors:	Senators Hartsell, Clodfelter, Dalton, Hoyle, Kerr, Webster; and Boseman.	
Referred to:	Finance.	

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO ENFORCE COLLECTION OF PROPERTY TAXES ON REAL PROPERTY AGAINST THE RECORD OWNER AS OF THE DATE THE TAXES BECOME DELINQUENT AND TO CODIFY THE PRORATION OF TAXES ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273(17) reads as rewritten:

"**§ 105-273. Definitions.**

When used in this Subchapter (unless the context requires a different meaning):

...

(17) "Taxpayer" means any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation. For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, "taxpayer" means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date."

SECTION 2. G.S. 105-369 reads as rewritten:

"**§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.**

(a) Report of Unpaid Taxes That Are Liens on Real Property. – In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. – After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the ~~listing owner and to the~~ record owner of each affected parcel of property, as determined as of ~~December 31 of the fiscal year for which the taxes are due.~~the date the taxes became delinquent. The notice must be sent to each owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the ~~names~~ name of ~~the listing owner and~~ the record owner as of the date the taxes became delinquent will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct ~~listing owner or~~ record owner does not affect the validity of the tax lien or of any foreclosure action.

(c) Time and Contents of Advertisement. – A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is permitted.

The posted notice and newspaper advertisement shall set forth the following information:

~~(1) In the case of property that the listing owner has not transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, in alphabetical order.~~

(1a) ~~In the case of property that the listing owner has transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of the record owner as of December 31 of each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order, followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner.~~The name of the record owner as of the date the taxes became delinquent for each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order.

(1b) After the information required by subdivision ~~(1) or~~ (1a) of this subsection for each parcel, a brief description of each parcel of land to

which a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

(d) Costs. – Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this subsection are taxes.

(e) Payments during Advertising Period. – At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. – No tax lien is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. – Any tax collector or deputy tax collector who willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence."

SECTION 3. G.S. 105-374(c) reads as rewritten:

"(c) Parties; Summonses. – The ~~listing taxpayer~~owner of record as of the date the taxes became delinquent and spouse (if any), ~~the current owner,~~any subsequent owner, all other taxing units having tax liens, all other lienholders of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, shall be made parties and served with summonses in the manner provided by G.S. 1A-1, Rule 4.

The fact that the ~~listing taxpayer~~owner of record, any subsequent owner, or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and all such persons shall be made parties and served with summons in the same manner as in other civil actions.

Persons who have disappeared or who cannot be located and persons whose names and whereabouts are unknown, and all possible heirs or assignees of such persons, may be served by publication; and such persons, their heirs, and assignees may be designated by general description or by fictitious names in such an action."

SECTION 4. G.S. 105-375(c) reads as rewritten:

"(c) Notice Listing Taxpayer and Others. – The tax collector filing the certificate provided for in subsection (b), above, shall, at least 30 days prior to docketing the judgment, send a registered or certified letter, return receipt requested, to the ~~listing taxpayer at his~~owner of record as of the date the taxes became delinquent at the owner's last known address, and to all lienholders of record who have a lien against the ~~listing taxpayer~~owner of record or against any subsequent owner of the property (including any liens referred to in the conveyance of the property to the ~~listing taxpayer~~owner of record or to the subsequent owner of the property), stating that the judgment will be docketed and the execution will be issued thereon in the manner provided by law. ~~A notice stating that the judgment will be docketed and that execution will be issued thereon shall also be mailed by certified or registered mail, return receipt requested, to the current owner of the property (if different from the listing owner) if: (i) a deed or other instrument transferring title to and containing the name of the current owner was recorded in the office of the register of deeds or filed or docketed in the office of the clerk of superior court after January 1 of the first year in which the property was listed in the name of the listing owner, and (ii) the tax collector can obtain the current owner's mailing address through the exercise of due diligence.~~ If within 10 days following the mailing of said letters of notice, a return receipt has not been received by the tax collector indicating receipt of the letter, then the tax collector shall have a notice published in a newspaper of general circulation in said county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the ~~listing taxpayer~~owner of record that a judgment will be docketed against the ~~listing taxpayer.~~owner of record. The notice shall contain the proposed date of such docketing, that execution will issue thereon as provided by law, a brief description of the real property affected, and notice that the lien may be paid off prior to judgment being entered. All costs of mailing and publication, plus a charge of fifty dollars ($50.00) to defray administrative costs, shall be added to the amount of taxes that are a lien on the real property and shall be paid by the taxpayer to the taxing unit at the time the taxes are collected or the property is sold."

SECTION 5. Chapter 39 of the General Statutes is amended by adding the following new Article to read:

"Article 10.

"Real Property Tax Proration.

"**§ 39-60. Property tax proration on sale of real property.**

Unless otherwise provided by contract, property taxes on the real property being sold shall be prorated between the seller and buyer of the real property on a calendar-year basis."

SECTION 6. Section 5 of this act becomes effective for contracts entered into on or after October 1, 2006. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2006.

SENATE BILL 1451:
Amend Delinquent Property Tax Collection

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 6, 2006
Introduced by:	Sen. Hartsell	**Summary by:**	Martha Walston Committee Counsel
Version:	First Edition		

SUMMARY: Senate Bill 1451 is a recommendation of the Revenue Laws Study Committee. It makes the following changes to the property tax laws to relieve the seller of personal liability for property taxes assessed on real property when the seller transfers the property before the taxes become delinquent or when the seller transfers the property before it is annexed by the taxing unit and taxes are imposed by the taxing unit:

- *Authorizes the tax collector to enforce the remedy of attachment and garnishment against the record owner of real property as of the date the taxes on the real property become delinquent instead of the listing owner of the real property.*
- *Requires the tax collector to send the notice of a tax lien on real property to the record owner of the property as determined as of the date property taxes become delinquent instead of the listing owner of the property. The advertisement must also state the name of the record owner instead of the listing owner.*
- *Amends the definition of "Taxpayer" in the property tax laws to clarify that when collecting delinquent taxes assessed on real property, "taxpayer" means owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after the delinquent date.*

The bill also amends Chapter 39 of the General Statutes by adding a new Article that codifies the practice of prorating property taxes on a calendar-year basis when the property is sold, unless the parties' contract states otherwise.

CURRENT LAW: Under North Carolina property tax laws, the date of January 1 applies to the following events:

- The date the value of real property is determined for tax purposes.
- The date property is listed in the name of the owner on that date.
- The date a tax lien attaches to the real property.

The owner of the property as of January 1 generally receives a property tax bill in July or August for property taxes owing on the property for the fiscal year that runs from July 1 of the year the property is required to be listed to the following June 30. Taxes become due and payable on September 1, and are payable at face amount if paid before January 6 following the due date. Taxes are delinquent if paid on or after January 6 following the due date and are

subject to interest charges.[1] For example, if a taxpayer lists his or her property on January 1, 2006, then taxes on the property become due on September 1, 2006, for the fiscal year beginning July 1, 2006, and ending June 30, 2007. Taxes on the property are delinquent beginning January 6, 2007.[2]

In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. After the governing body orders the tax collector to advertise tax liens, the tax collector must send a notice to the record owner of each affected parcel as determined as of December 31 of the fiscal year for which taxes are due. If the property was transferred during the one year period beginning on the listing date preceding the fiscal year in which the taxes become due, then the notice of tax lien on the property must be sent to each listing owner and record owner of the parcel as determined as of December 31 of the fiscal year for which taxes are due. The notice must inform the owners that their names will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. If the listing owner transferred the property after the listing date, the advertisement will state the record owner's name followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner.

In addition to the remedy of foreclosing on the real property, the taxing unit may also attach and garnish the wages and other compensation, rents, bank deposits, and other intangible personal property of the listing owner of the property. Attachment and garnishment may only be enforced against the listing owner because the pertinent statutes provide that the remedy may be enforced against the taxpayer. Taxpayer is defined in G.S. 105-273(17) as the person whose property is subject to property tax by a county or municipality and any person who has a duty to list property for taxation.

BILL ANALYSIS: Senate Bill 1451 is an attempt to solve the following problems:

- Seller conveys real property to Buyer on July 8, 2006. After the transfer, Buyer petitions for annexation to the city. On October 2006, seller receives a bill due September 1, 2006 for the partial year annexation. If Seller does not pay this before January 6, 2007, the tax collector can garnish Seller's bank account, because Seller was the owner of the property on the listing date. (January 1 immediately preceding the beginning of the fiscal year to which the annexation becomes effective) G.S. 160A-58.10.
- Seller conveys real property to Buyer in May, 2006. The closing attorney prorates the taxes giving Buyer credit for the months Seller owned the property and directs Buyer to pay the taxes. Buyer does not pay the taxes by January 6, 2007. Seller disregards the notice of delinquent taxes because he had his share of the taxes deducted from his net

[1] For the period January 6 to February 1, interest rate accrues at 2%. For the period February 1 until the principal amount of taxes, the accrued interest, and any penalties are paid, interest accrues at the rate of ¾% a month or fraction thereof.
[2] When real property is acquired after January 1, but prior to July 1, and the property was not subject to taxation on January 1 on account of its exempt status, it is listed for tax by the transferee as of the date of acquisition and is appraised at its true value as of January 1 preceding the date of acquisition. The property is taxed for the fiscal year of the taxing unit beginning on July 1 of the year in which it is acquired.

proceeds at closing and Seller believes his share of taxes was paid at closing. The tax collector has the authority to garnish the wages of Seller.

The bill amends the definition of "Taxpayer" in the property tax laws so that for purposes of collecting delinquent property taxes assessed on real property, the remedies against personal property may only be enforced against the record owner of the real property on the date the taxes become delinquent and against any subsequent record owner of the real property if conveyed after the delinquent date. This means that the tax collector would have the authority to garnish the wages, bank account, or other intangible property of the owner of the property at the time the taxes on that property become delinquent and any subsequent record owner instead of the listing owner of the property.

The bill provides that the notice of the tax lien would be sent to the record owner of the real property as of the date the taxes became delinquent instead of the listing owner. The advertisement of the tax lien would not set out the name of the listing owner, unless the listing owner and owner of record on the delinquent date is the same person.

The bill also codifies the practice of prorating property taxes between the seller and buyer of real property on a calendar-year basis, unless the contract states otherwise.

EFFECTIVE DATE: The bill is effective for taxes imposed for taxable years beginning on or after July 1, 2006, except that section 5 becomes effective for contracts entered into on or after October 1, 2006.

S1451e1-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1451 (First Edition)

SHORT TITLE: Amend Delinquent Property Tax Collection.

SPONSOR(S): Senator Hartsell

FISCAL IMPACT

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

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

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments

EFFECTIVE DATE: Section 5 of this act becomes effective for contracts entered into on or after October 1, 2006. The remainder of this act is effective upon ratification and applies to tax years beginning on or after July 1, 2006.

BILL SUMMARY:

This bill makes the following changes to the property tax laws to relieve the seller of personal liability for property taxes assessed on real property when the seller transfers the property before the taxes become delinquent or when the seller transfers the property before it is annexed by the taxing unit and taxes are imposed by the taxing unit:

- Authorizes the tax collector to enforce the remedy of attachment and garnishment against the record owner of real property as of the date the taxes on the real property become delinquent instead of the listing owner of the real property.
- Requires the tax collector to send the notice of a tax lien on real property to the record owner of the property as determined as of the date property taxes become delinquent and to any subsequent record owner instead of the listing owner of the property. The advertisement must also state the names of the record owner and any subsequent owner instead of the listing owner.
- Amends the definition of "Taxpayer" in the property tax laws to clarify that when collecting delinquent taxes assessed on real property, "taxpayer" means owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after the delinquent date.

- Amends Chapter 39 of the General Statutes by adding a new Article that codifies the practice of prorating property taxes on a calendar-year basis when the property is sold.

ASSUMPTIONS AND METHODOLOGY:
The bill corrects the problems that occur when an owner sells property after the listing date, and the property taxes later become delinquent under the new owner. Current law allows the tax assessor to use remedies of attachment and wage garnishment against the listing owner. This bill allows tax assessors to use these tax collection remedies against owner of record as opposed to the listing owner. The bill does not change the types of remedies available to assessors and is not projected to significantly impact revenue collection.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: June 6, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1526

Short Title:	Reidsville Deannexation.	(Local)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF REIDSVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Reidsville are reduced by removing the following described property:

Beginning at a point in the eastern right-of-way of McCoy Road (SR-2437, formerly Port McCoy Rd), said point being northeasterly approximately 0.1 mi. from the intersection of Pin Tail Drive (SR-2938) and McCoy Road, said point also being a corner between Dora D. Martin and The City of Reidsville (formerly Raymond C. Snipes), thence along their lines the following six calls, S 61 deg. 01 sec. 22 min. E 300.26 ft., S 28 deg. 58 min. 38 sec. W 75.00 ft., S 46 deg. 31 min. 22 sec. E 93.87 ft., S 18 deg. 25 min. 05 sec. W 39.44 ft., S 42 deg. 22 min. 25 sec. E 385.78 ft. and S 04 deg.39 min. 31 sec. W 166.20 ft. to an iron, thence N 61 deg. 01 min. 22 sec. W 854.14 ft to an Iron in the eastern right-of-way of McCoy Road, thence with the eastern right-of-way of McCoy Road N 28 deg. 58 min. 38 sec. E 400.00 ft. to the point of beginning and Being that 5.51 ac.+/- parcel as shown on a survey as prepared by Southern Mapping and Engineering Company dated March, 1973 and recorded with an Order of Confirmation and Consent Judgment recorded in the Rockingham County Clerk of Court, File No. 73 SP65.

SECTION 2. This act is effective from and after April 13, 1994.

SENATE BILL 1526:
Reidsville Deannexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	Trina Griffin Committee Counsel
Version:	First Edition		

SUMMARY: Senate Bill 1526 de-annexes a 5.51 acre parcel from the corporate limits of the City of Reidsville. The act becomes effective from and after April 13, 1994.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: Senate Bill 1526 de-annexes a 5.51 acre parcel from the corporate limits of the City of Reidsville. The act is effective from and after April 13, 1994.

BACKGROUND: In the mid-1970's the City was acquiring property for the construction of Lake Reidsville and sought to acquire a 7.74 acre tract on the southwest side that was needed. Negotiations were unsuccessful and a condemnation action was initiated. A negotiated settlement was reached whereby the City acquired 2.23 acres, the amount that was needed for the high water mark of the proposed lake, with the owners retaining the 5.51 acre balance of the tract. The original engineering maps were never changed to reflect the court settlement. Historically, the tax records have shown that the entire tract was owned by the City of Reidsville.

In 1994, in a voluntary petitioned annexation, the City annexed all City-owned land around the lake for the purposes of law enforcement authority. The entire tract has been in the City without question since that time.

Recently, the widow of the owner made an inquiry to the County Tax Department, prompting research into the matter that revealed the flaws in the history of the property. The current owners now wish to make use of the 5.51 acre tract they retained and find that it is officially in the City Limits and subject to taxation accordingly. The owners do not want their property in the City and have requested that it be removed. The Reidsville City Council has passed a Resolution requesting that the subject property be removed from the corporate limits of the City. This legislation is requested to correct the erroneous annexation in 1994 of the 5.51 acre tract into the corporate limits of the City of Reidsville.

Judy Collier, Research Assistant, contributed significantly to this summary.

S1526e1-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1428
PROPOSED COMMITTEE SUBSTITUTE S1428-CSSVx-74 [v.1]

6/6/2006 8:07:49 PM

Short Title: Various Satellite Annexations/Referendum. (Local)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWNS OF BURGAW, CLAYTON, AND PRINCETON, AND TO ALLOW AN ADVISORY REFERENDUM IN THE TOWN OF CLAYTON.

The General Assembly of North Carolina enacts:

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

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

...

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

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

SECTION 2. The Clayton Town Council may, by resolution, direct the Johnston County Board of Elections to conduct prior to January 1, 2008, an advisory referendum on whether the Town should consider amending the manner by which

voters elect Council members. The referendum shall be conducted in accordance with Chapter 163 of the General Statutes. The form of the question to be presented on a ballot for such a referendum shall be:

"Should the Clayton Town Council consider amending the manner by which voters elect Council members by designating that some members are elected from voting districts to be drawn by the Town Council and other members are elected at large?

[ ] YES [ ] NO"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1428

Short Title:	Burgaw Satellite Annexations.	(Local)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

May 17, 2006

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

. . .

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

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

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

SENATE BILL 1428:
Various Satellite Annexations/Referendum

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Soles	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS for First Edition S1428-CSSVx-74		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1428 would exempt the towns of Burgaw, Clayton, and Princeton from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. It would also authorize an advisory referendum in the Town of Clayton on whether the Town should consider amending the manner by which voters elect Council members.***

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

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

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

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 1428 would permanently exempt the towns of Burgaw, Clayton, and Princeton from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily

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

exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities and towns (at least 51) from this 10% rule by local act.

The Proposed Committee Substitute would also authorize the Town of Clayton to conduct an advisory referendum on whether the Town should consider amending the manner by which voters elect Council members.

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

S1428e1-SMSV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1428

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

S1428-ALB-139 [v.1]

Date _____,2006

Comm. Sub. [NO]
Amends Title [YES]
S1428-CSSVx-74

Senator _____

moves to amend the bill on page 1, line 2-3, by deleting "THE TOWNS OF BURGAW, CLAYTON, AND PRINCETON", and substituting "VARIOUS MUNICIPALITIES"

further moves to amend the bill on page 1, line 20, by adding "Dobson," immediately after "Dallas,", and on line 25, by adding "Yadkinville," immediately after "Windsor,"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1372

Short Title:	Property Tax Due Date Change.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Finance.	

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY COLLECT PROPERTY TAXES FOR CERTAIN NEWLY ANNEXED PROPERTY OVER A THREE-YEAR PERIOD AND DELAY THE ACCRUAL OF INTEREST ACCORDINGLY.

The General Assembly of North Carolina enacts:

SECTION 1. A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the due date and accrual of interest, G.S. 105-380 and G.S. 105-381 regarding the release, refund, and compromise of taxes, and G.S. 160A-58.10 regarding the taxation of newly annexed property, property taxes for the partial fiscal year October 1, 2005, through June 30, 2006, shall be collected over a three-year period with one-third due and payable on September 1, 2006, one-third due and payable on September 1, 2007, and the remaining one-third due and payable on September 1, 2008. The resolution may provide that interest accrues on unpaid property taxes only to the extent that the property taxes have become due and payable under the payment schedule set out in the resolution. To the extent property taxes are due and payable pursuant to a resolution adopted under this act, interest accruing on taxes that remain unpaid shall be computed according to the schedule stated in G.S. 105-360. A resolution adopted pursuant to this act applies only to taxes for the partial fiscal year October 1, 2005, through June 30, 2006, on property located in an area that was annexed between January 1, 2003, and January 1, 2006, and for which effective date of the annexation was set by judicial order.

SECTION 2. If a resolution adopted by a taxing unit's governing body pursuant to this act delays the due date, accrual of interest, or both for any property taxes, the tax collector's obligations under G.S. 160A-58.10 and G.S. 105-360 with respect to those taxes are delayed to the same extent.

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

SENATE BILL 1372:
Property Tax Due Date Change

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Rand	**Summary by:**	Trina Griffin Committee Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 1372 authorizes a taxing unit to pass a resolution allowing property taxes for certain newly annexed property to be collected over a three-year period. It would apply only to taxes for the partial fiscal year of October 1, 2005 through June 30, 2006 on property located in an area that was annexed between January 1, 2003 and January 1, 2006 and for which effective date of the annexation was set by judicial order.***

CURRENT LAW: G.S. 160A-58.10 provides for the taxation of newly annexed territory. If an annexation becomes effective after September 1 and before the following July 1, the prorated taxes shall be due and payable on the first day of September of the next succeeding fiscal year. Taxes are billable for all full calendar months remaining in the fiscal year on the effective date of annexation.

BILL ANALYSIS: This bill would give property owners in the 27-square miles of territory annexed to the City of Fayetteville last year, three years to pay taxes owed from October 1, 2005 through June 30, 2006. One-third would be due and payable on September 1, 2006, one-third would be due and payable on September 1, 2007, and the remaining one-third would be due and payable on September 1, 2008. Otherwise, those nine months of property taxes would be due with the regular annual tax bill mailed in August, and the affected landowners would owe 21 months of property taxes at once.

This act is a Statewide act rather than a local one because it must be Statewide to avoid conflicting with the prohibition in the North Carolina constitution on certain local acts. Article II, Section 24(1)(k) of the State Constitution prohibits local acts that extend the time for collecting taxes or otherwise relieve a tax collector from the performance of his duty. Although the act is nominally Statewide, it applies only to Cumberland County because it applies only to taxes for property located in an area that was annexed between January 1, 2003 and January 1, 2006, and for which the effective date of the annexation was set by judicial order. The annexation to the City of Fayetteville became effective, by judicial order, on September 30, 2005.

EFFECTIVE DATE: This act would be effective when it becomes law.

BACKGROUND: In November 2003, the Fayetteville City Council approved a plan, over the objection of many residents, to annex over 40,000 residents and 27 square miles to the City of Fayetteville. The annexation was to become effective June 30, 2004. Residents of the Gates Four community filed the only timely challenge to the annexation. In March 2004, the city and the Gates Four Homeowners Association agreed to work toward a settlement, which was approved by a superior court judge in May 2004. Three other lawsuits were also filed. On June 29, 2004, the North Carolina Court of Appeals issued a stay delaying the annexation, but lifted the order a few days later. Based on the rulings of the Superior Court and the Court of Appeals, Fayetteville annexed the area and began providing services. Shortly thereafter, the North Carolina Supreme Court issued a stay. After a year of litigation, the North Carolina Supreme Court ultimately sided with the city, and after the United States Supreme Court declined to hear the case, the annexation became effective, by judicial order, on September 30, 2005.

S1372e1-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1372

Short Title:	Property Tax Due Date Change.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Finance.	

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY COLLECT PROPERTY TAXES FOR CERTAIN NEWLY ANNEXED PROPERTY OVER A THREE-YEAR PERIOD AND DELAY THE ACCRUAL OF INTEREST ACCORDINGLY.

The General Assembly of North Carolina enacts:

SECTION 1. A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the due date and accrual of interest, G.S. 105-380 and G.S. 105-381 regarding the release, refund, and compromise of taxes, and G.S. 160A-58.10 regarding the taxation of newly annexed property, property taxes for the partial fiscal year October 1, 2005, through June 30, 2006, shall be collected over a three-year period with one-third due and payable on September 1, 2006, one-third due and payable on September 1, 2007, and the remaining one-third due and payable on September 1, 2008. The resolution may provide that interest accrues on unpaid property taxes only to the extent that the property taxes have become due and payable under the payment schedule set out in the resolution. To the extent property taxes are due and payable pursuant to a resolution adopted under this act, interest accruing on taxes that remain unpaid shall be computed according to the schedule stated in G.S. 105-360. A resolution adopted pursuant to this act applies only to taxes for the partial fiscal year October 1, 2005, through June 30, 2006, on property located in an area that was annexed between January 1, 2003, and January 1, 2006, and for which effective date of the annexation was set by judicial order.

SECTION 2. If a resolution adopted by a taxing unit's governing body pursuant to this act delays the due date, accrual of interest, or both for any property taxes, the tax collector's obligations under G.S. 160A-58.10 and G.S. 105-360 with respect to those taxes are delayed to the same extent.

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

SENATE BILL 1372:
Property Tax Due Date Change

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Rand	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1372 authorizes a taxing unit to pass a resolution allowing property taxes for certain newly annexed property to be collected over a three-year period. It would apply only to taxes for the partial fiscal year of October 1, 2005 through June 30, 2006 on property located in an area that was annexed between January 1, 2003 and January 1, 2006 and for which effective date of the annexation was set by judicial order.***

CURRENT LAW: G.S. 160A-58.10 provides for the taxation of newly annexed territory. If an annexation becomes effective after September 1 and before the following July 1, the prorated taxes shall be due and payable on the first day of September of the next succeeding fiscal year. Taxes are billable for all full calendar months remaining in the fiscal year on the effective date of annexation.

BILL ANALYSIS: This bill would give property owners in the 27-square miles of territory annexed to the City of Fayetteville last year, three years to pay taxes owed from October 1, 2005 through June 30, 2006. One-third would be due and payable on September 1, 2006, one-third would be due and payable on September 1, 2007, and the remaining one-third would be due and payable on September 1, 2008. Otherwise, those nine months of property taxes would be due with the regular annual tax bill mailed in August, and the affected landowners would owe 21 months of property taxes at once.

This act is a Statewide act rather than a local one because it must be Statewide to avoid conflicting with the prohibition in the North Carolina constitution on certain local acts. Article II, Section 24(1)(k) of the State Constitution prohibits local acts that extend the time for collecting taxes or otherwise relieve a tax collector from the performance of his duty. Although the act is nominally Statewide, it applies only to Cumberland County because it applies only to taxes for property located in an area that was annexed between January 1, 2003 and January 1, 2006, and for which the effective date of the annexation was set by judicial order. The annexation to the City of Fayetteville became effective, by judicial order, on September 30, 2005.

EFFECTIVE DATE: This act would be effective when it becomes law.

BACKGROUND: In November 2003, the Fayetteville City Council approved a plan, over the objection of many residents, to annex over 40,000 residents and 27 square miles to the City of Fayetteville. The annexation was to become effective June 30, 2004. Residents of the Gates Four community filed the only timely challenge to the annexation. In March 2004, the city and the Gates Four Homeowners Association agreed to work toward a settlement, which was approved by a superior court judge in May 2004. Three other lawsuits were also filed. On June 29, 2004, the North Carolina Court of Appeals issued a stay delaying the annexation, but lifted the order a few days later. Based on the rulings of the Superior Court and the Court of Appeals, Fayetteville annexed the area and began providing services. Shortly thereafter, the North Carolina Supreme Court issued a stay. After a year of litigation, the North Carolina Supreme Court ultimately sided with the city, and after the United States Supreme Court declined to hear the case, the annexation became effective, by judicial order, on September 30, 2005.

S1372e1-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1372 (First Edition)

SHORT TITLE: Property Tax Due Date Change.

SPONSOR(S): Senator Rand

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
City of Fayetteville	($4.2)	$2.1	$2.1	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Fayetteville

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

The bill allows a governing unit to collect property taxes for certain newly annexed property over a three-year period and delay the accrual of interest accordingly. The bill applies to taxes due for the partial fiscal year from October 1, 2005, through June 30, 2006, on property located in an area that was annexed between January 1, 2003, and January 1, 2006, and for which the effective date of the annexation was set by judicial order.

ASSUMPTIONS AND METHODOLOGY:

This bill would give property owners in the 27-square miles of territory annexed to the City of Fayetteville last year, three years to pay taxes owed from October 1, 2005 through June 30, 2006. One-third would be due and payable on September 1, 2006, one-third would be due and payable on September 1, 2007, and the remaining one-third would be due and payable on September 1, 2008. Otherwise, those nine months of property taxes would be due with the regular annual tax bill mailed in August, and the affected landowners would owe 21 months of property taxes at once.

According to the City of Fayetteville, the prorated property tax due for the annexed area amounts to approximately $6.5 million. The bill spreads this revenue over three years. This results in a revenue loss of $4.2 million in FY 2006-07, which is recovered in the following two years.

SOURCES OF DATA: City of Fayetteville

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division



DATE: June 7, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1915*
PROPOSED SENATE COMMITTEE SUBSTITUTE H1915-PCS50730-RB-49

Short Title: SSTA Sales Tax Defn/Sales Tax Payments. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE STREAMLINED SALES TAX DEFINITIONS CONCERNING TELECOMMUNICATIONS, TO SIMPLIFY THE TAX PAYMENT REQUIREMENTS FOR SEMIMONTHLY TAXPAYERS, AND TO TREAT TANGIBLE PERSONAL PROPERTY USED IN MODULAR HOMES THE SAME AS TANGIBLE PERSONAL PROPERTY USED IN OTHER HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by amending or adding the following definitions to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(01) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

...

(27) Prepaid telephone calling service. – Prepaid wireline calling service or prepaid wireless calling service.

(27a) Prepaid wireline calling service. – A right that meets all of the following requirements:

a. Authorizes the exclusive purchase of wireline telecommunications service.

b. Must be paid for in advance.

c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

(27b) Prepaid wireless calling service. – A right that meets all of the following requirements:
a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
b. Must be paid for in advance.
c. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement ~~adopted November 12, 2002,~~ as amended ~~on November 19, 2003, November 16, 2004, and April 16, 2005.~~ in November 2005.

...

(48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among ~~points, by or through any electronic, radio, satellite, optical, microwave, or other medium, regardless of the protocol used for the transmission, conveyance, or routing. The term includes mobile telecommunications service and vertical services. Vertical services are switch-based services offered in connection with a telecommunications service, such as call forwarding services, caller ID services, and three-way calling services.~~ points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:
a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a customer whose primary purpose for using the service is to obtain the processed data or information.
b. The sale, installation, maintenance, or repair of tangible personal property.
c. Directory advertising and other advertising.
d. Billing and collection services provided to a third party.
e. Internet access service.

f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.

g. Ancillary service.

h. A digital product delivered electronically, including software, music, a ring tone, video, and reading material."

SECTION 2. G.S. 105-164.4(a)(4c) and (4d) read as rewritten:

"**§ 105-164.4. Tax imposed on retailers.**

(a) **(Effective for sales made before July 1, 2007)** A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4 1/2%).

(4c) The combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary service. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. ~~Telecommunications service is~~ These services are taxed in accordance with G.S. 105-164.4C.

(4d) The sale or recharge of prepaid telephone calling service is taxable at the general rate of tax. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service."

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

"**§ 105-164.4B. Sourcing principles.**

(a) General Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product.

(1) Over-the-counter. – When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.

(2) Delivery to specified address. – When a purchaser receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser receives the product.

(3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this subdivision that is known to the seller:

a. The business or home address of the purchaser.

b. The billing address of the purchaser or, if the product is ~~a~~ prepaid ~~telephone~~ wireless calling ~~service that authorizes the purchase of mobile telecommunications~~ service, the location associated with the mobile telephone number.

c. The address from which tangible personal property was shipped or from which a service was provided."

SECTION 4. G.S. 105-164.4C reads as rewritten:

"**§ 105-164.4C. ~~Tax on telecommunications.~~Telecommunications service and ancillary service.**

(a) General. – The gross receipts derived from providing telecommunications service or ancillary service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services.

(a1) General Sourcing Principles. – The following general sourcing principles apply to telecommunications services. If a service falls within one of the exceptions set out in subsection (a2) of this section, the service is sourced in accordance with the exception instead of the general principle.

(1) Flat rate. – A telecommunications service that is not sold on a call-by-call basis is sourced to this State if the place of primary use is in this State.

(2) General call-by-call. – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to this State in the following circumstances:

a. The call both originates and terminates in this State.

b. The call either originates or terminates in this State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in this State. This applies regardless of where the call is billed or paid.

(3) Postpaid. – A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

(a2) Sourcing Exceptions. – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

(1) Mobile. – Mobile telecommunications service is sourced to the place of primary use, unless the service is ~~authorized by a~~ prepaid ~~telephone~~ wireless calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft

and enables a telephone call to be made from the aircraft. The sourcing principle in this subdivision applies to a service provided as an adjunct to mobile telecommunications service if the charge for the service is included within the term "charges for mobile telecommunications services" under the federal Mobile Telecommunications Sourcing Act.

(2) Prepaid. – Prepaid telephone calling service is sourced in accordance with G.S. 105-164.4B.

(3) Private. – Private telecommunications service is sourced in accordance with subsection (e) of this section.

~~(b) Included in Gross Receipts. – Gross receipts derived from telecommunications service include the following:~~

~~(1) Receipts from flat rate service, service provided on a call-by-call basis, mobile telecommunications service, and private telecommunications service.~~

~~(2) Charges for directory assistance, directory listing that is not yellow page classified listing, call forwarding, call waiting, three-way calling, caller ID, voice mail, and other similar services.~~

~~(3) Customer access line charges billed to subscribers for access to the intrastate or interstate interexchange network.~~

~~(4) Charges billed to a pay telephone provider who uses the telecommunications service to provide pay telephone service.~~

~~(c) Excluded From Gross Receipts. – Gross receipts derived from telecommunications service do not include any of the following:~~

~~(1) Charges for telecommunications services that are a component part of or are integrated into a telecommunications service that is resold. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).~~

~~(2) Telecommunications services that are resold as part of a prepaid telephone calling service.~~

~~(3) 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.~~

~~(4) Allowable surcharges imposed to recoup assessments for the Universal Service Fund.~~

~~(5) Receipts of a pay telephone provider from the sale of pay telephone service.~~

~~(6) Charges for commercial, cable, mobile, broadcast, or satellite video or audio service unless the service provides two-way communication,~~

~~other than the customer's interactive communication in connection with the customer's selection or use of the video or audio service.~~

~~(7) Paging service, unless the service provides two-way communication.~~

~~(8) Charges for telephone service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.~~

~~(9) Receipts from the sale, installation, maintenance, or repair of tangible personal property.~~

~~(10) Directory advertising and yellow-page classified listings.~~

(11) Repealed by Session Laws 2005-276, s. 33.7, effective October 1, 2005.

~~(12) Information services. An information service is a service that can generate, acquire, store, transform, process, retrieve, use, or make available information through a communications service. Examples of an information service include an electronic publishing service and a web hosting service.~~

~~(13) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line services.~~

~~(14) Billing and collection services.~~

~~(15) Charges for bad checks or late payments.~~

~~(16) Charges to a State agency or to a local unit of government for the North Carolina Information Highway and other data networks owned or leased by the State or unit of local government.~~

(d) Bundled Services. – When a taxable telecommunications service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

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

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

(e) Private Line. – The gross receipts derived from private telecommunications service are sourced as follows:

(1) If all the customer's channel termination points are located in this State, the service is sourced to this State.

(2) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.

(3) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:

a. A charge for a channel segment between two channel termination points located in this State is sourced to this State.

b. Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.

(4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.

(f) Call Center Cap. The gross receipts tax on telecommunications service that originates outside this State, terminates in this State, and is provided to a call center that has a direct pay permit issued by the Department under G.S. 105-164.27A may not exceed fifty thousand dollars ($50,000) a calendar year. This cap applies separately to each legal entity.

(g) Credit. – A taxpayer who pays a tax legally imposed by another state on a telecommunications service taxable under this section is allowed a credit against the tax imposed in this section.

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

(01) Ancillary service. – Defined in G.S. 105-164.3.

(1) Call-by-call basis. – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.

(2) Call center. – Defined in G.S. 105-164.27A.

(3) Mobile telecommunications service. – Defined in G.S. 105-164.3.

(4) Place of primary use. – Defined in G.S. 105-164.3.

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the

requirements of a prepaid wireline telephone calling service, except the exclusive use requirement.

(6) Prepaid telephone calling service. – Defined in G.S. 105-164.3.

(7) Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.

(8) Telecommunications service. – Defined in G.S. 105-164.3."

SECTION 5. G.S. 105-164.13 is amended by adding the following subdivision to read:

"(54) The following telecommunications services and charges:

a. Telecommunications service that is a component part of or is integrated into a telecommunications service that is resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).

b. Pay telephone service.

c. 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.

d. Charges for telecommunications service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.

e. Telecommunications service purchased by a State agency or a unit of local government for the North Carolina Information Highway or another data network owned or leased by the State or unit of local government."

SECTION 6. G.S. 105-164.14(b) and (c) read as rewritten:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity included in the following list is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than ~~electricity and telecommunications~~ electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit entity:

(1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes.

(2) Educational institutions not operated for profit.

(3) Churches, orphanages, and other charitable or religious institutions and organizations not operated for profit.

(4) Qualified retirement facilities whose property is excluded from property tax under G.S. 105-278.6A.

Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity.

A hospital that is not allowed a refund under this subsection of sales and use taxes paid on its direct purchases of tangible personal property is allowed a semiannual refund of sales and use taxes paid by it on medicines and drugs purchased for use in carrying out its work.

The refunds allowed under this subsection for certain nonprofit entities and for medicines and drugs purchased by hospitals do not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c).

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than ~~electricity and telecommunications~~ electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year. The Secretary shall make an annual report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly by March 1 of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of this subsection over the preceding year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.
(2b) (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.
(3) A metropolitan sewerage district or a metropolitan water district in this State.
(4) A water and sewer authority created under Chapter 162A of the General Statutes.
(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
(6) A sanitary district.
(7) A regional solid waste management authority created pursuant to G.S. 153A-421.
(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.
(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
(18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Health Care System.
(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

SECTION 7. G.S. 105-164.27A(b) reads as rewritten:

"(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service and ancillary service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases ~~telecommunications service~~ these services under a direct pay permit must file a return and pay the tax due monthly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service and ancillary service.

A call center that purchases telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service and ancillary service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming."

SECTION 8. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is eighteen and three one-hundredths percent (18.03%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars ($2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section."

SECTION 9. G.S. 105-164.16 reads as rewritten:

"**§ 105-164.16. Returns and payment of taxes.**

(a) General. – Sales and use taxes are payable ~~quarterly, monthly, or semimonthly as specified in this section.~~ when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property that was purchased or received during the reporting period and is subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required

information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars ($100.00) a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(b1) Monthly. – A taxpayer who is consistently liable for more than one hundred dollars ($100.00) ~~but less than ten thousand dollars ($10,000)~~ a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(b2) ~~Semimonthly.~~ Prepayment. – A taxpayer who is consistently liable for at least ten thousand dollars ($10,000) a month in State and local sales and use taxes must ~~pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month.~~

~~A return covers both semimonthly payment periods. The return is due by the 20th day of the month following the month of the payment periods covered by the return. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least ninety-five percent (95%) of the lesser of the following and includes the underpayment with the monthly return for those semimonthly payment periods:~~

~~(1) The amount due for each semimonthly payment period.~~

~~(2) The average semimonthly payment for the prior calendar year.~~

make a monthly prepayment of the next month's tax liability. The prepayment is due on the date a monthly return is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:

(1) The amount of tax due for the current month.

(2) The amount of tax due for the same month in the preceding year.

(3) The average monthly amount of tax due in the preceding calendar year.

(b3) Category. – The Secretary must monitor the amount of State and local sales and use taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns ~~in accordance with the appropriate schedule.~~ as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's ~~direction until notified in writing to file and pay under a different schedule.~~direction.

(c) Repealed by Session Laws 2001-427, s. 6(a), effective January 1, 2002, and applicable to taxes levied on or after that date.

(d) **(Effective for taxable years ending before January 1, 2010)** Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases tangible personal property outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.

(d) **(Effective for taxable years beginning on or after January 1, 2010)** Use Tax on Out-of-State Purchases. – Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose shall file a use tax return on an annual basis. The annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

SECTION 10. G.S. 105-113(b) reads as rewritten:

"(b) Report and Payment. – The tax imposed by this section is payable ~~quarterly, semimonthly,~~ quarterly or monthly as specified in this subsection. A return is due quarterly.

A water company or public sewerage company must pay tax quarterly when filing a return. An electric power company must pay tax in accordance with the schedule ~~that applies to its~~ and requirements that apply to payments of sales and use tax under G.S. 105-164.16 and must file a return quarterly. ~~An electric power company is not subject to interest on or penalties for an underpayment for a semimonthly or monthly payment period if the electric power company timely pays at least ninety-five percent (95%) of the amount due for each semimonthly or monthly payment period and includes the underpayment with the quarterly return for those semimonthly or monthly payment periods.~~

A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return. A taxpayer must submit a return on a form provided by the Secretary. The return must include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section. A taxpayer must report its gross receipts on an accrual basis. A return must contain the following information:

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a)."

SECTION 11. G.S. 105-164.4(a)(8) reads as rewritten:

"(8) The rate of two and one-half percent (2.5%) applies to the sales price of each modular home ~~sold,~~sold at retail, including all accessories attached to the modular home when it is delivered to the purchaser. ~~For the purposes of this subdivision, the retail sale is deemed to be the~~The sale of a modular home to a modular ~~homebuilder.~~homebuilder is considered a retail sale. A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home."

SECTION 12. G.S. 105-164.42H(a)(3) is repealed.

SECTION 13. G.S. 105-187.43 reads as rewritten:

"**§ 105-187.43. Payment of the tax.**

(a) Payment. – The tax imposed by this Article is payable ~~semimonthly in accordance with the schedule set in G.S. 105-164.16 for semimonthly payments of sales and use taxes.~~ monthly. A monthly payment is due by the 20th day of the month following the calendar month in which liability for the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) ~~Small Underpayments. A person is not subject to interest on or penalties for an underpayment of a semimonthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.~~ Prepayment. – A taxpayer who is consistently liable for at least ten thousand dollars ($10,000) of tax a month must make a monthly prepayment of the next month's tax liability. This requirement applies when the taxpayer meets the threshold and the Secretary notifies the taxpayer to make prepayments. A prepayment is due on the date a monthly payment is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:

(1) The amount of tax due for the current month.

(2) The amount of tax due for the same month in the preceding year.

(3) The average monthly amount of tax due in the preceding calendar year.

(c) Return. – A return is due quarterly. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return."

SECTION 14. Section 12 becomes effective June 1, 2006. Section 11 becomes effective July 1, 2006, and applies to purchases made on or after that date. Sections 9 through 10 and Section 13 of this act become effective October 1, 2007. The remainder of this act becomes effective January 1, 2007.

HOUSE BILL 1915:
SSTA Sales Tax Defn/Sales Tax Payments

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Rep. Hill	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to First Edition H1915-CSRB		

SUMMARY: House Bill 1915 is a recommendation of the Revenue Laws Study Committee. Its Senate companion bill, Senate Bill 1510, introduced by Sen. Kerr, is also in Senate Finance. House Bill 1915 does two things:

- ***It modifies the definitions used in the sales and use tax law that apply to telecommunications to conform to the definitions adopted in the Streamlined Sales Tax Agreement. This part of the bill becomes effective January 1, 2007.***
- ***It replaces the semimonthly payment sales tax schedule with a single monthly payment and a prepayment of the next month's liability due on the same day as the monthly payment. This part of the bill would become effective October 1, 2007.***

The proposed Senate committee substitute adds two provisions to the bill. Section 11 incorporates the provisions of Senate Bill 1966. It treats tangible personal property used in modular homes the same as tangible personal property used in other homes. It also adds Section 12 at the request of the Department of Revenue. It repeals the requirement that a certified automated system must be able to determine whether an exemption certificate offered by a purchaser is a valid certificate based upon a State registry because the Streamlined Sales Tax Agreement does not require this determination.

STREAMLINED SALES TAX CHANGES: Sections 1 through 8 of the bill modify the definitions used in the sales and use tax law that apply to telecommunications services. The changes are made to adopt the definitions in the Streamlined Sales Tax Agreement. These changes become effective January 1, 2007.

Section 1 makes the following changes in G.S. 105-164.3, the definitional section of the sales and use tax laws:

- Adds a definition of the term "ancillary service" in new (01) because the definitions in the Streamlined Sales Tax Agreement separate ancillary services from telecommunications services. Current North Carolina law considers ancillary services to be part of telecommunications services. All of the ancillary services are currently taxed and will continue to be taxed.
- Modifies the definition of "prepaid telephone calling service" in (27) to include the newly defined terms for "prepaid wireless calling service" and prepaid wireline calling service." Current law does not distinguish between prepaid wireline and prepaid wireless. The definition of prepaid wireless was added to recognize that prepaid wireless includes whatever services can be obtained with the same card used to obtain wireless telecommunications service. Prepaid cards are taxed at the point of sale rather than as telecommunications when the minutes are used. Some services that are not within the definition of telecommunications service can be purchased with the card that authorizes prepaid wireless use. The current definition of prepaid telephone calling service has an exclusive use requirement that conflicts with the practice for prepaid wireless.

- Converts the current definition of prepaid telephone calling service into the definition of "prepaid wireline calling service" in new 27(a). This is a technical change for prepaid wireline with no change in meaning.
- Adds a definition for "prepaid wireless calling service" in new (27b). This does not have an exclusive use requirement, in contrast to prepaid wireline.
- Updates the definition for "Streamlined Agreement" in (45a) to include the latest (January 13, 2006) amendments.
- Conforms the definition of "telecommunications service" in (48) to the Streamlined definition and incorporates into the definition the appropriate inclusions and exclusions that are now in G.S. 105-164.4C(b) and (c). (See also the new exemptions in G.S. 105-164.13(54) in Section 5.) As changed, the definition is the same as current law with two exceptions. The first is Universal Service Fund surcharges. These surcharges are part of the sales price and will be subject to tax. The second is paging service. Universal Service Fund surcharges cannot be "carved out" and remain as is because there is no Streamlined "carve out" in sales price or telecommunications service for this. Paging service could be carved out because there is a Streamlined definition for this, but this bill does not include that carve out. The subparts of new (48) match up with current law as follows:

Subpart in (48)	Location in Current Law
a. (info service)	105-164.4C(c)(12) and (13)
b. (sale, etc. of tpp)	105-164.4C(c)(9)
c. (advertising)	105-164.4C(c)(10)
d. (billing)	105-164.4C(c)(14)
e. (Internet)	105-164.4C(c)(13)
f. (cable and radio)	105-164.4C(c)(6)
g. (ancillary)	105-164.4C(b)(2)
h. (digital)	No specific exclusion but not taxed now.

Section 2 changes the tax imposition statute to add the now-separate category of "ancillary service" and to include non-telecommunications services that are sold as part of a prepaid wireless calling service.

Section 3 makes a conforming change to the sourcing statute to apply the new definition of prepaid wireless call service.

Section 4 makes conforming changes to the separate statute on telecommunications to include ancillary service and to apply the new definition of prepaid wireless calling service. The items that were in subsections (b) and (c) are now either part of the definition of telecommunications or are exempt in Section 5.

Section 5 moves to the exemption statute the items that were formerly excluded from the definition of telecommunications and are not intended to be taxed. The items in new (54) were all in G.S. 105-164.4C(c).

Sections 6 through 8 add the now separate category of "ancillary service" in the exemption statute (G.S. 105-164.14), in the direct pay permit statute (G.S. 105-164.27A), and in the local distribution statute (G.S. 105-164.44F).

Section 12 of the bill repeals the requirement that a certified automated system must be able to determine whether an exemption certificate offered by a purchaser is a valid certificate based upon a State registry because the Streamlined Sales Tax Agreement does not require this determination. The section becomes effective June 1, 2006, because the first certification of an automated system under the SSTA occurred around that date. Under the SSTA, a seller may collect and remit the sales and use tax due a state through either a certified service provider or it may do it itself through the use of a certified automated system. A certified automated system is a software program certified by the Secretary of Revenue as being able to correctly determine the applicable State and local sales tax rate. G.S. 105-164.44H(a) lists the specific requirements a certified automated system must meet to be certified. This section removes one of the requirements because it is not a requirement under the Agreement.

SALES TAX ON MODULAR HOMES: Current law states that the retail sale of a modular home is the sale of the home to a modular homebuilder. It assumes that a manufacturer will sell to a modular homebuilder who will then enter into a performance contract with a customer to construct the home. This assumption does not cover the circumstance in which the manufacturer sells directly to the customer who will occupy the home.

Section 13 of the bill addresses two issues. First, it clarifies the law concerning a retail sale of a modular home by including within the scope of a retail sale all sales to the customer who will occupy the home. It does this by removing the current limitation that defines a retail sale as a sale to a modular homebuilder. Second, it allows a credit for sales and use tax paid on materials used in the home. G.S. 105-164.6 allows a credit against this State's sales tax for any sales or use tax paid in another state on the same item. This provision does not apply, however, to taxes paid in another state on materials that are included in a modular home that is taxed when it is sold to a modular homebuilder because the sale of the home is a different sale than the sale of the item. This section allows credit for sales tax paid on the items that are included in the home.

This part of the bill becomes effective July 1, 2006, and applies to purchases made on or after that date.

SIMPLIFY SEMI-MONTHLY SALES TAX PAYMENTS: Taxpayers that are liable for at least $10,000 a month in sales tax, electric utility tax, or piped gas excise tax must pay tax twice a month. For these taxpayers, the month is split into two periods – the first day of the month through the 15th of the month, and the 16th of the month through the end of the month. The tax payment for the 1st through 15th period is due by the 25th of the same month and the tax payment for the 16th through the end of the month is due by the 10th day of the following month. Taxpayers therefore have 10 days after the end of a semimonthly period to make a payment.

In addition to the payments, these taxpayers also file a return. The sales tax return is due monthly by the 20th and the electric utility and piped gas returns are due quarterly by the end of the month after the close of the quarter.

Several large retailers in the Streamlined Sales Tax project asked North Carolina to look at its payment schedule to determine if it could require payments to be made only once a month. North Carolina is one of only a few states that require payments twice a month.

Sections 9, 10, and 13 of the bill replace the semimonthly payment schedule with a single monthly payment and a prepayment of the next month's liability due on the same day as the monthly payment. The result is that taxpayers would have more time to gather data before filing a return and make payments on only one day of the month. Under the bill, the State receives the payment that would otherwise be due on the 25th in the form of a prepayment made on the 20th and it also receives some of the revenue it would have received on the 10th of the following month in the form of the prepayment

made on the 20th. The State will experience a slight one-time increase in revenue in the first month that the prepayment schedule takes effect.

The prepayment must equal at least 65% of one of three thresholds:

- The current month's liability.
- The liability for the same month the preceding year.
- The average monthly liability for the past calendar year.

These thresholds are easily determined and eliminate the need for the taxpayer to calculate actual liability for periods of less than a month. The 65% threshold was chosen because it was suggested by the retailers who requested North Carolina to review its law and the prepayment date is about 2/3 of the time in a month. A similar method and threshold are already in place in Florida and Arkansas. Florida sets the prepayment threshold at 60% and Arkansas sets it at 80%.

The bill eliminates the provisions concerning penalty relief for small underpayments because the relief is no longer needed. The relief is provided under current law because the law requires taxpayers to calculate liability for short periods within 10 days after the end of the period. Under the bill, sales tax taxpayers have 20 days after the end of the month to file a return and electric utility and piped gas taxpayers have a full month after the end of a quarter to file a return.

This part of the bill becomes effective October 1, 2007.

H1915e1-SMRB

H1915e1-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1915 (First Edition)

SHORT TITLE: SSTA Sales Tax Defn/Sales Tax Payments.

SPONSOR(S): Representative Hill

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	See Assumptions and Methodology				
EXPENDITURES:	See Assumptions and Methodology				
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Sections 9 through 11 (semi-monthly filers) becomes effective October 1, 2007. The remainder becomes effective January 1, 2007.

BILL SUMMARY: The legislation makes three changes related to the Streamlined Sales Tax Agreement (SSTA). First, it alters the definition of telecommunications services and adds a definition of "ancillary services" to the sales tax statutes. This change is required to comply with the Streamlined Agreement. Second, the bill changes the sales tax payment schedule for semi-monthly filers. Under existing law the state's largest taxpayers, those who regularly owe at least $10,000 a month in sales taxes, must make sales tax payments twice a month. The first payment is due the 25th of the month and reflects sales made between the 1st and 15th of that month. The second payment reflects sales made after the 16th day of the month, and is due the 10th day of the following month. The proposal replaces the twice a month payment with a single monthly payment. The new payment, due on the 20th, should reflect sales made in the previous month along with an estimated amount for the current month. The estimated amount is to be 65% of either 1) the current month's liability, 2) the liability for the same month in the previous year, or 3) the average monthly liability for the past calendar year. The taxpayer can choose their method of calculation. Finally, the legislation eliminates statutory provisions to deal with small underpayments; as such a provision is no longer necessary with the proposed pre-payment plan. While these last two changes are related to SSTA, they are not required for compliance with the Agreement.

ASSUMPTIONS AND METHODOLOGY: Sections 1 and 2 make several changes to telecommunications related definitions. Definitions altered or added include ancillary service, prepaid wireless calling service, and telecommunications service. The first to of these changes are technical in nature and are not expected to have a fiscal impact. The third – telecommunications service – actually consolidates and clarifies some definitions already addressed by the General Assembly in previous sessions. This change is also not expected to have a significant fiscal impact. Section 1 also updates the reference date for the Agreement, which has no fiscal affect.

Section 3 addresses the sourcing of sales of prepaid wireless services. Because it only impacts local revenues, no state impact is expected. Moreover, because the change is not expected to actually alter the treatment of these sales, no local impact is expected.

Section 4 makes conforming definitional changes and is not expected to have a fiscal impact.

Section 5 moves to the exemption statute the items that were formerly excluded from the definition of telecommunications and are not intended to be taxed. The items in exemption section were all in the prior telecommunication section statutes. No fiscal impact is expected.

Sections 6 – 8 make conforming changes by inserting the newly defined term 'ancillary services', with the term 'telecommunications services'. All items covered under the new definitions are currently taxed under the existing definition of telecommunications services. While the new definitions create two separate categories – ancillary services and telecommunications services – they are both subject to the general sales tax. As a result, this change is only technical and has no revenue impact.

Sections 9 – 11 alter the sales tax payment schedules for the state's largest retailers. According to the North Carolina Department of Revenue, these retailers represent approximately 68% of total sales tax collections. Because the legislation does not affect the retailer's liability there is no recurring cost or gain associated with the bill. However, the shift from semi-monthly to monthly payments does create a potential one time revenue change. By shifting the payment date for part of the liability from the 25th to the 20th, the state gains five days of interest on the float, creating a small revenue gain. However, because retailers can select which method they will use to calculate their pre-payment, there is a potential for a short term revenue loss, as the state would lose interest on the under-payment. The Department of Revenue indicates that if average pre-payments fall below 60% of actual liabilities, the state could see a small fiscal loss. Given the uncertainty surrounding retailer responses, it is not possible to estimate the potential loss or gain. However, data from the Department indicate that whatever change is seen in either direction would likely be substantially less than $1.0 million. There may also be some computer programming costs associated with the payment schedule change. However, at this point Fiscal Research cannot determine the exact cost associated with this computer change.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Millsaps and Brenna Erford

Official
Fiscal Research Division
Publication

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 19, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 2011

Short Title:	Railroad Cars Sales Tax Changes.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Finance.	

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW UTILITIES THE SAME TREATMENT AS INTERSTATE CARRIERS WITH RESPECT TO THE SALES AND USE TAXES IMPOSED ON RAILWAY CARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.4B(b) reads as rewritten:

"(b) Periodic Rental Payments. – When a lease or rental agreement requires recurring periodic payments, the payments are sourced as follows:

(1) For leased or rented property, the first payment is sourced in accordance with the principles set out in subsection (a) of this section and each subsequent payment is sourced to the primary location of the leased or rented property for the period covered by the payment. This subdivision applies to all property except a motor vehicle, an aircraft, ~~and~~ transportation ~~equipment.~~ equipment, and a utility company railway car.

(2) For leased or rented property that is a motor vehicle or an aircraft but is not transportation equipment, all payments are sourced to the primary location of the leased or rented property for the period covered by the payment.

(3) For leased or rented property that is transportation equipment, all payments are sourced in accordance with the principles set out in subsection (a) of this section.

(4) For a railway car that is leased or rented by a utility company and would be transportation equipment if it were used in interstate commerce, all payments are sourced in accordance with the principles set out in subsection (a) of this section."

SECTION 2. G.S. 105-164.14 is amended by adding a new subsection to read:

(a2) Utility Companies. – A utility company is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives and accessories for a railway car or locomotive the utility company operates. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's railway cars and locomotives were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its railway cars and locomotives in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 3. This act becomes effective July 1, 2006. Section 1 of this act applies to lease or rental payments made on or after that date. Section 2 of this act applies to purchases made on or after that date.

SENATE BILL 2011:
Railroad Cars Sales Tax Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 7, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 2011 allows utilities the same treatment as interstate carriers with respect to the sales and use tax imposed on railway cars.

CURRENT LAW: In last year's budget, the General Assembly changed the sales and use tax rate of railway cars and locomotives from a 3% rate, with a cap of $1,500 per item, to the 7% general rate, in order to comply with the Streamlined Sales Tax Agreement. The new rate became effective January 1, 2006. At the same time, the General Assembly authorized interstate carriers[1] to receive a refund of a portion of the sales and use taxes paid on purchases of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. Utility companies are not considered interstate carriers for purposes of this refund, yet they do purchase railway cars to transport coal used to generate electricity.

BILL ANALYSIS: This bill would provide utility companies with the same refund for a portion of sales and use taxes paid on purchases of railway cars and accessories that is currently available to interstate carriers for those same purchases. The formula for calculating the refund is based on the number of miles that the applicant operated the railway cars in the State as compared to the total miles, both inside and outside of the State, multiplied by the purchase price. The product is then multiplied by the tax rate that would have applied if all of the items had been purchased in this State. The formula for calculating the refund and the procedures for claiming the refund are identical to the formula and procedures set out for interstate carriers in the current law.

The bill also provides that recurring periodic payments for lease or rental agreements for a railway car that is leased by a utility company and would be transportation equipment if it were used in interstate commerce are sourced according to general principles set out in G.S. 105-164.4B(a). That is, if the purchaser receives the product at the business location of the seller, the sale is sourced to that business location; if the product is delivered to an address specified by the purchaser, the sales is sourced to the location where the purchaser received the product; and if the delivery address is unknown, the sale is sourced either to the business or home address of the purchaser, the billing address of the purchaser, or the address from which tangible personal property was shipped.

EFFECTIVE DATE: This act would become effective July 1, 2006, and would apply to purchases made on or after that date.

S2011e1-SMSV

[1] An 'interstate carrier' is a person who is engaged in transporting person or property in interstate commerce for compensation.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 2011 (First Edition)

SHORT TITLE: Railroad Cars Sales Tax Changes.

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
State	**(0.37)**	**(0.66)**	**(0.66)**	**(0.66)**	**(0.66)**
Local	**(0.21)**	**(0.41)**	**(0.41)**	**(0.41)**	**(0.41)**
POSITIONS (cumulative):					

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

EFFECTIVE DATE: July 1, 2006.

BILL SUMMARY: Prior to 2005 railway cars, locomotives, and related parts were subject to a 3% State sales tax, with a cap of $1,500 per item. In 2005, as a part of multiple changes to conform to the Streamlined Sales Tax Agreement, the General Assembly altered the taxation of these items. Currently the purchase of railway cars, locomotives, and related parts are subject to the 7.0% general rate of tax with no cap on the total tax paid per item. Interstate carriers can apply for an annual refund of this tax. The legislation extends the special tax treatment granted to interstate carriers to utilities, under certain circumstances. In particular, the legislation allows a refund for taxes paid by utility companies in association with recurring, periodic payments for lease or rental agreements for railway cars that they leased, if the item would have been considered transportation equipment if it were used in interstate commerce. It also enacts a new GS 105-164.14(a2) allowing a utility company a refund of sales and use taxes paid on the purchase in NC of railway cars and locomotives operated by the company, with an associated apportionment formula.

ASSUMPTIONS AND METHODOLOGY: The North Carolina Department of Revenue reports that in 2004-05 sales taxes of $11.4 million were collected from businesses that reported selling

boats, airplanes and railway cars. This was at the 3.0% rate. Because of the way the data is collected the amount for railway cars, locomotives, and associated parts cannot be separated from the larger group. Also, there is no way to determine what proportion of the money collected on the sale of railway cars, locomotives and associated parts would be attributable to utility companies, nor the proportion that would be subject to a refund under the apportionment formula noted in the bill. Given this lack of Department data, Fiscal Research requested data from the affected industry. Representatives of the power companies indicate that, in total, the companies will have annual taxable leases of approximately $16.6 million. Applying the appropriate state and local sales taxes, and the affective date, to the $16.6 million annual base suggests the fiscal impacts noted in the box above.

NOTE: The fiscal analysis assumes the refund is annual on a calendar year basis.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps

Linda Struyk Millsaps

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: 6-7-06 Lynn Muchmore

SENATE FINANCE COMMITTEE
Wednesday, June 14, 2006 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 14, 2006, in Room 544 of the Legislative Office Building. Thirty-two members of the committee were present. Sen. Kerr presided. Klara Ledford of Franklin, Lindsey Huckabee of Belmont, Julian Quesada of Apex, Valerie Long of Rocky Mount, Phyllis Marshall of Nashville, Nick Sipes of Greensboro, and Taylor Warren of Raleigh served as pages.

SB 1541 – Tabor City Subdivisions.

This bill was removed from the agenda.

HB 1025 – Winemaking on Premises Permit.

This bill was removed from the agenda.

SB 2012 – SUTA Modifications.

This bill was removed from the agenda.

HB 449 – Gift Tax Changes.

This bill was removed from the agenda.

HB 688 – Certify On-Site Wastewater Contractors.

Representative Gibson was recognized explained the bill. Senator Stevens made a motion for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note are attached.

HB 474 – Mill Rehabilitation Tax Credit.

Representative Ross was recognized to explain the proposed committee substitute. Senator Hoyle moved to adopt the PCS for discussion and the motion carried. Brenna Erford, a Fiscal Research Division fiscal analyst, was available to answer questions. Senator Apodaca made a motion for a favorable report and the motion carried. A copy of the proposed committee substitute, the bill, the summary and the fiscal note are attached.

SB 1373 – Eliminate Fee for Legion of Valor Plate.

Senator Rand was recognized to explain the proposed committee substitute. Senator Hoyle moved to adopt the PCS for discussion and the motion carried. Senator Apodaca made a motion for a favorable report and the motion carried. A copy of the proposed committee substitute, the bill, the summary and the fiscal note are attached.

SB 1862 – Limit Nutrient Offset Payments.

Senator Malone and Senator Stevens were recognized to explain the proposed committee substitute. Senator Hoyle moved to adopt the PCS for discussion and the motion carried. Lisa Martin, representing the NC Home Builders Association, was recognized to answer questions. Elizabeth Self, NC Sierra Club representative, was recognized to speak in opposition to the bill. Senator Jenkins made a motion for a favorable report and the motion carried. A copy of the proposed committee substitute, the bill, and the summary are attached.

SB 1621 – Wage Standard – Textile Manufacturers.

Senator Hoyle was recognized to explain the proposed committee substitute and moved that the PCS be adopted for discussion. The motion carried. Canaan Huie, a staff attorney with the Bill Drafting Division,

was recognized to answer questions. Senator Webster made a motion for a favorable report and the motion carried. A copy of the proposed committee substitute, the bill, and the summary are attached.

SB 1892 – Wildlife Commission Indebtedness.

Senator Hoyle was recognized to explain the proposed committee substitute. Senator Rand moved that the PCS be adopted for discussion. The motion carried. Dick Hamilton, the Wildlife Commission Director, was recognized to answer questions and speak in favor of the bill. Senator Cowell made a motion for a favorable report and the motion carried. A copy of the proposed committee substitute, the bill, the summary, and the fiscal note are attached.

HB1806 – Tax Certification – Register of Deeds.

Cindy Avrette, a Research Division staff attorney, was recognized to explain the bill. Senator Albertson made a motion for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 2048 – Expansion of Royalty Reporting Option.

Trina Griffin, a Research Division staff attorney, was recognized to explain the bill. Senator Hartsell made a motion for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note are attached.

Former Senator RB Sloan attended the meeting and was recognized.

The meeting adjourned at 1:55 PM.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

CORRECTED REPORT

Thursday, June 15, 2006

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

FAVORABLE

H.B.(SCS #1) **688** Certify On-Site Wastewater Contractors.
Sequential Referral: None
Recommended Referral: None

H.B. **1806** Tax Certification - Register of Deeds.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1621** Wage Standard - Textile Manufacturers.
Draft Number: 55497
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1862** Limit Nutrient Offset Payments.
Draft Number: 55496
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1892** Wildlife Commission Indebtedness.
Draft Number: 85471
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) **474** Mill Rehabilitation Tax Credit.

Draft Number:	70779
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 6

Committee Clerk Comments:

SB 1373 removed to be reported out Monday.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Monday, June 19, 2006

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

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

S.B. **1373** Eliminate Fee for Legion of Valor Plate.

Draft Number:	15341
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Baker	NC DOR
Katherine Skinner	NC Nature Conservancy
Andrew Stewart	Empire Properties
Tom BERN	NC Wildlife Federation
Tracy Kirkland	Parker Poe
Mike Nelson	Conservation Council
Elizabeth Self	NC Sierra Club
Lane Pearson	Pres NC
Myrick Howard	Pres NC
Linda Harris Edmisten	Preservation NC
TOM NIEMAND	NIEMANN CAPITAL, LLC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dick Hamilton	NC WRC
Gordon Myers	NCWRC
[signature]	WCPSS
Dave Horne	Smith Anderson
Bill Rowe	NJ Justice Center
Willy Rowe	Raleigh
Lochart Taylor	NC ESC
Tim Minter	HBA of Raleigh-Wake County
Suzanne Harris	HBA of Raleigh-Wake County
Lisa Martin	NC Home Builders
Vance Holloman	St. Treasurer's Office

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NC Beverage Assoc.
CHRIS TUCKER	CCPS
Dempsey Benton	DENR
Tom REEDER	DWQ
Erica Rieder	CWMTF
Andrew Sprouse	Capital Area Preservation
Stan Wall	DENR
Robin Smith	DENR
Mary Penny Thompson	DENR
Greg Rudolph	NC DOR
Sam McEwen	NCDOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Christine Mersereau	Environment North Carolina
Susanne Streb	NCRA
DAVID BARNES	PTS
Stephanie Dorko	Charlotte Chamber
Andy Romanet	NCLM
Betty Turner	Bank of America
David Crawford	AIA North Carolina
Henry Jones	Attorney Raleigh
Bill Seeger	KCLH
Paula Hopper	KCLH
Doug Lassiter	NCSTA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 14, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rachel Edwards Conn	Capitol
David Zabriske	Team CSC
Gary Harris	NC PMA
Stephanie Simpson	NCAR
Anita McNeil	NC DENR
Cassy Hardy	SENR
[illegible]	[illegible]
Ken Kirby	Home Builders Assn. of Raleigh/Wake Co.
Elizabeth Song	CCA
Emily Kirby	NCCN
Erin Kinsey	NCCN

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 7, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dave Simpson	Carolinas AGC
Terry Pratt	Albemarle Fishermen's Assoc
Peggy Nunn	
Fred Couples	PGA
Frank Gray	N. C. Restaurant Assn.
Ellen	NCBMA
John Godman	NCCBI
Elizabeth Dalton	NCCMA
Kathy Hawkins	Progress Energy
John McAlister	Duke Energy

Senate Finance Committee
Wednesday, June 14, 2006, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 474	Mill Rehabilitation Tax Credit.	Rep. Ross Rep. Brubaker Rep. Howard Rep. Goodwin
HB 688	Certify On-Site Wastewater Contractors.	Rep. Culp Rep. Gibson
HB 1025	Winemaking on Premises Permit.	Rep. Luebke
HB 1806	Tax Certification - Register of Deeds.	Rep. Owens, Jr.
HB 2048	Expansion of Royalty Reporting Option.	Rep. Luebke
SB 1373	Eliminate Fee for Legion of Valor Plate.	Senator Rand
SB 1541	Tabor City Subdivisions.	Senator Soles, Jr.
SB 1621	Wage Standard - Textile Manufacturers.	Senator Hoyle
SB 1862	Limit Nutrient Offset Payments.	Senator Malone
SB 1892	Wildlife Commission Indebtedness.	Senator Hoyle

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

4

HOUSE BILL 688*

Committee Substitute Favorable 7/7/05
Committee Substitute #2 Favorable 7/26/05
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/1/06

Short Title: Certify On-Site Wastewater Contractors. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"**§ 90A-70. Purpose.**

It is the purpose of this Article to protect the environment and public health, safety, and welfare by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise or conduct the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

"**§ 90A-71. Definitions.**

The following definitions apply in this Article:

(1) 'Board' means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

(2) 'Contractor' means a person who constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.

(3) 'Conventional wastewater system' has the same meaning as in G.S. 130A-343(a)(3).

(4) 'Department' means the Department of Environment and Natural Resources.

(5) 'Inspector' means a person who conducts an inspection of an on-site wastewater system at any time after the local health department has issued an operation permit pursuant to G.S. 130A-337.

(6) 'On-site wastewater system' means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or the surface waters of the State.

(7) 'Person' means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

"**§ 90A-72. Certification required; applicability.**

(a) Certification Required. – No person shall construct, install, or repair or offer to construct, install, or repair an on-site wastewater system in the State without being certified as a contractor at the required level of certification for the specified system. No person shall conduct an inspection or offer to conduct an inspection of an on-site wastewater system without being certified as an inspector at the required level of certification for the specified system.

(b) Applicability. – This Article does not apply to the following:

(1) A person who is employed by, or performs labor and services for, a certified contractor or inspector in connection with the construction, installation, repair, or inspection of an on-site wastewater system performed under the direct and personal supervision of the certified contractor or inspector.

(2) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed distribution system when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family.

(3) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed.

(4) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.

(5) A person permitted under Article 21 of Chapter 143 of the General Statutes who is constructing a water pollution control facility

necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.

(6) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.

(7) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, or lines or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository.

"**§ 90A-73. Creation and membership of the Board.**

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

(1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor who, at the time of appointment, is a certified water treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes, to a term that expires on 1 July of years evenly divisible by three.

(3) One member appointed by the Governor who is an employee of the Division of Environmental Health of the Department to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.

(7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.

(8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed as an environmental health specialist, and (ii) engaged primarily in the inspection and permitting of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by the North Carolina Cooperative Extension Service, and (ii) is knowledgeable in the area of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(c) Oath. – Each member of the Board, before entering upon the discharge of the duties of the Board, shall take and file with the Secretary of State an oath in writing to perform properly the duties as a member of the Board and to uphold the Constitution of North Carolina and the Constitution of the United States.

(d) Dual Office Holding. – Service on the Board may be in addition to any other office a person is entitled to hold.

(e) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of election until 30 June of the following year, or until a successor is elected.

(f) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(g) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.

(h) Meetings. – The Board shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members of the Board.

(i) Staff. – The Board may employ staff to carry out the duties of the Board and the provisions of this Article. The Board shall determine the compensation, duties, and other terms and conditions of employment of the staff.

"**§ 90A-74. Powers and duties of the Board.**

The Board shall have the following general powers and duties:

(1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this Article.

(2) To determine the eligibility requirements for persons seeking certification pursuant to this Article.

(3) To establish grade levels of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.

(4) To develop and administer examinations for each grade level of certification. The Board may approve applications by recognized associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.

(5) To issue, renew, deny, restrict, suspend, or revoke certifications and to carry out any of the other actions authorized by this Article.

(6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.

(7) To maintain a record of all proceedings and make available to persons certified under this Article, and to other concerned parties, an annual report of all Board action.

(8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.

(9) To conduct investigations to determine whether violations of this Article or grounds for disciplining persons certified under this Article exist.

(10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.

(11) To conduct other services necessary to carry out the purposes of this Article.

"**§ 90A-75. Expenses and fees.**

(a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. – The Board may accept grants, contributions, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

(1) Application for basic certification	$150.00
(2) Application for each grade level	$50.00

(3) Certification renewal $100.00
(4) Reinstatement of revoked or suspended certification $500.00
(5) Application for on-site wastewater system inspector $200.00.

(d) Audit. – The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

"**§ 90A-76. On-Site Wastewater Certification Fund.**

The On-Site Wastewater Certification Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used solely for the costs of administering this Article.

"**§ 90A-77. Certification requirements.**

(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

(1) Is at least 18 years of age.
(2) Submits a properly completed application to the Board.
(3) If the applicant has prior experience providing on-site wastewater system services, submits affidavits of three persons not related to the applicant for whom the applicant provided on-site wastewater services.
(4) If the applicant has no prior experience, completes the basic on-site wastewater education program approved by the Board.
(5) Completes any additional training program designed by the Board specific to the grade level for which the applicant is applying.
(6) Pays the applicable fees set by the Board for the particular application and grade level.
(7) For grade levels greater than conventional systems, passes a written or oral examination that tests the applicant's proficiency in all of the following areas:
a. Principles of public and environmental health associated with on-site wastewater systems.
b. Principles of construction and safety.
c. Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.
d. Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.

(b) Location of Examinations. – The Board shall provide a minimum of three examinations each year: one each in the eastern, central, and western regions of the State.

(c) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant who has completed an approved training or continuing education program.

(d) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. An applicant that meets all the conditions for certification except for passage of the Board examination may take the

examination on three successive occasions without having to file for a new application, pay an additional application fee, or repeat any applicable training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay an additional application fee, and repeat the training program.

(e) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a certified contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.

(f) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars ($25.00).

"**§ 90A-78. Certification renewal.**

(a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:

(1) Submit an application for renewal on the form prescribed by the Board.

(2) Meet the continuing education requirements prescribed by the Board.

(3) Pay the certification renewal fee.

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars ($25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.

"**§ 90A-79. Continuing education.**

(a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certified contractor or inspector.

(b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course provides useful educational information or experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs.

"**§ 90A-80. Investigation of complaints.**

(a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any certified contractor or inspector. The charges shall be in writing and sworn to by the complainant and submitted to the

Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.

(b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.

(c) Notification. – The Board shall provide local health departments with notification of changes in certifications, complaints, suspensions, or reinstatements under this Article.

"**§ 90A-81. Remedies.**

(a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:

(1) A violation of this Article or a rule of the Board.

(2) The use of fraud or deceit in obtaining or renewing a certificate.

(3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.

(4) Failure to satisfactorily complete continuing education requirements prescribed by the Board.

(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certified contractor or inspector or any work performed by a certified contractor or inspector, or conflicts involving any certified contractor or inspector and the Division of Environmental Health of the Department or a local health department.

(c) Injunction. – The Board may ask the Attorney General to seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Attorney General may bring an action for an injunction in the name of the State in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

(1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the grade level of on-site wastewater system.

(2) Gives false or forged evidence of any kind in obtaining a certificate.

(3) Falsely impersonates a certified contractor or inspector."

SECTION 2.(a) In order to provide for a system of staggered three-year terms for the members of the On-Site Wastewater Contractors and Inspectors Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(1) shall be three years and shall expire on 1 July 2009.

(2) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(2) shall be four years and shall expire on 1 July 2010.

(3) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(3) shall be five years and shall expire on 1 July 2011.

(4) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(4) shall be five years and shall expire on 1 July 2011.

(5) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(5) shall be three years and shall expire on 1 July 2009.

(6) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(6) shall be four years and shall expire on 1 July 2010.

(7) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(7) shall be four years and shall expire on 1 July 2010.

(8) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(8) shall be five years and shall expire on 1 July 2011.

(9) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(9) shall be three years and shall expire on 1 July 2009.

SECTION 2.(b) In the event that the General Assembly fails to appoint one or more initial members to the On-Site Wastewater Contractors and Inspectors Certification Board during the 2006 Regular Session, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

SECTION 3. Section 1 of this act is effective when this act becomes law except that G.S. 90A-72, 90A-79, and 90A-81, as enacted by Section 1 of this act, become effective 1 January 2008. Sections 2 and 3 of this act are effective when it becomes law.

HOUSE BILL 688:
Certify On-Site Wastewater Contractors

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 13, 2006
Introduced by:	Reps. Gibson, Culp	**Summary by:**	Cindy Avrette Committee Counsel
Version:	Fourth Edition		

SUMMARY: ***House Bill 688 would require the construction, installation, repair, and inspection of on-site wastewater systems in the State to be conducted by a certified on-site wastewater contractor or inspector. The bill creates a nine-member On-Site Wastewater Contractors and Inspectors Certification Board (Board) to implement the certification program, establishes certification and continuing education requirements for contractors and inspectors, and sets out the maximum fees the Board may charge. The certification and continuing education requirements would become effective 1 January 2008.***

CURRENT LAW: An on-site wastewater system is a wastewater system, such as a septic tank system, that is permitted under the provisions of Article 11 of Chapter 130A of the General Statutes and does not discharge to a treatment facility or to surface waters. The Department of Environment and Natural Resources (DENR) is responsible for the review and approval of on-site wastewater system technologies, while local health departments play are responsible for the issuance of improvement permits and operation permits for on-site wastewater systems. There are, however, no current certification requirements for persons who construct, install, repair, or inspect on-site wastewater systems in the State. In order to install or repair an on-site wastewater system, a person is generally only required to register with the local health department.

BACKGROUND: The Legislative Committee on New Licensing Boards studied this issue and published a report in May 2005 that recommended the licensure of on-site wastewater contractors and inspectors. Specifically, the Committee found that the unregulated practice of on-site wastewater contractors can be harmful to public health, safety, or welfare because the installation and repair of new on-site wastewater systems and the inspection of existing systems at the time of property transfer are not currently regulated in a way that provides the public with assurance of competent construction practices. The Committee found that the current requirement of registration with the local health department does not adequately protect the State's environmental quality or the public health of the citizens of North Carolina.

BILL ANALYSIS: The bill adds a new Article 5 to G.S. Chapter 90A to make the following changes:

Certification of on-site wastewater contractors and inspectors. Any person who constructs, installs, or repairs an on-site wastewater system must hold the required grade level of certification for the particular system. In addition, any inspection of an on-site wastewater system at any time after the local health department has issued an operation permit shall be performed by a certified inspector.

Exemptions from certification. The following persons are exempted from the certification requirement:

- An employee or contractor working under the direct and personal supervision of a certified contractor or inspector.
- A landowner who constructs, installs, or repairs an on-site wastewater system described as a single septic system so long as it is intended for use by that person and members of that person's immediate family.
- A licensed general contractor who constructs or installs an on-site wastewater system ancillary to the building being constructed.
- A person already certified by the Water Pollution Control System Operators Certification Commission who is contracted to provide necessary operation and maintenance on an on-site wastewater system.
- A person permitted under Chapter 143 of the General Statutes to construct a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.
- A licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.
- A licensed plumbing contractor, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, or lines or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository.

Initial Certification Requirements. To be certified, an applicant must meet the following conditions:

- Be at least 18 years old.
- Submit a properly completed application with the Board.
- If the applicant has prior experience providing on-site wastewater system services, submit three (3) affidavits of persons not related to the applicant for whom the applicant has provided on-site wastewater services.
- If the applicant has no prior experience, complete a basic on-site wastewater education program approved by the Board.
- Complete the training program designed by the Board specific to the grade level for which the applicant is applying. The Board shall establish grade levels based on design capacity, complexity, projected costs, and other features of the on-site wastewater system.
- For grade levels greater than conventional systems, passes a written or oral exam.
- Pay the applicable fee.

Fee amounts. Fees cannot exceed the following amounts.

Purpose of Fee	Fee Amount
Application for basic certification	$150.00
Application for each step grade	$50.00
Certification renewal	$100.00
Reinstatement of revoked or suspended certification	$500.00
Application for on-site wastewater system inspector certification	$200.00
Replacement of a certificate	$25.00
Late renewal	$25.00

No Degree Requirement. Applicants are not required to hold a degree to be certified.

North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board will consist of nine members, three appointed by the Governor, three by the General Assembly upon recommendation of the President Pro Tem of the Senate, and three by the General Assembly upon recommendation of the Speaker of the House. The members of the Board would serve staggered four-year terms. The Board has administrative and disciplinary powers, and may determine eligibility requirements, establish grades of certification, develop and administer exams, and establish fees, not to exceed statutory maximums.

EFFECTIVE DATE:

The certification requirements, continuing education requirements, and disciplinary powers of the Board would become effective 1 January 2008. The remaining provisions of the bill would become effective when the bill becomes law.

Tim Dodge, Legislative Analyst to the Senate Agriculture/Environment/Natural Resources Committee, substantially contributed to this summary.

H0688e4-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 688 (Fourth Edition)

SHORT TITLE: Certify On-Site Wastewater Contractors.

SPONSOR(S): Representatives Culp and Gibson

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund					
DENR	No Fiscal Impact				
Dept. of Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial Branch	Exact amount cannot be determined; no substantial impact anticipated.				
On-Site Wastewater Certification Fund	$0	$285,000	$185,250	$186,050	$187,350
EXPENDITURES:					
On-Site Wastewater Certification Fund	See Assumptions and Methodology				
POSITIONS (cumulative):	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources (DENR); Department of Correction; Judicial Branch

EFFECTIVE DATE: Effective when it becomes law except provisions requiring persons to be licensed, continuing education program approval and requirements, and remedies for violation take effect on January 1, 2008.

BILL SUMMARY: Adds new Article 5 of G.S. Chapter 90A to require licensing of on-site wastewater contractors and inspectors. Creates a nine-member NC On-Site Wastewater Contractors and Inspectors Certification Board, appointed by the Governor and General Assembly. Specifies the duties of the Board including determining the qualifications for certification, issuing, suspending and revoking licenses, and establishing and enforcing rules of professional conduct. Sets out maximum fees that Board may charge. Specifies requirements for applicant for certification and for renewals. Creates the On-Site Wastewater Certification Fund, a

non-reverting account with the Department of Environment and Natural Resources (DENR). Sets out procedure for Board to investigate complaints of fraud, deceit, negligence, incompetence, or misconduct of any licensed contractor or inspector. Creates the following new Class 2 misdemeanor offenses: 1) engaging in or offering to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the specific grade of on-site wastewater system; 2) giving false or forged evidence of any kind in obtaining a certificate; and, 3) falsely impersonating a certified contractor or inspector. Effective when it becomes law except provisions requiring persons to be licensed, continuing education program approval and requirements, and remedies for violation take effect on January 1, 2008.

ASSUMPTIONS AND METHODOLOGY:

The On-Site Wastewater Contractors and Inspectors Certification Board created by this act will be entirely funded by fees and contributions as set forth in G.S. 90A-75. All fees and contributions will be deposited into the On-Site Wastewater Certification Fund to be established in DENR. The NC Septic Tank Association estimates the number of installers ranges from 1,500 to 2,000, of which 300 to 400 will also request certification as on-site wastewater system inspectors. In order to meet the January 1, 2008 certification deadline, this fiscal note assumes that installers seeking certification will apply in FY07-08. After this initial certification period, the Septic Tank Association believes that the number of new applications each year will be minimal. Consequently, this fiscal note assumes a 5% annual growth rate in new applications and a 95% renewal rate in subsequent years. Table 1 below summarizes the revenue generated if the Board adopts the maximum fees allowed. A revenue estimate cannot be given at this time on the number of applications for step grades or revoked/suspended certificates.

Table 1: Estimated Fee Revenue

		FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Number of Applications						
New Applications						
-Basic		0	1,500	75	79	83
-System Inspector		0	300	15	16	17
Renewals (Basic & Inspector)		0	0	1,710	1,710	1,715
Fee Revenues:						
New Applications						
-Basic	$150	$0	$225,000	$11,250	$11,850	$12,450
-System Inspector	$200	$0	$60,000	$3,000	$3,200	$3,400
Renewals	$100	$0	$0	$171,000	$171,000	$171,500
Total		**$0**	**$285,000**	**$185,250**	**$186,050**	**$187,350**

At this time a precise estimate of the cost to operate this program is not available. DENR staff, however, estimates the Board's operating costs will average $180,000 a year for a staff of three (includes salaries and fringe benefits, travel for Board and staff, rental, postage, supplies, contractual services, etc.). This estimate is based on the staff DENR employs for its Water Certification Board. Additional start-up costs in the first year are estimated to be $16,000 for furniture, computers, printers, and software.

Department of Correction

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Since this bill would create new offenses, the Sentencing Commission has no historical data from which to estimate the impact on local jail populations.

- In FY 2004-05, 16 percent of Class 2 misdemeanors resulted in active sentences with an average term imposed of 22.9 days.
- Offenders with active sentences of less than thirty days are housed in county jails at county expense.
- The remaining 84 percent of Class 2 misdemeanants received non-active sentences (intermediate or community punishment). For those sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.93 per offender per day; those supervised by DCC are also required to pay a $30 per month supervision fee. Offenders sentenced to community service would cost $0.67 per offender per day, and must pay a one-time fee of $200.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because the bill creates new offenses, no data is available to estimate the number of additional charges that might result from this bill. Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor via trial is $2,380. This cost includes an estimated $1,431 in costs of time in court and attorney costs and an additional $949 in indigent defense. However, based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of $211 per plea.

The AOC also notes that new G.S. 90A-81(c), which would authorize the Board to request the Attorney General to seek an injunction to restrain any violators of the new article, could increase superior court workload. However, no data is available from which to estimate the frequency with which the Attorney General would seek an injunction under the bill; thus the specific cost cannot be determined.

SOURCES OF DATA: Department of Environment and Natural Resources; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristin Walker and Bryce Ball

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 12, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

H

HOUSE BILL 1806

Short Title: Tax Certification - Register of Deeds. (Local)

Sponsors: Representative Owens.

Referred to: Local Government I.

May 9, 2006

A BILL TO BE ENTITLED

AN ACT TO ADD TYRRELL COUNTY TO THE LIST OF COUNTIES WHERE THE BOARD OF COMMISSIONERS MAY REQUIRE THE REGISTER OF DEEDS TO HAVE A CERTIFICATION THAT NO TAXES ARE DUE ON REAL PROPERTY BEFORE ACCEPTING FOR REGISTRATION A DEED TRANSFERRING OWNERSHIP OF THAT PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Lee, Lenoir, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wilson, and Yadkin Counties."

SECTION 2. This act becomes effective July 1, 2006.

HOUSE BILL 1806:
Tax Certification - Register of Deeds

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 13, 2006
Introduced by:	Rep. Owens	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1806 adds Tyrrell County to the list of counties that have the authority to require tax certification of a deed prior to registration. The bill becomes effective July 1, 2006.

CURRENT LAW: G.S. 161-31 provides that in certain counties, the board of county commissioners may adopt a resolution to require the register of deeds to refuse to register a deed unless the county tax collector has certified that no delinquent taxes are due on the property. However, G.S. 161-31 also provides that if a board of county commissioners adopts a resolution to require the register of deeds to refuse to register a deed without the certification of the county tax collector, the register of deeds must still accept an uncertified deed that is submitted for registration under the supervision of a closing attorney and containing the statement, "*This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.*"

This provision applies to the following 57 counties: Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Lee, Lenoir, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties.

In addition to G.S. 161-31, the General Assembly has enacted similar laws that prohibit a register of deeds from registering deeds unless the tax collector has certified that no delinquent taxes are due. These provisions apply to the following local governments: Avery County (1963); Mitchell County (1987); Ashe County (1993); the Towns of Newland and Spruce Pine (1997); the Town of Banner Elk (1998); the Town of Bakersville (1999); and the towns in Ashe County and Alleghany County (2005).

In a county or local government where G.S. 161-31 and other similar State laws do not apply, the register of deeds registers deeds submitted for registration regardless of whether delinquent taxes are due on the property.

BILL ANALYSIS: House Bill 1806 would include Tyrrell County in the list of counties that have the authority to require tax certification of a deed prior to registration

H1806e1-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1621
PROPOSED COMMITTEE SUBSTITUTE S1621-CSLY-74 [v.1]

6/8/2006 3:43:03 PM

Short Title: Wage Standard - Certain Manufacturers. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REVISE THE WAGE STANDARD UNDER THE BILL LEE ACT FOR CERTAIN MANUFACTURERS WHOSE BUSINESS UTILIZES A SEQUENTIAL MANUFACTURING PROCESS IN SEPARATE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area. For the purposes of this subsection, for a fiber, yarn, or thread mill that uses a sequential manufacturing process in which separate parts of the sequential manufacturing process are performed in different facilities within the same county, the term 'location' may mean either the specific establishment or all facilities in the county in which parts of the process are performed.

Part-time jobs for which the taxpayer provides health insurance as provided in subsection (b2) of this section are considered to have an average weekly wage at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located. There may be a period of up to 100 days between the time at which an employee begins a part-time job and the time at which the taxpayer begins to provide health insurance for that employee.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one hundred ten percent (110%) of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 1996.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1621

Short Title:	Wage Standard - Textile Manufacturers.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REVISE THE WAGE STANDARD UNDER THE BILL LEE ACT FOR CERTAIN TEXTILE MANUFACTURERS WHOSE BUSINESS UTILIZES A CONTINUOUS MANUFACTURING PROCESS IN SEPARATE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area. For the purposes of this subsection, for a textile manufacturer that uses a continuous manufacturing process in which separate parts of the continuous manufacturing process are performed in different facilities within the same county, the term 'location' may mean either the specific establishment or all facilities in the county in which parts of the process are performed.

Part-time jobs for which the taxpayer provides health insurance as provided in subsection (b2) of this section are considered to have an average weekly wage at least

equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located. There may be a period of up to 100 days between the time at which an employee begins a part-time job and the time at which the taxpayer begins to provide health insurance for that employee.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one hundred ten percent (110%) of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 1996.

SENATE BILL 1621:
Wage Standard - Textile Manufacturers

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 12, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Canaan Huie
Version:	PCS to First Edition S1621-CSLY-74		Committee Counsel

SUMMARY: ***This bill would retroactively alter the definition of "location" with respect to certain manufacturers for the purpose of meeting the wage standard under the Bill Lee Act. This change would be effective for taxable years beginning on or after January 1, 1996.***

CURRENT LAW: A taxpayer is eligible for a credit under the Bill Lee Act only if the jobs provided by the taxpayer meet a wage standard. Legislation in 2002 eliminated the wage standard in enterprise tier one and two areas. Since the wage standard for a business located in a development zone is the same as for tier one counties, that legislation also eliminated the wage standard for a development zone area. For enterprise tier areas three through five, the jobs provided by the taxpayer must pay at least 110% of the applicable average weekly wage. The applicable average weekly wage of the county is the lowest of the following: the average weekly wage for all insured private employers in the county, the average weekly wage for all insured private employers in the State, and the average weekly wage for all insured private employers in the county multiplied by the county income/wage adjustment factor.[1]

For the credit for job creation, the average weekly wage of the jobs for which the credit is claimed and the average weekly wage of all jobs at the location with respect to which the credit is claimed must meet the relevant wage standard. For the other credits, the average weekly wage of all jobs at the location with respect to which the credit is claimed must meet the relevant wage standard. The term "location" is not defined in the statute, but the Department of Revenue has interpreted "location" to be synonymous with "establishment" for the purpose of applying the wage standard.

BILL ANALYSIS: This bill would modify the definition of "location" with respect to certain manufacturers. For a fiber, yarn, or thread mill that uses a sequential manufacturing process, the term could mean either a single facility or all facilities located within a single county that were part of the sequential manufacturing process.

EFFECTIVE DATE: This bill would be effective for taxable years beginning on or after January 1, 1996.

BACKGROUND: At least one taxpayer that qualifies as a fiber, yarn, or thread mill that uses a sequential process would become eligible for credits under the Bill Lee Act based on this change. American & Efird, located in Gaston County, undertook activities for which it would have been eligible for credits during the 1996 tax year if it had met the wage standard. The company failed to satisfy the wage standard at each individual facility, but would have satisfied the standard if all the facilities were treated as one location. There are no other known taxpayers that would benefit from this change.

S1621e1-SMLY-CSLY-74

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1862*
PROPOSED COMMITTEE SUBSTITUTE S1862-CSSVf-77 [v.5]

6/14/2006 11:44:50 AM

Short Title: Limit Nutrient Offset Payments. (Public)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO SET THE PER POUND FACTOR USED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION TO CALCULATE NUTRIENT OFFSET PAYMENTS AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE NUTRIENT OFFSET PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the per pound factors for nutrient offset payments established in 15A NCAC 2B. 0240, as adopted by the Environmental Management Commission on 12 January 2006, the per pound factors for nutrient offset payments are established as follows:

(1) Eleven dollars ($11.00) per pound of nitrogen, calculated in accordance with the method used as of January 1, 2006 for determining pounds of nitrogen per acre.

(2) Forty-five dollars ($45.00) per tenth of a pound of phosphorous.

SECTION 2. Study – The Environmental Review Commission, with the assistance of the Division of Water Quality of the Department of Environment and Natural Resources, shall study issues related to nutrient offset payments. The Commission shall specifically study the costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen; whether nutrient offset payments should be authorized for additional nutrients, including phosphorus; and whether the nutrient offset program should be expanded to other areas of the State.

SECTION 3. Report – The Environmental Review Commission shall report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 4. The Division of Water Quality of the Department of Environment and Natural Resources must refund any fee paid in excess of the amount established under this act.

SECTION 5. This act becomes effective 1 August 2006, and applies to all nutrient offset payments, including those set out in 15A NCAC 2B. 0240, as adopted by the Environmental Management Commission on 12 January 2006. This act expires 1 September 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SENATE BILL 1862*

Short Title:	Limit Nutrient Offset Payments.	(Public)
Sponsors:	Senators Malone, Stevens; Bingham, Dannelly, Dorsett, Forrester, Garwood, Goodall, Hoyle, Jenkins, and Purcell.	
Referred to:	Rules and Operations of the Senate.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO SET THE PER POUND FACTOR USED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION TO CALCULATE NUTRIENT OFFSET PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.3D(e) is amended by adding a new subdivision to read:

"(8) Per Pound Factor for Nutrient Offset Payments. – The per pound factor used by the Environmental Management Commission to establish a nutrient offset payment pursuant to this Article or rules adopted pursuant to this Article shall be thirty-five dollars ($35.00) per pound of nitrogen and per tenth of a pound of phosphorous."

SECTION 2. This act becomes effective July 1, 2006 and applies to all nutrient offset payments, including those set out in 15A NCAC 2B.0240, as adopted by the Environmental Management Commission on January 12, 2006.

SENATE BILL 1862:
Limit Nutrient Offset Payments

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 14, 2006
Introduced by:	Sen. Malone	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition S1862-CSSVf-77 [v. 5]		Staff Attorney

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 1862 would: (i) set the per pound factors for nutrient offset payments; (ii) direct the Environmental Review Commission (ERC) to study issues related to nutrient offset payments and report to the 2007 General Assembly upon its convening; and (iii) direct the Division of Water Quality (DWQ) of the Department of Environment and Natural Resources (Department) to refund any fee paid in excess of the amounts established under the PCS.***

BACKGROUND: The Nutrient Offset Fee Program (Program) was established by the Environmental Management Commission (EMC) in 1998 in order to provide new development and new and expanding wastewater discharges an option of paying a fee to the Riparian Buffer Restoration Fund instead of meeting the nitrogen limits required in parts of the State, including the Neuse River Basin. Payment of an offset fee into the Program is voluntary for developers and wastewater dischargers. The offset fees are used by the Department to construct nutrient controls to achieve the nutrient reductions that developers and dischargers would otherwise have to construct.

The original 1998 offset fee was set at $11 per pound of nitrogen per year. In October 2004, the EMC initiated a process to update the offset fees. Based on data provided by North Carolina State University, the EMC determined that the fees for nitrogen should be increased to $57 per pound of nitrogen per year and that a fee for phosphorous should be set at $45 per tenth of pound of phosphorous per year. The EMC determined that these costs reflect the actual costs necessary for the Department to maintain the nutrient offset option as part of a self-sustaining, fee supported program.

Upon completion of the evaluation, the EMC initiated rulemaking to increase the offset fees. The EMC presented the draft rule to the General Assembly's Governmental Operations Committee in October 2005. The EMC adopted the rule in January 2006 and the Rules Review Commission approved it in February 2006. The Rules Review Commission received no letters requesting legislative review of the rule.

CURRENT LAW: 15A NCAC 2B. 0240 (Nutrient Offset Payments) as amended by the EMC provides per pound factors for nutrient offset payments as follows: $57 per pound of nitrogen per year and $45 per tenth of pound of phosphorous per year. The new fees established by the amended rule are scheduled to go into effect on 1 August 2006.

BILL ANALYSIS: The PCS would:

- Establish the per pound factors for nutrient offset payments at:

- $11.00 per pound of nitrogen, calculated in accordance with the method used as of 1 January 2006 to determine pounds of nitrogen per acre.
- $45.00 per tenth of a pound of phosphorous.

These factors would be established notwithstanding those set out in 15A NCAC 2B. 0240 which was amended by the EMC.

- Direct the ERC, with the assistance of DWQ, to study issues related to nutrient offset payments, including costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen; whether nutrient offset payments should be authorized for additional nutrients, and whether the Program should be expanded to other areas of the State. The ERC would report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.
- Direct DWQ to refund any fee paid in excess of the amount established under the PCS.

EFFECTIVE DATE: The PCS would become effective 1 August 2006 and apply to all nutrient offset payments. The provisions of the PCS would sunset 1 September 2007.

S1862e1-SMRI-CSSVf-77

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1892*
PROPOSED COMMITTEE SUBSTITUTE S1892-CSLYx-82 [v.2]

6/14/2006 10:34:44 AM

Short Title: Special Indebtedness Projects. (Public)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF SPECIAL INDEBTEDNESS TO FINANCE THE CAPITAL FACILITIES COSTS OF A PURCHASE OF LAND BY THE WILDLIFE RESOURCES COMMISSION AND TO FINANCE THE CAPITAL FACILITY COSTS OF STALL BARNS AT THE SENATOR BOB MARTIN EASTERN AGRICULTURAL CENTER.

The General Assembly of North Carolina enacts:

SECTION 1. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the costs of purchasing land to be administered by the Wildlife Resources Commission as State game lands. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of purchasing the land described in this section.

SECTION 2. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of three million three hundred thousand dollars ($3,300,000) to finance the capital facility costs of two stall barns at the Senator Bob Martin Eastern Agricultural Center. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this section.

SECTION 3. G.S. 143-64.05 reads as rewritten:

"**§ 143-64.05.** ~~**Definitions.**~~**Service charge; receipts.**

(a) The State agency for surplus property may assess and collect a service charge for the acquisition, receipt, warehousing, distribution, or transfer of any State surplus property and for the transfer or sale of recyclable material. The service charge authorized by this subsection does not apply to the transfer or sale of timber on land owned by the Wildlife Resources Commission.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity."

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

S

SENATE BILL 1892*

Short Title: Wildlife Commission Indebtedness. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF SPECIAL INDEBTEDNESS TO FINANCE THE CAPITAL FACILITIES COSTS OF A PURCHASE OF LAND BY THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the costs of purchasing land to be administered by the Wildlife Resources Commission as State game lands. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of purchasing the land described in this section.

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

SENATE BILL 1892:
Wildlife Commission Indebtedness

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 13, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Y. Canaan Huie
Version:	PCS to First Edition S1892-CSLYx-82		Committee Counsel

SUMMARY: ***This bill would authorize the issuance of up to $20 million of special indebtedness to finance the purchase by the Wildlife Resources Commission of land to be used as State game lands and up to $3.3 million to finance the capital facility costs of two stall barns at the Senator Bob Martin Eastern Agricultural Center. The bill would become effective when it became law.***

CURRENT LAW: Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that is typically secured only by an interest in State property being acquired or improved. The term "special indebtedness" covers the various forms this type of debt can take: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and bonds.

The particular form of special indebtedness to be used for a given project will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of special indebtedness may be the least expensive and most practical for the State to utilize. Article 9 of Chapter 142 of the General Statutes prohibits the issuance of special indebtedness except for projects specifically authorized by the General Assembly.

Before any type of special indebtedness may be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the details of the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

Under general law, the Department of Administration may assess a service charge for the transfer or sale of recyclable material by a State agency. Timber is considered to be a recyclable material, so timber sales are subject to this service charge.

BILL ANALYSIS: This bill would authorize the issuance of up to $20 million of special indebtedness to finance the purchase by the Wildlife Resources Commission of land to be used as State game lands. In addition, the bill would authorize the issuance of up to $3.3 million of special indebtedness to finance the capital facility costs of two stall barns at the Senator Bob Martin Eastern Agricultural Center. The bill would also exempt sales of timber by the Wildlife Resources Commission from the service charge imposed by the Department of Administration.

EFFECTIVE DATE: This bill would become effective when it become law.

BACKGROUND: The Nature Conservancy is in negotiations with International Paper to purchase over 173,000 acres of land located at 22 sites in 9 southeastern states. The North Carolina portion of the purchase would total over 76,000 acres at 4 sites (on the Chowan River, the Roanoke River and the Upper Tar River in northeastern North Carolina and on Juniper Creek in southeastern North Carolina). The Wildlife Resources Commission would then purchase from The Nature Conservancy over 64,000 acres of this land to be used as State game lands. It is anticipated that timber receipts from the land will be sufficient to pay the special indebtedness authorized by this bill.

The Senator Bob Martin Eastern Agriculture Center is owned by the Department of Agriculture and Consumer Services and is located in Williamston. The facility includes an equine and livestock exhibition arena. The funds from the special indebtedness authorized by this bill would be used to construct and equip two new stall barns that would include an additional 300 permanent stalls.

S1892e1-SMLY-CSLYx-82

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 14, 2006

TO: House Committee on Finance

FROM: Jim Klingler
Fiscal Research Division

RE: Wildlife Special Indebtedness

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	**3,063,543**	**2,153,862**	**2,296,568**	**2,033,756**	**1,788,986**
EXPENDITURES:					
Debt Service	575,000	2,121,250	2,063,750	2,006,250	1,948,750
Personnel	311,999	323,543	335,191	347,257	359,064
Capital/Equip./ Maint.	263,200	83,844	85,521	87,231	88,976
Total	**1,150,199**	**2,528,637**	**2,484,462**	**2,440,738**	**2,396,790**
POSITIONS (cumulative):	**8**	**8**	**8**	**8**	**8**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wildlife Resources Commission

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

BILL SUMMARY:
May 24, 2006
S 1892. WILDLIFE COMMISSION INDEBTEDNESS (=H 2485). Filed 5/24/06. TO AUTHORIZE THE ISSUANCE OF SPECIAL INDEBTEDNESS TO FINANCE THE CAPITAL

FACILITIES COSTS OF A PURCHASE OF LAND BY THE WILDLIFE RESOURCES COMMISSION. Identical to H 2485, filed 5/23/06
Source: Bill Digest S.B. 1892 (05/24/0200).

ASSUMPTIONS AND METHODOLOGY:
The proposed land acquisition involves a total of 77,090 acres currently owned by the International Paper Corporation and located in four separate tracts. The total estimated cost for purchasing the lands is $80 million, and the Nature Conservancy has approached the State to fund the purchase in the following manner:

- $45 million from the Clean Water Management Trust Fund
- $10 million from the Natural Heritage Trust Fund
- $5 million from the Parks and Recreation Trust Fund
- $20 million from the Wildlife Resources Commission (WRC)

SB 1892 authorizes the Governor and the Council of State to issue special indebtedness in the amount of $20 million for WRC. WRC would purchase roughly 66,000 acres of International Paper lands through a land deal brokered by the Nature Conservancy. The purchase of all 77,090 acres would occur over three years.

The four tracts available for purchase include:

- 22,009 acres along the Roanoke River
- 20,749 acres of the Upper Tar River watershed
- 18,341 acres along Juniper Creek
- 15,464 acres along the Chowan River

The lands proposed for allocation to WRC would be lands that are contiguous or approximate to existing game lands in the WRC system.

Debt Service
The debt service schedule in Chart 1 was developed by the Office of State Treasurer based on the following assumptions:

- Certificates of participation would be issued
- All $20 million would be issued in Fall 2006
- 5.57% average interest rate
- 20-year term

Chart 1 – Debt Service for Game Lands Acquisition

Fiscal Year	Principal	Interest	Debt Service Payment
2006-07		575,000	575,000
2007-08	1,000,000	1,121,250	2,121,250
2008-09	1,000,000	1,063,750	2,063,750
2009-10	1,000,000	1,006,250	2,006,250
2010-11	1,000,000	948,750	1,948,750
2011-12	1,000,000	891,250	1,891,250
2012-13	1,000,000	833,750	1,833,750
2013-14	1,000,000	776,250	1,776,250
2014-15	1,000,000	718,750	1,718,750

Fiscal Year	Principal	Interest	Debt Service Payment
2015-16	1,000,000	661,250	1,661,250
2016-17	1,000,000	603,750	1,603,750
2017-18	1,000,000	546,250	1,546,250
2018-19	1,000,000	488,750	1,488,750
2019-20	1,000,000	431,250	1,431,250
2020-21	1,000,000	373,750	1,373,750
2021-22	1,000,000	316,250	1,316,250
2022-23	1,000,000	258,750	1,258,750
2023-24	1,000,000	201,250	1,201,250
2024-25	1,000,000	143,750	1,143,750
2025-26	1,000,000	86,250	1,086,250
2026-27	1,000,000	28,750	1,028,750
TOTALS	**20,000,000**	**12,075,000**	**32,075,000**

Revenue Estimate

The WRC has proposed to pay for the debt service, operating, and capital costs from the sale of timber on land acquired through SB 1892 and other State lands allocated to WRC. Chart 2 presents the revenue estimate provided by WRC. The following assumptions were used to develop Chart 2:

- **IP Lands Projected Revenue** – Timber receipts estimate developed by WRC for the project's feasibility study.
- **WRC Lands Projected Revenue** – Timber receipts estimate developed by WRC for other State game lands to be included in the feasibility study
- **Total Revised Revenue** – The sum of all projected receipts. These feasibility study estimates are revised based on WRC's experience with timber sales from FY 2000-01 to FY 2004-05. **The revenue estimate is revised up 1.5 times.**

Chart 2 – Revenue Estimate from Timber Receipts			
Fiscal Year	IP Lands Projected Revenue	WRC Lands Projected Revenue	Total Revised Revenue
2006-07	$263,047	$1,779,315	$3,063,543
2007-08	$263,047	$1,172,861	$2,153,862
2008-09	$263,047	$1,267,998	$2,296,568
2009-10	$263,047	$1,092,790	$2,033,756
2010-11	$263,047	$929,610	$1,788,986
2011-12	$500,000	$928,915	$2,143,373
2012-13	$822,700	$796,418	$2,428,677
2013-14	$822,700	$706,553	$2,293,880
2014-15	$822,700	$809,188	$2,447,832
2015-16	$822,700	$818,609	$2,461,964
2016-17	$822,700	$690,121	$2,269,232

Fiscal Year	IP Lands Projected Revenue	WRC Lands Projected Revenue	Total Revised Revenue
2017-18	$1,225,000	$832,315	$3,085,973
2018-19	$1,225,000	$784,000	$3,013,500
2019-20	$1,280,000	$993,715	$3,410,573
2020-21	$1,280,000	$700,565	$2,970,848
2021-22	$1,300,000	$641,000	$2,911,500
2022-23	$1,300,000	$787,315	$3,130,973
2023-24	$1,300,000	$598,000	$2,847,000
2024-25	$1,534,868	$944,715	$3,719,375
2025-26	$1,534,868	$711,565	$3,369,650
2026-27	$1,534,868	$851,000	$3,578,802
Totals	**$19,443,339**	**$18,836,568**	**$57,419,861**

Operating and Capital Improvements Costs

According to WRC, the purchase of this land will result in operating cost increases associated with managing the new game lands. WRC anticipates needing eight new positions to manage the new game lands and associated equipment. WRC also anticipates the construction of new depots on the lands to serve as workspace for the new personnel. Please see Chart 3 for a five year estimate of new personnel costs, equipment and capital costs. Proposed costs would be 100% receipt supported from the sale of timber on State game lands.

Chart 3 – 5-year Operating and Capital Improvements Impact		
Fiscal Year	**Personnel Costs**	**Capital / Equipment / Maintenance**
2006-07	$311,999	$263,200
2007-08	$323,543	$83,844
2008-09	$335,191	$85,521
2009-10	$347,257	$87,231
2010-11	$359,064	$88,976
Total	**$1,677,054**	**$608,772**

Cash Flow

WRC proposes to service the special indebtedness authorized in SB 1892 through receipts generated by the sale of timber on State game lands. WRC also proposes funding all operating expenditures and capital improvements through the same revenue sources. **When estimate receipts are compared with proposed expenditure impacts, WRC is projected to have insufficient timber receipts for fiscal years 2011-12 through 2016-17.** In each of those years, WRC would produce enough timber receipts to service the debt, but not cover all projected operating and capital expenditures. WRC would need to use other receipts available to the Commission or seek assistance from the General Fund. Please see Chart 4 for details.

Chart 4 – Cash Flow Projection				
Fiscal Year	**Projected Revenue**	**Existing & New Operating & Capital Costs**	**Debt Service**	**Projected Cumulative Year-end Cash Balance**
2005-06		$631,192		$3,109,096
2006-07	$3,063,543	$1,215,859	$575,000	$4,381,780
2007-08	$2,153,862	$1,057,657	$2,121,250	$3,356,736
2008-09	$2,296,568	$1,080,735	$2,063,750	$2,508,818
2009-10	$2,033,756	$1,104,413	$2,006,250	$1,431,910
2010-11	$1,788,986	$1,128,013	$1,948,750	$144,133
2011-12	$2,143,373	$1,342,200	$1,891,250	($945,945)
2012-13	$2,428,677	$1,176,991	$1,833,750	($582,064)
2013-14	$2,293,880	$1,202,403	$1,776,250	($684,774)
2014-15	$2,447,832	$1,228,453	$1,718,750	($499,371)
2015-16	$2,461,964	$1,255,160	$1,661,250	($454,447)
2016-17	$2,269,232	$1,482,542	$1,603,750	($817,061)
2017-18	$3,085,973	$1,310,619	$1,546,250	$229,103
2018-19	$3,013,500	$1,339,411	$1,488,750	$414,443
2019-20	$3,410,573	$1,368,937	$1,431,250	$1,024,828
2020-21	$2,970,848	$1,399,221	$1,373,750	$1,222,705
2021-22	$2,911,500	$1,640,282	$1,316,250	$1,177,673
2022-23	$3,130,973	$1,462,144	$1,258,750	$1,587,751
2023-24	$2,847,000	$1,494,831	$1,201,250	$1,738,670
2024-25	$3,719,375	$1,528,365	$1,143,750	$2,785,930
2025-26	$3,369,650	$1,562,772	$1,086,250	$3,506,557
2026-07	$3,578,802	$1,598,078	$1,028,750	$4,458,532
Total	**$57,419,861**	**$28,610,278**	**$32,075,000**	

SOURCES OF DATA: Wildlife Resources Commission and the Nature Conservancy

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 474*

Committee Substitute Favorable 8/23/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H474-CSLY-75 [v.3]

6/13/2006 6:07:55 PM

Short Title: Mill Rehabilitation Tax Credit. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC MILL FACILITIES AND TO PROVIDE AN ENHANCED HISTORIC REHABILITATION CREDIT FOR REHABILITATION EXPENSES WITH RESPECT TO A FACILITY THAT WAS ONCE A STATE-OWNED TRAINING SCHOOL FOR JUVENILE OFFENDERS.

The General Assembly of North Carolina enacts:

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

"Article 3H.

"Mill Rehabilitation Tax Credit.

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in section 47 of the Code.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was used as a manufacturing facility, as a warehouse for storing the manufactured items or raw materials or component

parts used in the manufacturing process, or as a warehouse for selling agricultural products.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed three million dollars ($3,000,000) for the site as a whole.

(6) Enterprise tier area. – Defined in G.S. 105-129.3.

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

"**§ 105-129.71. Credit for income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For an eligible site located in an enterprise tier one, two, or three area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For an eligible site located in an enterprise tier four or five area, determined as of the date of certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty

percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.72. Credit for non-income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. For an eligible site located in an enterprise tier one, two, or three area, determined as of the date of certification, the amount of the credit is equal to forty

percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in an enterprise tier four or five area.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allocable credit is allocated equally among the five years in which the credit is claimed.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.73. Tax credited; cap.**

(a) Taxes Credited. – The credits allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credits allowed by this Article against only one

of the taxes against which it is allowed. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years.

"**§ 105-129.74. Coordination with Article 3D of this Chapter.**

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A apply to this Article.

"**§ 105-129.75. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2011."

SECTION 2. G.S. 105-129.35(a) reads as rewritten:

"(a) Credit. – A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit equal to twenty percent (20%) of the expenditures that qualify for the federal credit. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection."

SECTION 3. G.S. 105-129.36(a) reads as rewritten:

"(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a State-certified historic structure located in this State is allowed a credit equal to thirty percent (30%) of the rehabilitation expenses. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars ($25,000) within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection."

SECTION 4. G.S. 105-129.36(b)(1) reads as rewritten:

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

(1) Certified rehabilitation. – Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation ~~Officer prior to the commencement of the work.~~Officer."

SECTION 5. This act is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 474*
Committee Substitute Favorable 8/23/05

Short Title: Mill Rehabilitation Tax Credit. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC MILL FACILITIES.

Whereas, the State of North Carolina has lost more than 164,000 jobs in the textile industry during the past decade; and

Whereas, the State of North Carolina has also lost a large number of manufacturing jobs in other industries such as tobacco and furniture; and

Whereas, the losses of these manufacturing jobs have resulted in the vacancy of numerous mill buildings, many of which are historic; and

Whereas, a large vacant mill can be a cancer in a community if it remains vacant and unused, resulting in the deterioration of surrounding neighborhoods and commercial districts, crime, vandalism, vagrancy, arson, and a loss of community spirit; and

Whereas, renovated for new adaptive uses or for new industrial or business uses, a large old factory or mill can have significant environmental, economic development, cultural, tourism, tax base, and affordable housing benefits for a community; and

Whereas, the Historic Rehabilitation Tax Credits created by the North Carolina General Assembly in 1997 have proved to be successful in the revitalization of numerous major historic buildings; and

Whereas, additional incentives would help encourage the rehabilitation of the numerous industrial buildings that have been vacated in recent years, especially those in smaller towns and counties that have been hardest hit by the loss of manufacturing jobs; and

Whereas, the rehabilitation of historic buildings has been proven to be a successful economic development strategy for creating jobs and stimulating new investment; and

Whereas, Virginia and South Carolina have each adopted generous incentives for the rehabilitation of similar buildings that are resulting in new investment in their communities; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 3H.

"Mill Rehabilitation Tax Credit.

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in G.S. 105-129.35.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was designed for use or was used as a manufacturing facility or for purposes ancillary to manufacturing or as a facility for providing utility services.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the time at which the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed two million dollars ($2,000,000) for the site as a whole.

(6) Enterprise tier area. – Defined in G.S. 105-129.3.

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

"**§ 105-129.71. Credit for income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under

applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.72. Credit for non-income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to fifty percent (50%) of the rehabilitation expenses.

(2) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the

eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allocable credit is allocated equally among the five years in which the credit is claimed.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.73. Tax credited; cap.**

(a) Taxes Credited. – The credits allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credits allowed by this Article against only one of the taxes against which it is allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years.

"**§ 105-129.74. Coordination with Article 3D of this Chapter.**

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A apply to this Article.

"**§ 105-129.75. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2011."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after that date.

HOUSE BILL 474:
Mill Rehabilitation Tax Credit

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 12, 2006
Introduced by:	Reps. Ross, Howard, Brubaker, Goodwin	**Summary by:**	Canaan Huie Committee Counsel
Version:	PCS to Second Edition H474-CSLY-75		

SUMMARY: House Bill 474 would provide a tax credit for rehabilitating vacant historic manufacturing sites if the taxpayer spends at least $3 million to rehabilitate the site. The credit is a percentage of the qualified rehabilitation expenditures and the percentage varies depending on the enterprise tier location of the site and the eligibility for the federal credit. The credit may be claimed against the franchise tax, the income tax, or the gross premiums tax, but may be taken against only one of these taxes.

This PCS differs from the 2nd Edition of the bill in the following ways:

- *The credit is allowed for manufacturing, associated warehouse facilities, and warehouses used to sell agricultural products only. The 2nd Edition authorized the credits for manufacturing facilities, facilities ancillary to manufacturing, and utilities facilities.*
- *The 2nd Edition authorized a credit for non-income producing facilities in enterprise tiers four and five whereas this PCS does not.*
- *The PCS reduces the amount of the credit for non-income producing facilities in enterprise tiers one, two, and three from 50% to 40%.*
- *The expenses threshold for the 2nd Edition was $2 million whereas it is $3 million for this PCS.*
- *The PCS provides for a similar enhanced credit for facilities that at one time were State-owned training schools for juvenile offenders.*
- *The PCS eliminates the requirement that in order for a project to eligible for a credit for non-income producing property it must receive the certification of the State Historic Preservation Officer before the commencement of work.*

CURRENT LAW: North Carolina allows a tax credit to taxpayers that qualify for the federal historic rehabilitation credit. The federal tax credit is available for rehabilitating only income-producing historic structures, and is equal to 20% of the rehabilitation expenses. The amount of the North Carolina credit is 20% of the expenses that qualify for the federal credit. A pass-through entity may allocate the credit to an owner if an owner's adjusted basis in the pass-through entity is at least 40% of the amount allocated to that owner.

North Carolina also allows an income tax credit of 30% of the expenses of rehabilitating an historic structure that is not income-producing, and thus not eligible for the federal income tax credit. To qualify for the credit for non-income producing historic structure, the taxpayer must spend more than $25,000 within a 24-month period. In addition, the rehabilitation that is the subject of the credit must be certified as consistent with federal standards by the State Historic Preservation Office before the commencement of work. This credit must be taken in installments over five years after the structure is placed in service.

BILL ANALYSIS: House Bill 474 provides a credit to a taxpayer that rehabilitates a vacant historic manufacturing site and who spends at least $3 million to rehabilitate the site. The taxpayer must first provide the Secretary of Revenue with documents showing that the State Historic Preservation Officer certifies the site and rehabilitation and showing the amount of rehabilitation expenditures or expenses. The amount of the credit depends upon the enterprise tier in which the site is located and the eligibility for a federal credit as follows:

- 40% of qualified rehabilitation expenditures – if the site is located in enterprise tier one, two, or three area regardless of whether the taxpayer is allowed federal credit
- 30% of qualified rehab expenditures – if the site is located in enterprise tier four or five, and the taxpayer is allowed a federal credit.

If the credit is taken for income-producing property, it may be taken in the year the property is placed in service. If the credit is taken for non-income-producing property, the credit must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

The credit allowed may be claimed against the income tax, the franchise tax, or the gross premium tax. The taxpayer must elect the tax against which the credit will be claimed, and this election is binding.

The credit may not exceed the amount of the tax against which the credit is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by the taxpayer. Any unused portion of the credit may be carried forward for nine years.

A pass-through entity may allocate the credit among any of its owners without limitation so long as the owner's adjusted basis in the pass-through entity is at least 40% of the amount of credit allocated to the owner. An owner of a pass–through entity that qualifies for the credit will forfeit a portion of any credit the owner has received if both of the following conditions are met:

- The owner disposed of the interest within five years from the date the eligible site is placed into service.
- The owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed into service.

The forfeiture of an owner's interest is not required if the change in ownership is the result of the owner's death or the merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the entity, to the extent the entity does not receive cash or tangible property in the transaction. A taxpayer or owner of a pass-through entity that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest computed from the date the taxes would have been due if the credit had not been allowed.

Sections 2 and 3 of the bill authorize an enhanced historic rehabilitation credit for a facility that was once a State-owned training school for juvenile offenders. The amount of the credit such a facility would be eligible for would be increased to 40% of the qualified rehabilitation expenditures or rehabilitation expenses rather than 20% or 30%, respectively. This provision would allow for an enhanced credit for a rehabilitation of the facilities of the former Stonewall Jackson Manual Training and Industrial School in Cabarrus County.

Section 4 of the bill would eliminate the requirement that a taxpayer receive the State Historic Preservation Officer's certification regarding compliance with federal standards before the work began. The taxpayer would still be required to receive this certification, but the timing of that certification would be immaterial.

EFFECTIVE DATE: House Bill 474 is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after July 1, 2006. The credit expires for expenses incurred on or after January 1, 2011.

H0474e2-SMLY-CSLY-75

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 6, 2006

TO: Representatives Brubaker, Howard, Ross, and Goodwin

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 474 (Proposed Committee Substitute to 2nd Edition)

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
			(in millions)		
REVENUES:					
General Fund	(2.8)	(8.3)	(14.7)	(10.8)	(6.7)
POSITIONS (cumulative):					

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

EFFECTIVE DATE: January 1, 2006

BILL SUMMARY: Current law allows a 20% tax credit for rehabilitation of income-producing historic properties and a 30% tax credit for rehabilitation of non-income-producing historic properties (G.S. 105-129.29 through 105-129.34, Historic Rehabilitation Tax Credits). The existing tax credit may be taken in five equal installments over a period of five years after the property is placed into service. House Bill 474 provides a larger tax credit for rehabilitation of qualified historic mill properties and a different schedule for investors to claim the credit. In

addition, the tax credit created by this bill varies by economic tier in order to provide additional incentive for mill rehabilitations in more distressed counties.

Historic mill renovations costing more than $3 million located in economic tiers 1, 2, or 3 (most distressed counties) may claim either a 40% tax credit for an income-producing property or a 50% tax credit for a non-income-producing property. Mill renovations costing more than $3 million in economic tiers 4 and 5 may claim either a 30% tax credit for income-producing properties or a 40% tax credit for non-income-producing properties. Regardless of tier, any income-producing mill rehabilitation (commercial space and rental apartments) may take the entire amount of the credit in the first year it is available with a nine-year carryover if the credit exceeds tax liability. Non-income-producing mill rehabilitations (residential condos) may take the credit in five equal installments with a nine-year carryover if the credit exceeds tax liability. In addition, a certified historic structure that at one time served as a State training school for juvenile offenders may claim a credit equal to 40% of its qualified rehabilitation expenditures regardless of whether is it converted into an income-producing or non-income-producing property.

This credit may not be claimed in addition to the Article 3D credit. The credit may be claimed against either the franchise tax, the income tax, or the gross premiums tax. The entire credit may be claimed in the taxable year in which the property is placed into service. Any unused portion of the credit may be carried forward for nine years.

The bill includes a five-year sunset. Qualified rehabilitation expenditures incurred on or after July 1, 2011, are not eligible for credits created by this bill.

ASSUMPTIONS AND METHODOLOGY: The chart below illustrates the differences in value of tax credits available for rehabilitated mills under current law (Article 3D) and HB 474.

Existing Article 3D Credit v. HB 474			
		Income-producing	Non-income-producing
Article 3D		20%	30%
HB 474	Tiers 1-3	40%	40%
	Tiers 4-5	30%	No credit given

Preservation NC estimates there are approximately 30 to 35 mill properties out of more than 200 eligible properties throughout North Carolina likely to be rehabilitated as a result of this tax credit. Since most major mill rehabilitations in urban counties have already been completed, the projection assumes the establishment of this credit will generate private investment in remaining eligible properties in upper economic tiers as well as some properties in lower economic tier counties through 2006-07 and 2007-08. By 2008-09, the projection assumes most properties undergoing renovation will be located in lower economic tier counties. The projection also assumes a 12-month lag between a project's construction and its placement in service.

The estimated first-year cost of House Bill 474 is based on the estimated actual investment in two income-producing properties in Durham, NC. These properties are part of the American Tobacco project and are expected to be completed and put in service in fall 2006 and spring 2007. The base expenditure data for this projection for 2007-08 and beyond was derived from actual mill

rehabilitation data for North Carolina between 2002-2004. Since most mill rehabilitation projects completed during those years were income-producing properties located in economic tiers 4 and 5, the location (economic tier) and type (income-producing or non-income-producing) of mill rehabilitation has been altered to reflect expectations for future investment. The following tables detail these assumptions.

Projected Number of Mill Rehabilitations by Economic Tier (by fiscal year)						
	2006-07	2007-08	2008-09	2009-10	2010-11	**All years**
Low tiers (1, 2, and 3)	0	4	5	5	4	**17**
High tiers (4 and 5)	2	3	1	1	1	**8**
Total	**2**	**7**	**6**	**6**	**5**	**26**

Projected Number of Mill Rehabilitations by Type (by fiscal year)						
	2005-06	2006-07	2007-08	2008-09	2009-10	**All years**
Income-producing	2	3	2	2	1	**10**
Non-income-producing	0	4	4	4	4	**16**
Total	**2**	**7**	**6**	**6**	**7**	**26**

The cost of individual mill rehabilitations in this projection ranges from $4.0 million to $25.6 million with most projects costing between $5 million and $15 million. Preservation NC believes there are only two non-renovated mill properties remaining that are likely to attract investors and will cost more than $20 million to rehabilitate. The projection assumes these two projects will be completed and placed into service in 2008-09 and 2009-10.

House Bill 474 would allow the tax credit for income-producing properties to be taken in full the year the property is placed into service. Preservation NC has indicated that although many individuals who develop historic mills for income-producing uses may be able to take most of their available credit in one year, most non-income-producing mill property owners will not. For this reason, the credit will be available to non-income-producing property owners over a period of 5 years, similar to the existing Article 3D credit.

HB 474 Impact (Proposed Credit less Existing Credit)					
	2006-07	2007-08	2008-09	2009-10	2010-11
HB 474 (proposed)	8,400,000	11,625,362	20,140,980	18,178,066	14,991,847
Article 3D (existing)	$ 5,600,000	$ 3,301,626	$ 5,462,509	$ 7,365,323	$ 8,245,807
Total fiscal impact	**2,800,000**	**8,323,736**	**14,678,472**	**10,812,743**	**6,746,041**

SOURCES OF DATA: Preservation NC, State Historic Preservation Office

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1373
PROPOSED COMMITTEE SUBSTITUTE S1373-PCS15341-MA-25

Short Title: Eliminate Fee for Legion of Valor Plate. (Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REGISTRATION PLATE FEE REQUIREMENT FOR INDIVIDUALS WHO QUALIFY FOR THE LEGION OF VALOR SPECIAL REGISTRATION PLATE AND TO ADD THE DUCKS UNLIMITED SPECIAL PLATE TO THE LIST OF PLATES NOT REQUIRED TO HAVE A "FIRST IN FLIGHT" BACKGROUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of ~~the Congressional Medal of Honor,~~ a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional ~~Congressional Medal of Honor,~~ Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00

Stock Car Racing Theme	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Coastal Federation	$25.00
Nurses	$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Guilford Battleground Company	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Shag Dancing	$15.00
Active Member of the National Guard	None

100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 2. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1373

Short Title:	Eliminate Fee for Legion of Valor Plate.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Finance.	

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REGISTRATION PLATE FEE REQUIREMENT FOR INDIVIDUALS WHO QUALIFY FOR THE LEGION OF VALOR SPECIAL REGISTRATION PLATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of ~~the Congressional Medal of Honor,~~ a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional ~~Congressional Medal of Honor,~~ Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00

Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Coastal Federation	$25.00
Nurses	$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Guilford Battleground Company	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None

Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

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

SENATE BILL 1373:
Eliminate Fee for Legion of Valor Plate

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 13, 2006
Introduced by:	Sen. Rand	**Summary by:**	Cindy Avrette Committee Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 1373 would eliminate the vehicle registration fee of $28 and the additional special registration plate fee of $10 for recipients of the Legion of Valor special registration plate. The bill would become effective when it becomes law.***

CURRENT LAW: The Division of Motor Vehicles may issue one free registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional plates Congressional Medal of Honor, 100% disabled veteran, and ex-prisoner of war are subject to the regular motor vehicle registration fee of $28 and the additional special registration plate fee of $10.

In 1993, the General Assembly replaced the Congressional Medal of Honor special registration plate authorization with a Legion of Valor special plate authorization. The Legion of Valor plate authorization includes not only the Congressional Medal of Honor, but also the Distinguished Service Cross, the Navy Cross, and the Air Force Cross. The special plate bears the emblem and name of the recipient's decoration.

BILL ANALYSIS: Although the scope of the special plate authorization was expanded in 1993 to include the Distinguished Service Cross, the Navy Cross, and the Air Force Cross, the authorization to receive one free registration plate was not. Senate Bill 1373 would authorize the Division of Motor Vehicles to issue one free registration plate to recipients of the Distinguished Service Cross, the Navy Cross, and the Air Force Cross. Any additional plates issued to a recipient would be subject to the fees. There are 19 active Legion of Valor special registration plates.

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

S1373e1-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1373 (First Edition)

SHORT TITLE: Eliminate Fee for Legion of Valor Plate.

SPONSOR(S): Senator Rand

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
			(in dollars)		
REVENUES:					
General Fund			No Impact to General Fund		
Special Reserve Plate Account	($190)	($190)	($190)	($190)	($190)
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Division of Motor Vehicles

EFFECTIVE DATE: When law.

BILL SUMMARY: Senate Bill 1373 eliminates the $10.00 fee charged by the Division of Motor Vehicles for the Legion of Honor registration plate and deletes language regarding the Congressional Medal of Honor registration plate, which is included in the Legion of Valor plate.

ASSUMPTIONS AND METHODOLOGY: As of December 31, 2005, there were 19 active Legion of Honor registration plates in North Carolina and five Congressional Medal of Honor plates. Since Congressional Medal of Honor plates are already free of charge, the fiscal impact of Senate Bill 1373 is limited to the elimination of the fee for the Legion of Honor plate.

Division of Motor Vehicles records show that the number of active Legion of Honor plates has declined very slightly since 2000, but this projection assumes the number of plates will stay the same over the next five years.

SOURCES OF DATA: NC Division of Motor Vehicles

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 9, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2048*

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

May 18, 2006

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

a. A related entity.

b. A component member.

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

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

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

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

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

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

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

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

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

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

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

HOUSE BILL 2048:
Expansion of Royalty Reporting Option

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 13, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Trina Griffin Committee Counsel
Version:	First Edition		

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

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

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

In North Carolina, every C Corporation "doing business" in this State is subject to corporate income and franchise taxes.[2] Some corporations have argued that an out-of-state investment company's receipt of royalty income from the use of trademarks in this State does not constitute "doing business" in North Carolina and, therefore, the investment company is not subject to North Carolina income or franchise tax on the royalties.

However, in *A&F Trademark, Inc. v. Tolson* the North Carolina Court of Appeals upheld the State's position on the taxation of royalty income received by an out-of-state investment company for the use of trademarks in this State. The Court ruled that the out-of-state taxpayers who hold trademarks used in North Carolina were doing business in North Carolina. Therefore, under current law, an out-of-state

[1] Sen. Hoyle introduced a companion bill, Senate Bill 1458. It is in the Senate Finance Committee.
[2] See G.S. 105-130.3 and G.S. 105-122.

holding company receiving royalty payments for the use of trademarks, patents, or copyrights in North Carolina is subject to both North Carolina income and franchise taxes.

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

Specifically, G.S. 105-130.7A restates that a company's receipts from royalty payments for the use of trademarks in North Carolina are income from doing business in North Carolina. Then it provides adjustments to assure full and fair accountability of this income in relationship to where it is actually earned. In cases where the recipient of the North Carolina royalty income is unrelated to the payer, the recipient is required to pay tax on the income to North Carolina. In cases where the recipient and the payer are related, they have an option on how the income is reported to North Carolina. Either the payer can deduct the North Carolina royalty payments on its North Carolina return and the recipient can include them on its North Carolina return, or the payer can add them to its North Carolina income and the recipient can deduct them on its North Carolina return.[3]

This provision solves the problem as it relates to trademarks and trade names, but does not address other types of intellectual property, such as patents[4] and copyrights.[5]

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

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

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

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

H2048e1-SMRB

---

[3] See *Geoffrey, Inc. v. South Carolina Tax Com'n*, 437 S.E.2d 13 SC, 1993, cert. denied by U.S. Supreme Court, 114 S.Ct. 50 (1993). The South Carolina Supreme Court held that (1) royalty income of a foreign corporation, obtained from trademark licenses issued to an affiliate, could be taxed without violating due process clause and (2) tax could be imposed without violating interstate commerce clause.

[4] A patent for an invention is the grant of a property right to the inventor that gives the inventor the right to exclude others from making, using, offering for sale, selling or importing the invention for a specified period of time.

[5] Copyright is a form of protection provided under federal law to the authors of original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 2048 (First Edition)

SHORT TITLE: Expansion of Royalty Reporting Option.

SPONSOR(S): Representative Luebke

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	See "Assumptions and Methodology"				
EXPENDITURES:					

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

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

BILL SUMMARY .The 2001 General Assembly enacted legislation that eliminated the tax planning strategy of shifting trademark royalty income to another state in order to avoid the North Carolina income tax. The proposal would extend the 2001 treatment to royalty income from patents and copyrights.

ASSUMPTIONS AND METHODOLOGY: A discussion with the Department of Revenue indicates that the enactment of the bill could have a positive impact on General Fund tax revenue but the magnitude of this amount is not known. One factor limiting the impact is that fact that in the wake of the **A & F Trademark** case (court upheld right of state to tax trademark income), some taxpayers who would potentially be affected by this legislation may already be in compliance. Another issue is the fact that the proposal applies to patent and copyright royalty income only. In general, any revenue gain would be smaller than the receipts from the 2001 act affecting trademark income. During the 2001 discussion the estimated fiscal impact from the trademark provision was $20 million per year.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 24, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE FINANCE COMMITTEE
Tuesday, June 20, 2006 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 20, 2006, in Room 544 of the Legislative Office Building. Twenty-three members of the committee were present. Senator David Hoyle presided. Panos Harakas and Sadie Cooke of Gastonia and Caroline Cross and Alex Register of Burlington served as pages.

HB 1852 – Lincoln Annexations.

Senator Forrester was recognized to explain the bill. Senator Apodaca moved for a favorable report and the motion carried. Copies of the bill and the summary are attached.

HB 2097 – Property Tax Changes.

Representative Brubaker was recognized to explain the bill. Senator Tillman moved for a favorable report and the motion carried. Copies of the bill, summary and fiscal note are attached.

SB 1479 – Uniform Unincorporated Nonprofit Assoc. Act.

Senator Hagan was recognized to explain the bill. Senator Webster moved for a favorable report and the motion carried. A copy of the bill is attached.

SB 1203 – Agrarian Growth Zones – Bill Lee.

Senator Albertson was recognized to explain the bill and moved to adopt the proposed committee substitute for discussion. The motion carried. Senator Hartsell moved for a favorable report and the motion carried. Copies of the bill, proposed committee substitute, fiscal note and summary are attached.

SB 1157 – Oyster Shells/Ban Landfilling/Tax Credit.

Senator Albertson was recognized to explain the bill and motioned to adopt the proposed committee substitute for discussion. The motion carried. Senator Tillman moved for a favorable report and the motion carried. Copies of the bill, proposed committee substitute, summary and fiscal note are attached.

SB 2002 – UNC Students/Criminal Background Checks.

Senator Hunt was recognized to explain the bill and motioned to adopt the proposed committee substitute for discussion. The motion carried. Former Senator, Leslie Winner, counsel to the UNC system was recognized and spoke in opposition to the bill.

The bill was moved from the agenda. Copies of the bill, proposed committee substitute, summary and fiscal memo are attached.

SB 1563 – Tax Credits for Certain Real Prop. Donations.

Senator Clodfelter was recognized to explain the bill and motioned to adopt the proposed committee substitute for discussion. The motion carried. Senator Apodaca moved for a favorable report and the motion carried. Copies of the bill, proposed committee substitute, and fiscal note are attached.

SB 1559 – Video Service Competition Act.

Senator Clodfelter was recognized to explain the bill and motioned to adopt the proposed committee substitute for discussion. The motion carried. Senator Clodfelter offered an amendment (104) and motioned for a favorable report. The motion carried. Senator Cowell offered an amendment, but due to time the bill moved tentatively moved to the next agenda. Copies of the bill, proposed committee substitute, amendments, summary and fiscal note are attached.

The meeting adjourned at 1:58 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Wednesday, June 21, 2006

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

FAVORABLE

S.B. **1203** Agrarian Growth Zones - Bill Lee.
Sequential Referral: None
Recommended Referral: None

S.B. **1479** Uniform Unincorporated Nonprofit Assoc. Act.
Sequential Referral: None
Recommended Referral: None

H.B. **1094** Wastewater System Approvals/Small Counties
Sequential Referral: None
Recommended Referral: None

H.B. **1852** Lincoln Annexations.
Sequential Referral: None
Recommended Referral: None

H.B. **2097** Property Tax Changes.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1563** Tax Credits for Certain Real Prop. Donations.
Draft Number: 75545
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **1157** Oyster Shells/Ban Landfilling/Tax Credit.
Draft Number: 15416

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 7

Committee Clerk Comments:

Senate Finance Committee
Tuesday, June 20, 2006, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1852	Lincoln Annexations.	Rep. Kiser
HB 2097	Property Tax Changes.	Rep. Brubaker
SB 1157	Oyster Shells/Ban Landfilling/Tax Credit.	Senator Albertson
SB 1203	Agrarian Growth Zones - Bill Lee.	Senator Albertson
SB 1479	Uniform Unincorporated Nonprofit Assoc. Act.	Senator Hagan
SB 1559	Video Service Competition Act.	Senator Clodfelter
SB 1563	Tax Credits for Certain Real Prop. Donations.	Senator Clodfelter
SB 2002	UNC Students/ Criminal Background Checks.	Senator Hunt

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bill Wilson	AARP
Bill Rowe	NC Justice Center
J. Quinterno	NC BTC
Rob Schofield	NC Ctr. for Nonprofits
Doris Weaver	Communications Workers of Amer
Tom Coley	11
Tim Sturges	Visdoe
Bill Flournoy	DENR
Greg Ralph	NCDOR
Sam McEwen	NCDOR
Anna Mitchell	NC DOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

June 20, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andy Sasol	NC OCR
John Fuquay	Fayetteville
Bob Gillam	Public Staff - NCUC
Lemuel Hinton	NCUC Legal Staff
Chris Kukla	Ctr. for Responsible Lending
Erik Albright	Smith Moore LLP
P. Bly Hall	General Statutes Commission
Floyd M. Lewis	General Statutes Commission
Joanna Wright	e-NC Authority
CHARLES PITTMAN	E-NC AUTHORITY
JANO PATTERSON	E-NC AUTHORITY

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Hackney	NCPC
Dave Simpson	AGC
R. Rogers	NCDENR
Dick Culton	Duke
Doug Lassiter	NCSTA
Patrick Baker	Allen Assoc, Inc
Dana Simpson	Smith Anderson
Lisa Pierce	Duke Energy
Kathy Hawkins	Progress Energy
Connie Wilson	SSJ
Chatham Olive	2501 Tanglewood Charlotte NC 28211

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Stephason	N.C. Coastal Federation
DAVID BARNES	Pegram + Sanders
Steve Woodson	NC Farm Bureau
Stacy Flannery	NCHCFA
[illegible]	[illegible]
[illegible]	JP Assoc.
[illegible]	NCALTCF
[illegible]	Bona Assoc
PAUL Meyer	NCAA
Kim Hibbard	NCLM
Richard O'Brien	AFPNC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
MACK B. PEARSON	Citizen Video Legis
Amy Schilder	HANC
Karl Knapp	DOR
Heather Randell	Sierra Club
John McKeel	Gov Office
Paige Arnold	Gov Office
SUSANNE STREETS	NCRA
Elizabeth Dalton	NCRMA
Andy Ellen	NCRMA
[illegible]	Poyner & Spruill
Lin-Dan Coe Pennyman	Delta Education LLC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Herb Crenshaw	BellSouth

HOUSE BILL 1852*

Short Title:	Lincoln Annexations.	(Local)
Sponsors:	Representative Kiser.	
Referred to:	Local Government I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT NO GOVERNMENTAL ENTITY OUTSIDE OF LINCOLN COUNTY MAY ANNEX ANY PORTION OF THAT COUNTY, OR EXTEND ITS EXTRATERRITORIAL JURISDICTION INTO LINCOLN COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, no incorporated city, town, or village outside of Lincoln County may annex any territory within Lincoln County or extend its extraterritorial planning jurisdiction into Lincoln County.

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

HOUSE BILL 1852: Lincoln Annexations

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 21, 2006
Introduced by:	Rep. Kiser	**Summary by:**	Trina Griffin Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 1852 would prohibit any municipality located outside of Lincoln County from annexing any land within the borders of Lincoln County, and would prohibit any municipality located outside Lincoln County from exercising extraterritorial jurisdiction inside Lincoln County.***

CURRENT LAW: The General Statutes permit municipalities to grow and expand their municipal boundaries through the process of annexation. Prior to annexing an area, the municipality may elect to exercise their extraterritorial jurisdiction (ETJ) over the area. ETJ power is generally exercised over the area one mile from the existing corporate limits. The exercise of ETJ power permits the municipality to enforce its land use planning tools within the one-mile area outside the corporate limits.

BILL ANALYSIS: The bill would prohibit any municipality located outside of Lincoln County from exercising the power of annexation or extraterritorial jurisdiction inside the borders of Lincoln County.

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

BACKGROUND: Similar provisions have been enacted in the past for Davie County (Chapter 91 of the 1981 Session Laws) and Forsyth County (Chapter 453 of the 1973 Session Laws), and Currituck County (S.L. 2003-27).

Erika Churchill, counsel to House Local Government I, substantially contributed to this summary.

H1852e1-SMSV

H

HOUSE BILL 2097*

Short Title:	Property Tax Changes.	(Public)
Sponsors:	Representatives Brubaker; Carney, Church, Hill, Luebke, McComas, Wainwright, Wilkins, and Culp.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING CHANGES TO THE PROPERTY TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-304(a1) reads as rewritten:

"(a1) Electronic Listing. – The board of county commissioners may, by resolution, provide for electronic listing of ~~business~~ personal property in accordance with procedures prescribed by the board. If the board of county commissioners allows electronic listing of ~~business~~ personal property, the assessor must publish this information, including the timetable and procedures for electronic listing, in the notice required by G.S. 105-296(c)."

SECTION 2. G.S. 105-307 reads as rewritten:

"**§ 105-307. Length of listing period; extension; preliminary work.**

(a) Listing Period. – Unless extended as provided in this section, the period during which property is to be listed for taxation each year begins on the first business day of January and ends on January 31.

(b) General Extensions. – The board of county commissioners may, by resolution, extend the time during which property is to be listed for taxation as provided in this subsection. Any action by the board of county commissioners extending the listing period must be recorded in the minutes of the board, and notice of the extensions must be published as required by G.S. 105-296(c). The entire period for listing, including any extension of time granted, is considered the regular listing period for the particular year within the meaning of this Subchapter.

(1) In nonrevaluation years, the listing period may be extended for up to 30 additional days.

(2) In years of octennial appraisal of real property, the listing period may be extended for up to 60 additional days.

(3) If the county has provided for electronic listing of ~~business~~ personal property under G.S. 105-304, the period for electronic listing of business personal property may be extended up to June 1.

(c) Individual Extensions. – The board of county commissioners shall grant individual extensions of time for the listing of real and personal property upon written request and for good cause shown. The request must be filed with the assessor no later than the ending date of the regular listing period. The board may delegate the authority to grant extensions to the assessor. Extensions granted under this subsection shall not extend beyond April 15. If the county has provided for electronic listing of ~~business~~ personal property under G.S. 105-304, the period for electronic listing of business personal property is as provided in subsection (b) of this section.

(d) Preliminary Work. – The assessor may conduct preparatory work before the listing period begins, but may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285."

SECTION 3. G.S. 105-330.10 reads as rewritten:

"**§ 105-330.10. (Effective until July 1, 2009) Disposition of interest.**

Sixty percent (60%) of the first month's interest collected on unpaid taxes pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account created within the Treasurer's Office. The North Carolina Association of County Commissioners shall direct the Treasurer to distribute the funds in the Account to the Division of Motor Vehicles for the purpose of developing and implementing an integrated computer system within the Division of Motor Vehicles that would allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates. The Treasurer shall report to the Revenue Laws Study Committee semiannually with the first report due by April 30, 2006. The report shall contain a detailed description of the amount of moneys transferred to the Account and distributed from the Account."

SECTION 4. G.S. 105-277.4 is amended by adding a new subsection to read:

"(a1) Late Application. – Upon a showing of good cause by the applicant for failure to make a timely application as required by subsection (a) of this section, an application may be approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission."

SECTION 5. G.S. 105-321(d) is repealed.

SECTION 6. G.S. 105-378 is amended adding a new subsection to read:

"(d) Enforcement and Collection Delayed Pending Appeal. – When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been or is subsequently appealed to the Property Tax Commission, the tax collector may not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer."

SECTION 7. G.S. 105-373(a) reads as rewritten:

"(a) Annual Settlement of Tax Collector. –

(1) Preliminary Report. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make a sworn report to the governing body of the taxing unit showing:

a. A list of the persons owning real property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person; and

b. A list of the persons not owning real property whose personal property taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person. (To this list the tax collector shall append his statement under oath that he has made diligent efforts to collect the taxes due from the persons listed out of their personal property and by other means available to him for collection, and he shall report such other information concerning these taxpayers as may be of interest to or required by the governing body, including a report of his efforts to make collection outside the taxing unit under the provisions of G.S. 105-364.) The governing body of the taxing unit may publish this list in any newspaper in the taxing unit. The cost of publishing this list shall be paid by the taxing unit.

(2) Insolvents. – Upon receiving the report required by subdivision (a)(1), above the governing body of the taxing unit shall enter upon its minutes the names of persons owing taxes (but who listed no real property) whom it finds to be insolvent, and it shall by resolution designate the list entered in its minutes as the insolvent list to be credited to the tax collector in his settlement.

(3) Settlement for Current Taxes. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make full settlement with the governing body of the taxing unit for all taxes in his hands for collection for the preceding fiscal year.

a. In the settlement the tax collector shall be charged with:

1. The total amount of all taxes in his hands for collection for the year, including amounts originally charged to him and all amounts subsequently charged on account of discoveries;

2. All penalties, interest, and costs collected by him in connection with taxes for the current year; and

3. All other sums collected by him.

b. The tax collector shall be credited with:

1. All sums representing taxes for the year deposited by him to the credit of the taxing unit or receipted for by a proper official of the unit;

2. Releases duly allowed by the governing body;

3. The principal amount of taxes constituting liens on real property;
4. The principal amount of taxes included in the insolvent list determined in accordance with subdivision (a)(2), above;
5. Discounts allowed by law; ~~and~~
6. Commissions (if any) lawfully payable to the tax collector as ~~compensation.~~compensation; and
7. The principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.

The tax collector shall be liable on his bond for both honesty and faithful performance of duty; for any deficiencies; and, in addition, for all criminal penalties provided by law.

The settlement, together with the action of the governing body with respect thereto, shall be entered in full upon the minutes of the governing body.

(4) Disposition of Tax Receipts after Settlement. – Uncollected taxes allowed as credits in the settlement prescribed in subdivision (a)(3), above, whether represented by tax liens held by the taxing unit or included in the list of insolvents, shall, for purposes of collection, be recharged to the tax collector or charged to some other person designated by the governing body of the taxing unit under statutory authority. The person charged with uncollected taxes shall:

a. Give bond satisfactory to the governing body;
b. Receive the tax receipts and tax records representing the uncollected taxes;
c. Have and exercise all powers and duties conferred or imposed by law upon tax collectors; and
d. Receive compensation as determined by the governing body."

SECTION 8. This act is effective when it becomes law.

HOUSE BILL 2097: Property Tax Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 20, 2006
Introduced by:	Rep. Brubaker	**Summary by:**	Martha Walston Committee Counsel
Version:	First Edition		

SUMMARY: *House Bill 2097 is a recommendation of the Department of Revenue and would make the following clarifying changes to the property tax laws:*

- *Provides for the electronic filing of both business and individual personal property.*
- *Amends S.L. 2005-294 (AN ACT TO CREATE A COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM) to clarify that the first month's interest on past due bills would be transferred to a special account. This change reflects the intent of the bill sponsors and supporters.*
- *Authorizes a county board of equalization and review to approve a late application for present-use value appraisal of property if the applicant demonstrates good cause for the delay.*
- *Authorizes a tax collector to receive tax receipts for assessments that have been or are subsequently appealed to the Property Tax Commission and to send the taxpayer an initial tax bill or notice; however, the tax collector may not collect on the tax or enforce a tax lien until the appeal has been finally adjudicated.*
- *Clarifies that the list of items credited to the tax collector in the final assessment to the governing body of the taxing unit shall include the principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.*

Senate Bill 1452, introduced by Senator Hartsell, is a companion bill.

BILL ANALYSIS:

Sections 1 and 2 of the bill provide for the electronic filing of any personal property. Current law allows the board of county commissioners, by resolution, to provide for the electronic listing of business personal property. This language excludes the electronic filing of unlisted automobiles, jet skis, mobile homes, and boats by personal taxpayers. The Department states that there is no reason to limit electronic filing to business personal property.

Current law allows the period for electronic listing of business personal property to be extended to June 1. Section 2 of the bill clarifies that this extension is provided only to business personal property.

Section 3 of the bill makes a clarifying change to legislation that was enacted during the 2005 Session. This change would clarify the intent of the bill's sponsors and supporters. Last Session, the General Assembly ratified House Bill 1779, which creates a combined system for registration and taxation of motor vehicles to become effective July 1, 2009, or upon the earlier creation of a combined registration renewal and tax collection computer system within the

Division of Motor Vehicles. Under the new combined system, consumers will receive one statement per registered vehicle, containing both registration fees and the property taxes and vehicle fees due. Payment of the property taxes are a prerequisite to issuance of or renewal for the registration. Property taxes on the vehicle become due on the date a new registration is applied for or at the end of the grace period following the expiration of a vehicle's current registration. Taxes and registration fees may be collected by the DMV or a DMV agent.

To pay for the new system, the act increased the first month's interest on delinquent registered motor vehicle taxes from 2% to 5%, effective January 1, 2006, and required that 60% of the interest collected on unpaid taxes be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account in the Treasurer's Office. Funds in this Account may only be transferred to the DMV for the purpose of implementing the combined system, at the direction of the North Carolina Association of County Commissioners. The intent of the sponsors to House Bill 1779 and supporters of the bill was that 60% of only the **first month's** interest would be transferred to the Account, not the total interest collected on unpaid taxes. In December, 2005, the North Carolina Department of State Treasurer issued a memorandum directing counties to only remit 60% of the first month's interest to the Treasurer. The memorandum stated that this was the true intent of the bill and that it is anticipated that the language will be corrected during the 2006 Session. The memorandum was sent to all county managers, finance officers, tax administrators, tax assessor, tax collectors, and certified public accountants.

Section 4 of the bill would give a county board of equalization and review the authority to approve a late application for present-use value appraisal of property if the applicant demonstrates good cause for the delay. Under current law, a taxpayer seeking present-use value appraisal of farmland, must file the application within the following time periods:

- An initial application must be filed during the regular listing period of the year for which the benefit of the classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to a county's general reappraisal or horizontal adjustment of real property.
- An application required due to transfer of the land may be submitted at any time during the calendar year but must be submitted within 60 days of the date of the property's transfer.

The bill would allow approval of a late application upon a showing of good cause by the applicant to the board of equalization and review. If the county board of equalization and review is not in session, then the late filing may be approved by the board of county commissioners. Current law allows similar approval for late applications for property tax exemptions or exclusions. (See G.S. 105-282.1(a1).)

Sections 5 and 6 of the bill would allow a tax collector to receive tax receipts for assessments that have been appealed or are subsequently appealed to the Property Tax Commission, but would prohibit the tax collector from collecting the tax or enforcing a tax lien resulting from the assessment until the appeal has been finally adjudicated. Pending final adjudication, the tax collector may send an initial tax bill or notice to the taxpayer.

Each year, the county board of commissioners or the municipal governing body directs the tax collector to collect taxes charged in the tax records and receipts. The tax receipt sets out the name and address of the taxpayer, the assessment of the taxpayer's property, the rate of tax levied, and the amount of property taxes and any penalties due. Current law states that no tax receipts are to be delivered to the tax collector for any assessment appealed to the Property Tax Commission until the appeal has been finally adjudicated. In practice, boards of equalization and review often adjourn on June 30th, except to hear appeals filed prior to June 30th. By August 1, however, the tax collector has received the tax receipts. The proposal validates this practice, but clarifies that the tax collector may not seek any remedies for collection of the taxes or enforcement of the tax lien pending final adjudication of appeal from the assessment. The tax collector, however, may send an initial bill or notice to the taxpayer pending final adjudication. By providing notice pending appeal, the taxpayer may choose to avoid the amount of interest that accrues while the appeal is pending. If the taxpayer wins on appeal, the taxpayer receives a refund of any taxes paid plus interest. Finally, the bill would put a potential buyer of the property on notice of a tax bill, if the property is transferred pending the appeal.

Section 7 of the bill makes clarifying changes to the lists of items credited to the tax collector in the collector's final settlement with the governing body for all taxes in his hands for collection for the preceding fiscal year. Current law provides that the final settlement must contain the items to be charged against the tax collector and the items to be allowed as credits for the collector.[1] The charges and credits should balance. The bill adds to the lists of credits the principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.

EFFECTIVE DATE: The bill is effective when it becomes law.

H2097e1-SMLA

[1] Charges include the total amount of all taxes placed in the collector's hands for collection for the year, all late-listing penalties and costs collected by the collector, all interests on taxes collected by the collector, and any other sums collected or received by the tax collector. Credits include all sums deposited by the collector to the credit of the taxing unit, releases allowed by the governing body, discounts allowed for early payment of taxes, the principal amount of taxes constituting liens against real property, the principal amount of taxes determined to be insolvent and to be allowed as credits, and any commission the collector is entitled to deduct from amounts collected.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 2097 (First Edition)

SHORT TITLE: Property Tax Changes.

SPONSOR(S): Representative Brubaker

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:			*No Significant Impact*		
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, North Carolina Local Governments

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

Sections 1 and 2 of the bill provide for the electronic filing of personal property. Currently, counties are allowed to provide for electronic listing only for business personal property. The Department indicates no reason that this listing mechanism should not be allowed for all personal property. Current law allows the period for electronic listing of business personal property to be extended to June 1. Section 2 of this bill clarifies that this extension is provided only to business personal property.

Section 3 of the bill makes a clarifying change to House Bill 1779, which was enacted during the 2005 Session. The bill creates a combined system for registration and taxation of motor vehicles. The bill increases the first-month interest payments on unpaid vehicle property taxes from 2% to 5% and directs 60% of interest revenue to a special account within the Department of State Treasurer for the purpose of creating a registration renewal and property tax collection computer system within the Division of Motor Vehicles. The intent of the bill, and the practice put into place by the Department of State Treasurer, is to transfer 60% of only the first month of interest on unpaid taxes to the special account. This bill clarifies that the transfer applies to only the month of interest.

Section 4 of the bill would give county boards of equalization and review the authority to approve a late application for present-use value appraisal of property if the applicant demonstrates a good cause for the delay. Current law allows similar approvals for property tax exemptions or exclusions.

Sections 5 and 6 of the bill would allow tax collectors to receive tax receipts for assessments that have been appealed to the Property Tax Commission, but would not allow the collector to collect the tax or enforce a tax lien resulting from the assessment while the appeal is pending. This bill would validate the current practice in which boards of equalization provide tax receipts to collectors by August 1, but clarifies that the collector may not seek remedies for appealed assessments until the appeal is adjudicated.

Section 7 of the bill makes a clarifying change to add taxes appealed to the Property Tax Commission to the list of items credited to the tax collector in the collector's final settlement with the governing body.

ASSUMPTIONS AND METHODOLOGY: All of the proposed changes contained in the bill are administrative or clarifying in nature and would result in no significant fiscal impact.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 31, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 1479*

Short Title:	Uniform Unincorporated Nonprofit Assoc. Act.	(Public)
Sponsors:	Senators Hagan and Hartsell.	
Referred to:	Judiciary II.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 59B.**

"**Uniform Unincorporated Nonprofit Association Act.**

"**§ 59B-1. Short title.**

This Chapter may be cited as the Uniform Unincorporated Nonprofit Association Act.

"**§ 59B-2. Definitions.**

In this Chapter:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"**§ 59B-3. Supplementary general principles of law and equity.**

Principles of law and equity supplement this Chapter unless displaced by a particular provision of it.

"**§ 59B-4. Title to property; choice of law.**

Real and personal property in this State may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this State.

"**§ 59B-5. Real and personal property; nonprofit association as legatee, devisee, or beneficiary.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

(d) Any judgments and executions against a nonprofit association bind its real and personal property in like manner as if it were incorporated.

"**§ 59B-6. Statement of authority as to real property.**

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the register of deeds in the county in which a transfer of the property would be recorded.

(c) A statement of authority must be set forth in a document styled "affidavit" that contains all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) That the association is an unincorporated nonprofit association.

(5) The name or office of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(6) That the association has duly authorized the member or agent executing the statement to do so.

(d) A statement of authority must be sworn to and subscribed in the same manner as an affidavit by a member or agent who is not the person authorized to transfer the estate or interest.

(e) The register of deeds shall collect a fee for recording a statement of authority in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the name of the nonprofit association and the member or agent signing the statement of authority or any subsequent document relating thereto as Grantor and the name of the appointee as Grantee.

(f) An amendment, including a termination, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless terminated earlier, a recorded statement of authority or its most recent amendment expires by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the register of deeds in the county in which a transfer of real property would be recorded, the authority of the person or officer named in a statement of authority is conclusive in favor of a person who gives value without notice that the person or officer lacks authority.

"**§ 59B-7. Liability of members or other persons.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities.

(b) A person is not liable for the contract, tort, or other obligations of a nonprofit association merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(c) Reserved for future codification purposes.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(e) A member of, or a person referred to as a "member" by, a nonprofit association may assert a claim against or on behalf of the nonprofit association. A nonprofit association may assert a claim against a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-8. Capacity to assert and defend; standing.**

(a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members or persons referred to as "members" by the nonprofit association if one or more of them have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member or a person referred to as a "member" by the nonprofit association.

"**§ 59B-9. Effect of judgment or order.**

A judgment or order against a nonprofit association is not by itself a judgment or order against a member, a person referred to as a "member" by the nonprofit

association, or a person authorized to participate in the management of the affairs of the nonprofit association.

"**§ 59B-10. Disposition of personal property of inactive nonprofit association.**

If a nonprofit association has been inactive for three years or longer, or a different period specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer custody of the property:

(1) If a document of the nonprofit association or document of gift specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association, nonprofit corporation, or other nonprofit entity pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

"**§ 59B-11. Appointment of agent to receive service of process.**

(a) A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process, notice, or demand required or permitted by law to be served on a nonprofit association.

(b) A statement appointing an agent must set forth all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) The name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving written notice to the nonprofit association at its last known address.

(d) The sole duty of the appointed agent to the nonprofit association is to forward to the nonprofit association at its last known address any notice, process, or demand that is served on the appointed agent.

(e) The Secretary of State is not an agent for service of any process, notice, or demand on any nonprofit association.

(f) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Statement appointing an agent to receive service of process	$5.00
(2)	Amendment of statement appointing an agent	5.00

(3) Cancellation of statement appointing an agent 5.00
(4) Agent's statement of resignation No fee

(g) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

"**§ 59B-12. Claim not abated by change.**

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

"**§ 59B-13. Venue.**

For purposes of venue, a nonprofit association is a resident of a county in which it has an office or maintains a place of operation or, if on due inquiry no office or place of operation can be found, in which any officer resides.

"**§ 59B-14. Uniformity of application and construction.**

This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it."

SECTION 2.(a) G.S. 39-24 and G.S. 39-25 are repealed.

SECTION 2.(b) G.S. 39-26 and G.S. 39-27 are recodified as G.S. 59B-15(a) and (b), respectively. As recodified by this act, G.S. 59B-15 reads as rewritten:

"**§ 59B-15. Effect as to conveyances by ~~trustees.~~ trustees; prior deeds validated.**

(a) Nothing in this ~~Article shall be deemed in any manner to change~~ Chapter changes the law with reference to the holding and conveyance of land by the trustees of churches ~~or other voluntary organizations~~ under Chapter 61 of the General Statutes where ~~such~~ the land is conveyed to and held by ~~such~~ the trustees.

(b) All deeds ~~heretofore~~ executed ~~in conformity with this Article~~ before the effective date of this Chapter in conformity with former G.S. 39-24 and former G.S. 39-25 are declared to be sufficient to pass title to real ~~estate held by such organizations.~~ estate."

SECTION 3. G.S. 1-69.1 reads as rewritten:

"**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may hereafter sue or be sued under the name by which they are commonly known and called, or under which they are doing business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege the specific location of the recordation required by G.S. 66-68.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 4. G.S. 47C-3-101 reads as rewritten:

"**§ 47C-3-101. Organization of unit owners' association.**

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners, or following termination of the condominium, of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit association."

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect any other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 6. This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

SECTION 7. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Unincorporated Nonprofit Association Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 8. This act becomes effective January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1203

Short Title:	Agrarian Growth Zones - Bill Lee.	(Public)
Sponsors:	Senators Albertson; Bland, Boseman, Cowell, Dorsett, Garrou, Hartsell, Hoyle, Jacumin, Jenkins, Kerr, Lucas, Malone, Purcell, Snow, Soles, and Swindell.	
Referred to:	Finance.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AGRARIAN GROWTH ZONES UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.3B. Agrarian growth zone designation.**

(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census that meets all conditions in this subsection. A county may have no more than one agrarian growth zone.

(1) All land within the zone is located in whole within a county that has no municipality with a population in excess of 10,000.

(2) Every census tract and census block group that composes part of the zone has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(3) The area of the zone less the smallest census tract included in the zone does not exceed five percent (5%) of the total area of the county in which the zone is located.

(b) Designation. – Upon request of a local government, the Secretary of Commerce shall make a written determination whether an area is an agrarian growth zone that meets the conditions of subsection (a) of this section. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all agrarian growth zones with a description of their boundaries.

(c) Parcel of Property Partially in Agrarian Growth Zone. – For the purposes of this section, a parcel of property that is located partially within an agrarian growth zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.

(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.

(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary.

(d) Relationship With Enterprise Tiers. – For the purpose of the wage standard requirement of G.S. 105-129.4, the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, an agrarian growth zone is considered an enterprise tier one area. For all other purposes, an agrarian growth zone has the same enterprise tier designation as the county in which it is located."

SECTION 2. G.S. 105-129.2 reads as rewritten:

"**§ 105-129.2. Definitions.**

The following definitions apply in this Article:

(1) Agrarian growth zone. – An area designated as an agrarian growth zone pursuant to G.S. 105-129.3B.

(1a) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

..."

SECTION 3. G.S. 105-129.6(a1) reads as rewritten:

"(a1) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer must pay the Department of Revenue a fee of five hundred dollars ($500.00) for each credit the taxpayer claims or intends to claim with respect to a location that is in an enterprise tier three, four, or five area, subject to a maximum fee of one thousand five hundred dollars ($1,500) per taxpayer per taxable year. This fee does not apply to any credit the taxpayer claims or intends to claim with respect to a location that is in a development zone ~~as defined in G.S. 105-129.3A.~~ or agrarian growth zone. If the taxpayer claims or intends to claim a credit that relates to locations in more than one enterprise tier area, the fee is based on the highest-numbered enterprise tier area.

The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid.

The Secretary of Revenue shall retain three-fourths of the proceeds of the fee imposed in this section for the costs of administering and auditing the credits allowed in this Article. The Secretary of Revenue shall credit the remaining proceeds of the fee imposed in this section to the Department of Commerce for the costs of administering this Article. The proceeds of the fee are receipts of the Department to which they are credited."

SECTION 4. G.S. 105-129.7(b)(1) reads as rewritten:

"(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the enterprise tier designation of the location and whether it is in a development zone or agrarian growth zone. In addition, for each individual who fills a job at a location with respect to which a credit is claimed, the place where the individual resided before taking the job, including any enterprise tier designation of that place. In addition, for jobs that are located in a development zone, the number of those jobs that are filled by residents of the development zone."

SECTION 5. G.S. 105-129.8 reads as rewritten:

"**§ 105-129.8. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more full-time employees, and hires an additional full-time employee during the taxable year to fill a new position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development zone or agrarian growth zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

(a1) Positions. – A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The number of new positions a taxpayer fills during the taxable year is determined by subtracting the highest number of full-time employees the taxpayer had in this State at any time during the 12-month period preceding the beginning of the taxable year from the number of full-time employees the taxpayer has in this State at the end of the taxable year.

(a2) Installments. – The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit must be taken in equal installments over the four years following the taxable year in which the additional employee was hired and is conditioned on the taxpayer's continued employment in this State of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees in this State falls below the number of full-time employees the taxpayer had in this State in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

(a3) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone or agrarian growth zone to an area that is not a development zone or agrarian growth zone, the remaining installments of the credit must be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone or agrarian growth zone designation for that year even though the employees are not hired that year. In the case of an interstate air courier that has or is constructing a hub in this State and in the case of an eligible major industry, the applicable time period is seven years. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the applicable commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone or agrarian growth zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone or agrarian growth zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the applicable period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3."

SECTION 6. G.S. 105-129.9 reads as rewritten:

"**§ 105-129.9. Credit for investing in machinery and equipment.**

...

(d) Expiration. – As used in this subsection, the term "disposed of" means disposed of, taken out of service, or moved out of State.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, the credit expires and the taxpayer may not take any remaining installment of the credit for that machinery and equipment unless the cost of that machinery and equipment is offset in the same taxable year by the taxpayer's new investment in eligible machinery and equipment placed in service in the same enterprise tier, as provided in this subsection. If, during the taxable year the taxpayer disposed of the machinery and equipment for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same enterprise tier as the machinery and equipment that were disposed of, and the amount of

this reduction is greater than twenty percent (20%) of the cost of the machinery and equipment that were disposed of, then the taxpayer forfeits the remaining installments of the credit for the machinery and equipment that were disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the machinery and equipment that were disposed of, or if there is no net reduction, then the taxpayer does not forfeit the remaining installments of the expired credit. In determining the amount of any net reduction during the taxable year, the cost of machinery and equipment the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible machinery and equipment that are in service. If in a single taxable year machinery and equipment with respect to two or more credits in the same tier are disposed of, the net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same tier is compared to the total cost of all the machinery and equipment for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone or agrarian growth zone to an area that is not a development zone or agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone or agrarian growth zone designation for the year the letter was signed. In the case of an interstate air courier that has or is constructing a hub in this State and in the case of an eligible major industry, the applicable time period is seven years. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone or agrarian growth zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone or agrarian growth zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the applicable period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the applicable period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection."

SECTION 7. This act is effective for taxable years beginning on or after January 1, 2006, and applies to business activities occurring on or after that date.

SENATE BILL 1203:
Agrarian Growth Zones - Bill Lee

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 18, 2006
Introduced by:	Sen. Albertson	**Summary by:**	Canaan Huie
Version:	First Edition		Committee Counsel

SUMMARY: ***This bill would authorize the creation of agrarian growth (AG) zones and would provide for favorable treatment of the zones under the Bill Lee Act. This bill would be effective for taxable years beginning on or after January 1, 2006.***

CURRENT LAW: The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, and for worker training. Counties are divided into five enterprise tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. In addition, the Act authorizes the establishment of areas known as development zones. Development zones were intended to be areas of high poverty within urban areas. For some of the credits under the Act, the credit is more generous if the activity is performed in a development zone. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior or merely provided tax reductions to businesses that would have located or expanded in any case. In 2000, the General Assembly extended the sunset on the act until January 1, 2006. In 2005, the General Assembly approved a two-year extension of the Act, until January 1, 2008, in order to provide additional time to study alternatives to the Act.[1]

BILL ANALYSIS: This bill would authorize the creation of agrarian growth (AG) zones and would provide those areas with the same benefits currently provided to development zones. An AG zone must satisfy the following conditions: it must be composed of contiguous census tracts or block groups located within a single county that does not have any municipality with a population in excess of 10,000; all census tracts or block groups in the zone must have more than 20% of its population below the

[1] There are several exceptions to the 2008 sunset date. Interstate air couriers are eligible to claim the credits for business activity that occurs on or before January 1, 2010, provided that the interstate air courier entered into a real estate lease on or before January 1, 2006 with an airport authority that provides for the lease of at least 100 acres of land for a term of at least 15 years. "Eligible major industries" that qualify as such before January 1, 2006, are also allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least $100 million in acquiring, constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing. In addition, projects that are located in development zones are eligible for credits for business activities occurring before January 1, 2010, if all of the following conditions are met: before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce; the Secretary of Commerce makes a written determination that the taxpayer will invest $10 million and create at least 300 new jobs at the facility within a three-year period; and the taxpayer invests at least $4 million and creates at least 20 new jobs at the facility before January 1, 2006.

poverty level; the area of the zone, less its smallest census tract, may not exceed 5% of the total area of the county. The Department of Commerce shall designate an area as an AG zone upon the request of a local government.

For the most part, the benefits of an AG zone are the same as the benefits of a development zone. For activities that are performed in an AG zone, the taxpayer would not have to meet the wage standard requirement, would receive an additional credit of $4,000 per job created, and would be treated as an enterprise tier one area for purposes of the credit for investing in machinery and equipment and the credit for worker training. There are several provisions of the Bill Lee Act which refer to development zones that were put into place for specific projects; those provisions are not repeated for AG zones.

EFFECTIVE DATE: This bill would be effective for taxable years beginning on or after January 1, 2006, and would apply to business activities occurring on or after that date.

S1203e1-SMLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1157

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/19/05

PROPOSED COMMITTEE SUBSTITUTE S1157-CSSVx-78 [v.3]

6/20/2006 11:03:38 AM

Short Title: Oyster Shells/Tax Credit. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN INCOME TAX CREDIT FOR DONATIONS OF OYSTER SHELLS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR PLACEMENT IN OYSTER SANCTUARIES TO RESTORE OYSTER POPULATIONS.

The General Assembly of North Carolina enacts:

SECTION 2. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.48. Credit for recycling oyster shells.**

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to one dollar ($1.00) per bushel of oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer.

(c) Carryforward. – Any unused portion of a credit allowed in this section may be carried forward for the succeeding five years. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

(d) No Double Benefit. – No deduction is allowed under G.S. 105-130.5(b)(5) or G.S. 105-130.9 for the donation of oyster shells for which a credit is claimed under this section.

(e) Documentation of Credit. – To support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is

claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer.

(f) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, 2011."

SECTION 3. G.S. 105-130.9(4) reads as rewritten:

"(4) The amount of a contribution for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 or G.S. 105-130.48 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

SECTION 4. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.30. Credit for recycling oyster shells.**

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to one dollar ($1.00) per bushel of oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer.

(c) Carryforward. – Any unused portion of a credit allowed in this section may be carried forward for the succeeding five years.

(d) Documentation of Credit. – To support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer.

(e) No Double Benefit. – A taxpayer who claims a credit under this section must add back to taxable income any amount deducted under the Code for the donation of the oyster shells

(f) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, 2011."

SECTION 5. G.S. 105-151.26 reads as rewritten:

"**§ 105-151.26. Credit for charitable contributions by nonitemizers.**

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Part an amount equal to seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under ~~G.S. 105-151.12 or G.S. 105-151.14.~~ G.S. 105-151.12, G.S. 105-151.14, or G.S. 151.30. A nonresident or part-year resident who claims the

credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 6. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(5a) The market price of the oyster shells for which the taxpayer claims a credit for the taxable year under G.S. 105-151.30."

SECTION 7. G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

...

(8) G.S. 105-151.30. Credit for recycling oyster shells."

SECTION 8. This act is effective for taxable years beginning on or after January 1, 2006 and expires for taxable years beginning on or after January 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1157

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/19/05

Short Title: Oyster Shells/Ban Landfilling/Tax Credit. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISPOSAL OF OYSTER SHELLS IN LANDFILLS AND TO PROVIDE AN INCOME TAX CREDIT FOR DONATIONS OF OYSTER SHELLS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR PLACEMENT IN OYSTER SANCTUARIES TO RESTORE OYSTER POPULATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.10(f) reads as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.

(2) Used oil.

(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.

(4) White goods.

(5) Antifreeze (ethylene glycol).

(6) Aluminum cans.

(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). ~~The prohibition against landfilling~~ The prohibition of the disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(8) Lead-acid batteries, as provided in G.S. 130A-309.70.

(9) Oyster shells."

SECTION 2. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.47. Credit for recycling oyster shells.**

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to the fair market value of the oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years.

(c) No Double Benefit. – No deduction is allowed under G.S. 105-130.5(b)(5) for the oyster shells for which a credit is claimed under this section."

SECTION 3. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.29. Credit for recycling oyster shells.**

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to the fair market value of the oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years.

(c) No Double Benefit. – A taxpayer who claims a credit under this section must add back to taxable income any amount deducted under the Code for the donation of the oyster shells."

SECTION 4. G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

...

(8) G.S. 105-151.29. Credit for recycling oyster shells."

SECTION 5. Section 1 of this act becomes effective 1 December 2005. Sections 2 through 5 of this act become effective when it becomes law. Sections 2 through 4 of this act apply to taxable years beginning on or after 1 January 2005 and expire for taxable years beginning on or after 1 January 2010.

SENATE BILL 1157:
Oyster Shells/Tax Credit

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 21, 2006
Introduced by:	Sen. Albertson	**Summary by:**	Trina Griffin
Version:	PCS to Second Edition S1157-CSSVx-78		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1157 would authorize a tax credit in the amount of $1.00 per bushel of oyster shells donated to the Division of Marine Fisheries of the Department of Environment and Natural Resources. The credit would be available for taxable years beginning on or after January 1, 2006 and would expire for taxable years beginning on or after January 1, 2011.***

BACKGROUND & CURRENT LAW: Currently, there is a voluntary oyster shell donation program operated by the Division of Marine Fisheries of the Department of Environment and Natural Resources. The current price for the purchase of shells form shucking houses is $.50 per bushel. The Division has recently hired a staff person to coordinate the recycling program; many of the program's logistics are in the developmental stage. Recycled oyster shells offer the following value: (1) their placement in sanctuaries and/or estuaries aid in the restoration of oyster populations; (2) landscaping purposes; and (3) for nutritional supplements. Beginning October 1, 2009, oyster shells may not be disposed in landfills.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 1157 would provide a dollar-for-dollar nonrefundable income tax credit for each bushel[1] of oyster shells that a taxpayer donates to the Division of Marine Fisheries of the Department of Environment and Natural Resources. To be eligible for the credit, the taxpayer must provide the Department of Revenue with documentation, supplied by the Division of Marine Fisheries, verifying the donation and the number of bushels donated. The credit may be carried forward for five years. No deduction would be allowed for the oyster shells for which a credit is claimed.

EFFECTIVE DATE: The act would be effective for taxable years beginning on or after January 1, 2006, and expires for taxable years beginning on or after January 1, 2011.

[1] The Division of Marine Fisheries has determined that the average weight of a bushel of oyster shells is 55 pounds. The net weight of a load of shells is divided by 55, which provides the number of bushels contained in the load.

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 19, 2006

TO: Senators Hoyle and Kerr

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: Oyster Tax Credit - PCS

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	(23,000)	(40,000)	(44,000)	(48,400)	(53,3)
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, North Carolina Department of Environment and Natural Resources.

EFFECTIVE DATE: January 1, 2006.

BILL SUMMARY: The legislation creates a new tax credit for donating oyster shells to the North Carolina Department of Environment and Natural Resources. These shells are used by the Department to create habitat for the development of new oyster beds. The tax credit is set at $1.00 per bushel donated. The Department of Environment and Natural Resources must provide the donor with appropriate documentation of the amount of shells donated. The legislation also creates a prohibition again placing oyster shells in North Carolina landfills.

ASSUMPTIONS AND METHODOLOGY: The Department of Environment and Natural Resources currently purchases oyster shells and other cultch material at a set rate of $0.50 per

bushel. This rate was negotiated in 2004. Both DENR and the North Carolina Coastal Foundation indicate that this rate is not sufficient to purchase shells, as it is below market rate. (Oyster shells are also used by landscapers and pharmaceutical companies). Indications from coastal restaurants and shucking houses suggest that $1.00 per bushel is a more representative of market price.

Based on historic purchase patterns, and conversations with the industry, the Division of Marine Fisheries estimates the following number of bushels will be donated in North Carolina:

YEAR	RESTAURANTS (BU.)	OTHER (BU.)	TOTAL (BU.)
2003		311	311
2004	1,658	1,327	2,985
2005	2,523	7,048	9,571
2006 (6 mth)	2,837	6,841	9,678
2006 (estimated total)	15,000	8,000	23,000
2007 (projection)	30,000	10,000	40,000
2008 (projection)	32,500	12,000	44,500

Using these estimates, and applying the $1.00 per bushel credit to the appropriate fiscal year, creates the fiscal impacts noted in the box above. The 2007- 2008 growth rates are used to project future years. The estimate assumes the credit will be taken the following spring when the taxpayer files their annual return or makes their final payment for estimated taxes.

SOURCES OF DATA: North Carolina Department of Environment and Natural Resources.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 2002
PROPOSED COMMITTEE SUBSTITUTE S2002-PCS85468-LB-117

Short Title: UNC Students/ Criminal Background Checks. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR STUDENTS TO BE ADMITTED TO THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Criminal Background Checks Required for Students to be Admitted to The University of North Carolina."

"**§ 116-265. Criminal background check required for students, fingerprint check may be required.**

(a) Each constituent institution shall require a national and State criminal background check of every person who is to be admitted to the institution.

(b) The Department of Justice may provide a criminal record check to the institution for a person who is accepted for admission to the institution. The institution shall provide to the Department of Justice, along with the request, any additional information required by the Department of Justice, and a form signed by the student consenting to the check of the criminal record. The institution shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

(c) The constituent institution may also require as a condition of admission or enrollment a fingerprint check of the applicant. In such case, the institution shall provide to the Department of Justice the fingerprints of the student, any additional information required by the Department of Justice, and a form signed by the student consenting to the check of fingerprints and other identifying information required by the State or national repositories. The student's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the

State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The institution shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

(d) The Department of Justice may charge each student a fee for conducting the checks of criminal history records authorized by this section.

(e) A prospective student at a constituent institution may have fingerprints taken at any sheriff's office or local law enforcement agency that has the necessary equipment.

(f) A constituent institution may contract with a third party to handle any duties assigned to it under this section."

SECTION 2. This act becomes effective for students first admitted for the Fall 2007 semester and thereafter.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 2002

Short Title: UNC Students/ Criminal Background Checks. (Public)

Sponsors: Senator Hunt.

Referred to: Finance.

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR STUDENTS TO BE ADMITTED TO THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Criminal Background Checks Required for Students to be Admitted to The University of North Carolina."

"**§ 116-265. Criminal background check required for students.**

(a) Each constituent institution shall require a national and State criminal background check of every person who is to be admitted to the institution.

(b) The Department of Justice may provide a criminal record check to the institution for a person who is accepted for admission to the institution. The institution shall provide to the Department of Justice, along with the request, the fingerprints of the student, any additional information required by the Department of Justice, and a form signed by the student consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The student's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The institution shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The Department of Justice may charge each student a fee for conducting the checks of criminal history records authorized by this subsection.

(c) A prospective student at a constituent institution may have fingerprints taken at any sheriff's office or local law enforcement agency that has the necessary equipment."

SECTION 2. This act becomes effective for students first admitted for the Fall 2007 semester and thereafter.

SENATE BILL 2002:
UNC Students/ Criminal Background Checks

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 21, 2006
Introduced by:	Sen. Hunt	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to First Edition S2002-PCS85468-LB-117		

SUMMARY: ***The Proposed Committee Substitute for SB 2002 requires each of the 16 constituent institutions of the UNC system to require national and State criminal background checks on every person who is to be admitted. The bill authorizes the constituent institutions to contract with a third party to handle any of the duties required to conduct the background checks. The fee for the background check would be paid to the Department of Justice by the prospective student.***

This act would become effective for students first admitted for the fall 2007 semester and thereafter.

CURRENT LAW: Criminal background checks are not required of entering students admitted to the university system. The admission application does, however, ask if the applicant has ever been convicted of a crime other than a traffic violation. If the applicant answers 'yes' then the application is forwarded to a special committee which examines the specific offense and assesses the risk for admitting the student. The committee may elect to hold a personal hearing with the applicant for further inquiry and explanation.

An applicant may not be compelled to disclose offenses on his or her juvenile record, which would cover offenses committed when the person was less than 16. Also, a person may not be compelled to disclose convictions which have been expunged from the person's record.

BILL ANALYSIS: The Proposed Committee Substitute for SB 2002 would require the UNC system to require national and State criminal background checks of every person to be admitted to the institution. Under the PCS, UNC could obtain the check through a commercial vendor or through the Department of Justice. The bill also authorizes UNC to require, but does not mandate, a fingerprint check. The bill does not, however, establish any criteria by which a constituent institution must make an admissions decision based upon a person's criminal background, nor does it address the potential liability of an institution arising from any act or omission related to carrying out the provisions of the bill.

The information obtained as a result of the criminal background check would be privileged and confidential and would not be considered a public record.

The bill also authorizes the Department of Justice to charge a fee to each student for conducting the checks.

EFFECTIVE DATE: This act would become effective for students first admitted for the fall 2007 semester and thereafter.

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 20, 2006

TO: Sen. Neal Hunt

FROM: Denise Thomas and Richard Bostic
Fiscal Research Division

RE: S2002-PCS85468-LB-117; UNC Students/Criminal Background Checks

FISCAL IMPACT

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

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: UNC General Administration; Department of Justice, State Bureau of Investigation;

EFFECTIVE DATE: This act becomes effective for students first admitted for the Fall 2007 semester and thereafter.

BILL SUMMARY: The Proposed Committee Substitute for SB 2002 requires each of the 16 constituent institutions of the UNC system to require national and State criminal background checks on every person who is to be admitted. The bill authorizes the constituent institutions to contract with a third party to handle any of the duties required to conduct the background checks. If UNC elects to use the SBI for this purpose, the fee for the background check would be paid to the Department of Justice by the prospective student. This act would become effective for students first admitted for the fall 2007 semester and thereafter.

ASSUMPTIONS AND METHODOLOGY: This is in addition to the transferring students and to graduate school admissions. The PCS removes the mandate for the background checks and removes the mandate requiring that the State Bureau of Investigation (SBI) conducts the background checks. The Fiscal Research Division is unable to determine the fiscal impact of the PCS because it is not possible to determine how many applicants would be required to undergo a background check. It is also not possible to determine, how many of the background checks would be conducted by the SBI or by commercial vendors.

UNC University System

While the fiscal impact cannot be determined, the PCS would have a significant cost impact for the UNC system to administer and coordinate a system of background checks on all admitted applicants. The UNC system institutions admitted over 67,000 undergraduate applicants in 2004. When combined with tranfers and graduate school admissions, this figure increases to around 80,000.

State Bureau of Investigation

The SBI would be allowed to charge $38 for background checks it conducts for this purpose. From this amount, SBI remits $22 to the Federal Bureau of Investigation for the cost of conducting the national background check. The SBI indicates that it is currently operating at capacity. Any workload increases will require SBI to recruit additional Identification technicians and to renovate space to accommodate the additional staff, equipment, etc. For every 10,000 increase in background checks, the SBI would need to hire one additional technician.

SOURCES OF DATA: UNC General Administration; State Bureau of Investigation

TECHNICAL CONSIDERATIONS: There are no technical issues related to the fiscal impact. However, there may be legal and administrative technical issues. For example, the national and state criminal records system will not have data on applicants from other countries. In addition, it is not clear what the process would be for applicants who apply to two or more institutions. Also, because many applicants will be 17-18 years old, the background checks will not reveal criminal activity/offenses prior to age 16 for in-state applicants or prior to age 18 for most out-of-state residents.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1563*
PROPOSED COMMITTEE SUBSTITUTE S1563-CSRB-56 [v.1]

6/20/2006 7:55:16 AM

Short Title: Extend Sunset on Certain Tax Credits. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO DELAY THE IMPOSITION ON PARTNERSHIPS OF THE DOLLAR AMOUNT LIMITATION ON THE CREDIT ALLOWED FOR REAL PROPERTY DONATIONS AND TO EXTEND THE SUNSET FOR A REFUND OF SALES AND USE TAXES PAID ON FUEL BY A QUALIFYING INTERSTATE PASSENGER AIR CARRIER.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2001-335, as amended by Section 1 of S.L. 2004-134, reads as rewritten:

"**SECTION 3.** This act becomes effective for taxable years beginning on or after January 1, 2002. Section 2 of this act expires for taxable years beginning on or after January 1, ~~2006.~~2007."

SECTION 2. G.S. 105-164.14(a1) reads as rewritten:

"(a1) Passenger Plane Maximum. – An interstate passenger air carrier is allowed a refund of the net amount of sales and use tax paid by it in this State on fuel during a calendar year in excess of two million five hundred thousand dollars ($2,500,000). The "net amount of sales and use tax paid" is the amount paid less the refund allowed under subsection (a) of this section. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the calendar year for which the refund is claimed. The refund allowed by this subsection is in addition to the refund allowed in subsection (a) of this section. This subsection is repealed for purchases made on or after January 1, 2009."

SECTION 3. Section 62 of S.L. 2005-435 reads as rewritten:

"**SECTION 62.** This part becomes effective January 1, 2005, and applies to purchases made on or after that date. ~~This part~~ Section 61.1 is repealed effective for purchases made on or after January 1, 2007. This part does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or

repealed by this part before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1563*

Short Title:	Tax Credits for Certain Real Prop. Donations.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE CREDIT FOR CERTAIN REAL PROPERTY DONATIONS AND TO INCREASE THE CREDIT FOR CERTAIN PASS-THROUGH ENTITIES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

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

"Article 3H.

"Tax Credit for Certain Real Property Donations.

"**§ 105-129.70. Tax credit allowed.**

A person who makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes is allowed a credit equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. To support the credit allowed by this Article, the taxpayer must file with the tax return for the taxable year in which the credit is claimed a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this section. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.

"**§ 105-129.71. Credit amount.**

(a) Corporations. – The aggregate amount of credit allowed to a corporation in a taxable year under this Article for one or more qualified donations, whether made directly or indirectly as owner of a pass-through entity, may not exceed five hundred thousand dollars ($500,000). That portion of a qualifying donation that is the basis for a credit allowed under this subsection is not eligible for deduction as a charitable contribution under G.S. 105-130.9 if it is claimed against income tax under Article 4 of this Chapter.

(b) Individuals. – The aggregate amount of credit allowed to an individual in a taxable year under this Article for one or more qualified donations, whether made directly or indirectly as owner of a pass-through entity, may not exceed two hundred fifty thousand dollars ($250,000). In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this Article on a separate return.

(c) Pass-Through Entities. – The aggregate amount of credit allowed to a pass-through entity in a taxable year under this section for one or more qualified donations, whether made directly or indirectly as owner of another pass-through entity, may not exceed five hundred thousand dollars ($500,000). Each individual who is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed two hundred fifty thousand dollars ($250,000). Each corporation that is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed five hundred thousand dollars ($500,000).

"§ 105-129.72. Tax Election; cap.

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the credit is claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax.

(b) Cap. – The credit allowed in this Article may not exceed the amount of tax against which it is claimed for the taxable year reduced by the sum of all credits allowed except payments of tax made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year.

"§ 105-129.73. Carryforward election; refund.

A taxpayer may elect to carry forward any unused portion of this credit as follows:

(1) For the next succeeding five years or

(2) For the next succeeding two years, and after a credit has been carried forward for two years, the Secretary must refund to the taxpayer in the next succeeding year an amount equal to fifty percent (50%) of the remaining unused amount of the credit.

"§ 105-129.74. Marshland.

In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 2003, to qualify for the credit allowed by this section.

"§ 105-129.75. Reports.

The Department of Revenue must report to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly by May 1 of each year all of the following information for the 12-month period ending the preceding December 31:

(1) The number of taxpayers that claimed a credit allowed in this Article.

(2) The amount of each credit claimed.

(3) The total amount refunded in excess of tax liability.

(4) The total cost to the General Fund of the credits claimed."

SECTION 2. G.S. 105-130.34 is repealed.

SECTION 3. G.S. 105-151.12 is repealed.

SECTION 4. In order to pay for its costs of computer programming to implement this act, the Department of Revenue may withhold not more than fifty-five thousand dollars ($55,000) during the 2006-2007 fiscal year from individual income tax collections under Part 2 of Article 4 of Chapter 105 of the General Statutes.

SECTION 5. The title of Article 16 of Chapter 113A of the General Statutes reads as rewritten:

"Article 16.

Conservation ~~Easements~~ Incentive Program."

SECTION 6. G.S. 113A-231 reads as rewritten:

"**§ 113A-230. Legislative findings; intent.**

The General Assembly finds that a statewide network of protected natural areas, riparian buffers, and greenways can best be accomplished through a conservation ~~easements~~ incentive program. The General Assembly further finds that other public conservation and use programs, such as natural area protection, beach access, trail systems, historic landscape protection, and agricultural preservation, can benefit from increased conservation tools. In this Article, the General Assembly therefore intends to extend the ability of the Department of Environment and Natural Resources to achieve these purposes and to strengthen the capability of private nonprofit land trusts to participate in land and water conservation."

SECTION 7. G.S. 113A-231 reads as rewritten:

"**§ 113A-231. Program to accomplish conservation purposes.**

The Department of Environment and Natural Resources shall develop a nonregulatory program that uses conservation tax credits as a prominent tool to accomplish conservation purposes, including the maintenance of ecological systems. As a part of this program, the Department shall exercise its powers to protect real property and interests in real property: donated for tax credit under ~~G.S. 105-130.34 or G.S. 105-151.12;~~ G.S. 105-129.70; conserved with the use of other financial incentives; or, conserved through nonregulatory programs. The Department shall call upon the Attorney General for legal assistance in developing and implementing the program."

SECTION 8. G.S. 113A-232(c) reads as rewritten:

"(c) Property Eligibility. – In order for real property or an interest in real property to be the subject of a grant under this Article, the real property or interest in real property must possess or have a high potential to possess ecological value, must be reasonably restorable, and must qualify for tax credits under ~~G.S. 105-130.34 or G.S. 105-151.12.~~ G.S. 105-129.70."

SECTION 9. G.S. 113A-232(c1) reads as rewritten:

"(c1) Grant Eligibility. – State conservation land management agencies, local government conservation land management agencies, and private nonprofit land trust organizations are eligible to receive grants from the Conservation Grant Fund. Private nonprofit land trust organizations must be qualified pursuant to ~~G.S. 105-130.34 and G.S. 105-151.12~~ G.S. 105-129.70 and must be certified under section 501(c)(3) of the Internal Revenue Code."

SECTION 10. G.S. 113A-233 reads as rewritten:

"**§ 113A-233. Uses of a grant from the Conservation Grant Fund.**

(a) Allowable Uses. – A grant from the Conservation Grant Fund may be used only to pay for one or more of the following costs:

(1) Reimbursement for total or partial transaction costs for a donation of real property or an interest in real property from an individual or corporation satisfying either of the following:

a. Insufficient financial ability to pay all costs or insufficient taxable income to allow these costs to be included in the donated value.

b. Insufficient tax burdens to allow these costs to be offset by the value of tax credits under ~~G.S. 105-130.34 or G.S. 105-151.12~~ G.S. 105-129.70 or by charitable deductions.

(2) Management support, including initial baseline inventory and planning.

(3) Monitoring compliance with conservation easements, the related use of riparian buffers, natural areas, and greenways, and the presence of ecological integrity.

(4) Education on conservation, including information materials intended for landowners and education for staff and volunteers.

(5) Stewardship of land.

(6) Transaction costs for recipients, including legal expenses, closing and title costs, and unusual direct costs, such as overnight travel.

(7) Administrative costs for short-term growth or for building capacity.

(b) Prohibition. – The Fund shall not be used to pay the purchase price of real property or an interest in real property."

SECTION 11. G.S. 105-130.9 reads as rewritten:

"**§ 105-130.9. Contributions.**

Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:

(1) Charitable contributions as defined in section 170(c) of the Code, exclusive of contributions allowed in subdivision (2) of this section,

shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five percent (5%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this section. Provided, that a carryover of contributions shall not be allowed and that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.

(2) Contributions by any corporation to the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county of this State, its institutions, instrumentalities, or agencies, any municipality of this State, its institutions, instrumentalities, or agencies, and contributions or gifts by any corporation to educational institutions located within North Carolina, no part of the net earnings of which inures to the benefit of any private stockholders or dividend. For the purpose of this subdivision, the words "educational institution" shall mean only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where the educational activities are carried on. The words "educational institution" shall be deemed to include all of such institution's departments, schools and colleges, a group of "educational institutions" and an organization (corporation, trust, foundation, association or other entity) organized and operated exclusively to receive, hold, invest and administer property and to make expenditures to or for the sole benefit of an "educational institution" or group of "educational institutions."

(3) Corporations allocating a part of their total net income outside North Carolina under the provisions of G.S. 105-130.4 shall deduct from total income allocable to North Carolina contributions made to North Carolina donees qualified under subdivisions (1) and (2) of this section or made through North Carolina offices or branches of other donees qualified under the above-mentioned subdivisions of this section; provided, such deduction for contributions made to North Carolina donees qualified under subdivision (1) of this section shall be limited in amount to five percent (5%) of the total income allocated to North Carolina as computed without the benefit of this deduction for contributions.

(4) The amount of a contribution for which the taxpayer claimed a tax credit pursuant to ~~G.S. 105-130.34~~ G.S. 105-129.70 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

SECTION 12. G.S. 105-277.3(d1) reads as rewritten:

"(d1) Exception for Easements on Qualified Conservation Lands Previously Appraised at Use Value. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in ~~G.S. 105-130.34 and G.S. 105-151.12.~~ G.S.105-129.70 without regard to actual production or income requirements of this section. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to an enforceable conservation easement that qualifies for the conservation tax credit provided in ~~G.S. 105-130.34 and G.S. 105-151.12.~~ G.S.105-129.70 The exception provided in this subsection applies only to that part of the property that is subject to the easement."

SECTION 13. G.S. 113-77.9(d) reads as rewritten:

"(d) Acquisition. – The Department of Administration may, pursuant to G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to this Article. Title to any land acquired pursuant to this Article shall be vested in the State. A State agency with management responsibility for land acquired pursuant to this Article may enter into a management agreement or lease with a county, city, town, or private nonprofit organization qualified under ~~G.S. 105-151.12 and G.S. 105-130.34~~ G.S. 105-129.70 and certified under section 501(c)(3) of the Internal Revenue Code to aid in managing the land. A management agreement or lease shall be executed by the Department of Administration pursuant to G.S. 143-341."

SECTION 14. G.S. 113A-256(g) reads as rewritten:

"(g) Tax Credit Certification. – The Trustees shall develop guidelines to determine whether land donated for a tax credit under ~~G.S. 105-130.34 or G.S. 105-151.12~~ G.S. 105-129.70 are suitable for one of the purposes under this Article and may be certified for a tax credit."

SECTION 15. G.S. 105-151.26 reads as rewritten:

"**§ 105-151.26. Credit for charitable contributions by nonitemizers.**

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Part an amount equal to seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under ~~G.S. 105-151.12~~ G.S. 105-129.70 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 16. Section 1 of this act is effective for credits claimed against income tax or gross premiums tax for taxable years beginning on or after January 1, 2006, and for credits claimed against franchise tax for taxable years beginning on or after January 1, 2007, and applies to property interests contributed on or after January 1, 2006. Sections 4 and 16 of this act are effective when this act becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 2006.

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 19, 2006

TO: Senators Hoyle and Kerr

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: Senate Bill 1563 – Tax Credit for Real Property Donations -PCS

FISCAL IMPACT (millions)

	Yes (X)	No ( )	No Estimate Available (X)		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Individual Inc. Tax	(0.1)	(0.1)			
Corporate Tax	(15.6)	(15.6)			
Sales Tax		* See Assumptions and Methodology *			
TOTAL					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, North Carolina Department of Environment and Natural Resources.

EFFECTIVE DATE: January 1, 2006.

BILL SUMMARY: The proposed committee substitute makes two changes to existing law. Until January 1, 2006Under G.S. 105-130.34 and G.S. 105-151.12 taxpayers can claim a credit for donations of real property for public beach access, public access to water or trails, fish and wildlife conservation, or other similar land conservation purposes. The credit amount allowed is 25% of the fair market value of the property donated in that year. The credit applies to outright donations or the donation of interest in the real property. In order to qualify the donation must be made in perpetuity, and be made to a unit of State or local government, or a conservation organization designed to accept such gifts. The Department of Environment and Natural Resources must certify that the property meets the previously mentioned eligibility requires and serves a public purpose.

The legislation extends this special tax treatment for two years. The second change relates to a refund of tax paid on some aviation fuel. During the 2005 legislative session the General Assembly granted a refund of sales taxes paid on aviation fuel by very large users. This legislation extends that special treatment two years.

ASSUMPTIONS AND METHODOLOGY: The North Carolina Department of Revenue's 2005 Tax Expenditure Report estimates the value of the credit for 2004 was $15.7 million. Of this amount $15.6 was credited for corporate taxpayers, and $0.1 million was credited for individual income tax payers. This estimate is based on actual 2002 and 2003 tax returns.

No specific information is available from the Department concerning the amount of refunds claimed for the aviation fuel item, due to confidentiality requirements. For purposes of tracking availability an estimate of $1.0 million will be used.

SOURCES OF DATA: North Carolina Department of Revenue, other sources.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1559*

Commerce Committee Substitute Adopted 6/13/06

PROPOSED COMMITTEE SUBSTITUTE S1559-CSRBx-57 [v.2]

6/20/2006 11:58:42 AM

Short Title: Video Service Competition Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

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

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

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

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

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

(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:

a. Is in effect on January 1, 2007.

b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.

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

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

(7) Secretary. – The Secretary of State.
(8) Video programming. – Defined in G.S. 105-164.3.

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

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

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

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

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

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

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

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

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

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

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a

notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

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

"**§ 66-353. Annual service report.**

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

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

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

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

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

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must

file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service in the area of noncompliance. Forfeiture does not apply to revenue received from cable service provided over a cable system in an area that is adjacent to a service area described in a notice of franchise and notice of service filed by that cable service provider under G.S. 66-352 if the provider obtains a State-issued franchise and files a notice of service that includes this area within 20 days after a civil action for forfeiture is filed. A forfeiture does not affect the liability of the cable service provider for sales tax due under G.S. 105-164.4 on cable service.

A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

"**§ 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 in any of the following circumstances:

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

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

c. A person provides wireline competition in the franchise area of the existing agreement by offering video programming over wireline facilities to single family households by a method that does not require a franchise under this Article. A notice of termination filed on the basis of wireline competition must

include evidence of the competition in providing video programming service, such as an advertisement announcing the availability of the service, the acceptance of an order for the service, and information on the provider's Web site about the availability of the service. A county or city is allowed 60 days to review the evidence. The effective date of the termination is tolled during this review period. At the end of this period, the termination proceeds unless the county or city has obtained an order enjoining the termination based on the cable service provider's failure to establish the existence of wireline competition in its franchise area.

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

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

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

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

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(5) Competitive pressure to respond to service offered by another cable service provider or other provider of video programming.

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

(c) Complaints. – The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to customer complaints concerning cable services. Persistent or repeated violations of the federal customer

service requirements or the terms and conditions of the cable service provider's agreement with customers are unfair or deceptive acts or practices under G.S. 75-1.1.

To facilitate the resolution of customer complaints, the cable service provider must include the following statement on the customer's bill: "If you have a complaint about your cable service, you should first contact customer service at the following telephone number: (insert the cable service provider's customer service telephone number). If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina (insert information on how to contact the Consumer Protection Division of the Attorney General's Office).

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

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

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

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within the later of the following:

(1) 120 days after the cable service provider receives the written request.

(2) 30 days after any interconnection requested under G.S. 66-358(a)(1) is accomplished.

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

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

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.

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

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

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

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

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

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

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

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

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

"§ 66-358. Transmission of PEG channels.

(a) Service. – A cable service provider operating under a State-issued franchise must transmit a PEG channel by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system within 120 days after it receives a written request for interconnection and may not refuse to interconnect on these terms. The terms include compensation for costs incurred in interconnecting. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.

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

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

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

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

"§ 66-359. PEG channel grants.

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

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

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

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

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

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

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

"§ 66-360. Service to public building.

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

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

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

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

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

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

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

~~b. Cable service.~~"

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

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

"**§ 105-164.4D. Bundled services.**

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

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

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based

on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) January 15, 2007, for a county or city that imposed a franchise tax payable quarterly or more frequently.

(2) March 15, 2007, for a county or city that imposed a franchise tax payable on any other basis.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or

city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The remainder of the distribution may be used for any public purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the ~~surface:~~surface. To the extent a municipality is authorized under other applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly

and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way.

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

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

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(c), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Consumer Protection Division of the Attorney General's Office must report to the Revenue Laws Study Committee on or before April 1 of each year, beginning April 1, 2008, on the following information concerning cable service complaints the Division has received from cable customers under G.S. 66-356:

(1) The number of customer complaints.

(2) The types of customer complaints.

(3) The different means of resolving customer complaints.

SECTION 19. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law. A person who provides video programming may obtain a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, and thereby become subject to that Article, regardless of whether the video programming the person provides is considered cable service provided under a cable system under that Article or under federal law.

SECTION 20. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 21. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by this act, has on the issues listed in this section to determine if any changes to the law are needed:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly

SECTION 22. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1559*
Commerce Committee Substitute Adopted 6/13/06

Short Title: Video Service Competition Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:

a. Is in effect on January 1, 2007.

b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.

(5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

(7) Secretary. – The Secretary of State.

"**§ 66-351. State franchising authority.**

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Award of franchise and commencement of service.**

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 57C-1-22 for filing articles of organization.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in the service area.

(b) Commencement of Service. – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

(1) The effective date of a notice of franchise for that area.

(2) A description and map of the service area.

(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of

the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report. The report must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this section.
(7) A report indicating the extent to which the holder has met the customer service requirements under G.S. 66-356(b).
(8) A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted under this section, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

(a) General. – A document filed with the Secretary under this Article must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Secretary under this Article, the person must send a copy of the document to any county or city included in the service area described in the document and to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area described in the document.

The provisions of Article 2 of Chapter 55D of the General Statutes apply to the submission of a document under this Article. A document filed under this Article is a public record as defined in G.S. 132-1. The Secretary must post a document filed under this Article on its Internet Web site or indicate on its Internet Web site that the document has been filed and is available for inspection.

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service. This forfeiture does not affect the liability of the cable service provider for sales tax due under G.S. 105-164.4 on cable service. A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

"**§ 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 in any of the following circumstances:

a. A notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

b. As of January 1, 2007, a county or city has an existing agreement with more than one cable service provider and at least twenty-five percent (25%) of the households in the franchise areas of the existing agreements are passed by more than one cable service provider.

c. A person provides wireline competition in the franchise area of the existing agreement by offering video programming, as defined in G.S. 105-164.3, over wireline facilities by a method that does not require a franchise under this Article. A notice of termination filed on the basis of wireline competition must include evidence of the competition in providing video programming service, such as an advertisement announcing the availability of the service, the acceptance of an order for the service, and information on the provider's Web site about the availability of the service. A county or city is allowed 60 days to review the evidence. The effective date of the termination is tolled during this review period. At the end of this period, the termination proceeds unless the county or city brings a civil

action to stay the termination based on the cable service provider's failure to establish the existence of wireline competition in its franchise area.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary. A termination of an existing agreement becomes effective at the end of the month in which the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance that specifically authorizes the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement or local ordinance before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is considered an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(5) Competitive pressure to respond to service offered by another cable service provider.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. Part 76 and emergency alert requirements established by the Federal Communications Commission.

(c) Complaints. – The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to customer complaints concerning cable services. Persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers are considered unfair or deceptive acts or practices under G.S. 75-1.1.

To facilitate the resolution of customer complaints, the cable service provider must include the following statement on the customer's bill: "If you have a complaint about your cable service, you should first contact customer service at the following telephone number: (insert the cable service provider's customer service telephone number). If the

cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001, at www.ncdoj.com, or at 1-877-5-NO-SCAM.

(d) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within 120 days after it receives the written request.

(c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier, and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if

it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60 days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of PEG channels by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other

provider's cable system when it receives a written request for interconnection and may not refuse to interconnect on these terms. The terms include compensation for costs incurred in interconnecting. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All PEG channel programming provided to a cable service provider for transmission must meet the federal National Television System Committee standards or the Advanced Television Systems Committee Standards. If a PEG channel programmer complies with these standards and the cable service provider cannot transmit the programming without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city the equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44l(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to the extent possible select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty-five thousand dollars ($25,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

"**§ 66-360. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a residential retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide inside wiring and is not required to provide service

that conflicts with restrictions that apply in a program licensing agreement or another contract. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catch line "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ —When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catch line to G.S. 105-164.12B reads as rewritten:

"§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract."

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter.~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars ($2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money

distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund, established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars ($2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by January 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

(j) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition.~~–~~ A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this

subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-296(a) reads as rewritten:

"(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited ~~to:~~to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper ~~repair;~~repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary ~~obstructions;~~obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent ~~domain;~~domain.

(4) The power to close any street or alley either permanently or ~~temporarily;~~temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and ~~bridges;~~bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the ~~surface;~~surface. In exercising this power, a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all nonmunicipal users of the public right-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the ~~city; and~~city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273."

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more

than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(c), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law. A person who provides video programming may obtain a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, regardless of whether the video programming the person provides is considered cable service provided under a cable system under that Article or under federal law.

SECTION 19. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 20. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any

changes to the law are needed and must report its findings to the 2009 Session of the North Carolina General Assembly:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

SECTION 21. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

SB 1559 (PCS): VIDEO SERVICE COMPETITION ACT

June 20, 2006

Executive Summary for the Senate Finance PCS

- **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 there is wireline competition in the provider's service area
- **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 Finance	**Date:**	June 20, 2006
Introduced by:	Sen. Clodfelter	**Summary by:**	Cindy Avrette
Version:	PCS to Second Edition S1559-CSRB		Committee Counsel

SUMMARY: The proposed Senate Finance committee substitute for 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 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 '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

[1] The Revenue Laws Study Committee staff met separately with representatives of the cable industry, the telephone industry, the cable administrators, and the counties and cities. It also held a series of four meetings with the all the affected parties and solicited comments from the parties on numerous occasions. The staff prepared a survey given to all the local governments in the State to determine their franchise fee collections and other nonmonetary contributions received in accordance with their cable franchise agreements.

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: 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 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.
- A description and map of the service 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.

- 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 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

[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.

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 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. In addition to any other authority the Attorney General has to respond to consumer complaints, the bill provides that persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers is 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.

- 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.

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).

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 direct the Consumer Protection Division of the Attorney General's Office to report to the Revenue Laws Study Committee on or before April 1 of each year, beginning April 1, 2008, on the number of customer complaints it has received regarding cable service, the types of complaints, and the different means it has used to resolve those complaints.

Section 19 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 20 would provide that the provisions of this act are severable.

Section 21 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 North Carolina General Assembly.

EFFECTIVE DATE: The bill becomes effective January 1, 2007.

S1559e2-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1559 (Second Edition)

SHORT TITLE: Video Service Competition Act.

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

Yes (X) No ( ) No Estimate Available ( )

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	No Impact to General Fund				
Local governments	Possible net gain up to $3.3 million; see Assumptions & Methodology				
EXPENDITURES:					
AG/Dept. of Justice					
Recurring	$0	$222,525	$222,525	$222,525	$222,525
Non-recurring	$0	$38,430	$0	$0	$0
POSITIONS					
AG/Dept. of Justice (cumulative):	0	3.0	3.0	3.0	3.0

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 and creates reporting requirements for the Consumer Protection Division regarding the type and volume of complaints handled;
- Requires the Revenue Laws Study Committee to study the impact of this legislation and report finding to the 2008 session of the North Carolina General Assembly.

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 October 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 October 1, 2005. Currently, all collections of this tax go to the General Fund. Under this legislation, 37% (or 2.5% of the 7.0% general sales tax rate) of satellite tax collections would be shared with local governments.

Based on early Department of Revenue data, satellite tax collections are exhibiting a rapid rate of growth, especially in relation to collections from cable service. This estimate for satellite uses a conservative annual growth rate of 8%.

Fiscal Research estimates that sales tax collections for satellite will be approximately $43.2 million for FY 2005-06. The 37% local share would be $16.0 million based on 2005-06 estimated collections.

Proposed Local Share of Sales Tax Collections by Industry

The chart below illustrates the local share of sales tax collections by industry. **This local share calculation is intended to hold local governments whole with the elimination of local franchise fees and to supply local governments with funds for PEG channel support.** The $65.3 million local share calculated through this distribution equals the estimated 2005 cable franchise fee revenues that would be foregone under this legislation.

---

[1] Federal law caps local franchise taxes at 5% of gross revenues, suggesting 2% of the 7% state sales tax goes to the state. Fiscal Research Division survey research suggests that not all North Carolina local governments with cable franchises assess franchise fees at the maximum 5% rate, and that the actual value of the tax credit may be somewhat less than 5% of cable's total sales tax liability.

[2] The cost of the cable tax credit was estimated at $65 million in the 2005 Tax Expenditure Report published by the North Carolina Department of Revenue

Proposed Local Share of Sales Tax Collections by Industry	
2005-06 Adjusted	
Industry	Local share
Telecommunications	28,607,502
Cable	20,654,235
Subtotal	*49,261,737*
Satellite	15,991,400
Total	**65,253,137**

Distribution of Sales Tax to Local Governments

Under this bill, the combined 7.23% of sales tax collections on telecommunications, 22.61% of state sales tax collections on cable service and 37% of sales tax collections on home satellite television service would be distributed to North Carolina local governments on a proportional basis. The proportionate share for each local government is calculated by dividing a local government's actual collections, including actual franchise fee collections and any per subscriber charges for PEG support, by the total of all local government cable revenues. The base amount of a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary was imposed during the first six months of FY 2006-07 (July 1, 2006 through January 1, 2007). The purpose of this time period is to capture the effect of franchise fee rate increases enacted by local governments for the 2006-07 fiscal year. The bill also provides that counties or cities that did not impose a cable franchise fee before July 1, 2006, are entitled to a share equal to $2.00 times the most recent population estimate for the city or county in question. Fiscal Research estimates that sixty-five cities and two counties do not currently impose a franchise fee. The total population of those sixty-seven local governments is approximately 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 approximately 25-30 applications within the first six months of 2007. Although the impact on the Secretary of State will be minimal, costs incurred could be offset by the designation of fees for use by the Secretary of State.

Attorney General's Office/Consumer Protection Division

Section 1 designates the Consumer Protection Division (CPD) in the Attorney General's Office/Department of Justice (DOJ) as the State Agency to receive and respond to customer complaints regarding cable services. The Consumer Protection Division currently has 50 positions. To implement and carry out the new requirements, DOJ estimates that 15 new positions will be needed as shown in the table below. Because DOJ proposes to add the positions on June 1, 2006, the total estimated FY 2006-07 costs would be only $166,612. In FY 2007-08, the cost would increase to $892,844 for the full year.

DOJ Estimated Staffing Needs to Implement HB 2047

Grade	Position Classification	# Positions	$ Annual Salary
68	Consumer Protection Specialist	7	40,585
70	Consumer Protection Specialist Supv.	1	44.229
87	Attorney Supv. II	1	95.538
59	Office Assistant IV	3	28.375
65	Admin Assistant II	1	35.770
63	Admin Assistant I	2	33.049
	TOTAL	**15**	**$610,855**

The DOJ estimate is based upon the assumption that one additional consumer protection specialist position is required for every 270,000 cable consumers in the state. No explanation/justification was provided for the remaining positions. There is no further explanation of how DOJ derived the 270,000 figure. Thus, DOJ's estimate of staffing needs is not based upon a projection of additional complaints or other measurable workload increases that would be generated under the proposed bill. It is recommended that the Department use an alternative approach to estimate the number of positions needed, specifically one that attempts to project the increased number of consumer complaints that will be arise as a result of House Bill 2047.

Preliminary data from a national survey indicates that in FY 2004-05, there were about 56,000 consumer complaints in jurisdictions representing a total of 5.3 million cable subscribers. This is equivalent to a "complaint rate" of 1.1 percent, or 1 complaint for every 16,317 subscribers. Using this factor, along with data on the number of cable subscribing households in North Carolina, the Fiscal Research Division (FRD) projects that the Consumer Protection Division would receive up to 4,200 additional complaints in FY 2006-07 and up to16,300 complaints annually in the

following years as a result of HB 2047. The 4,200 estimate was calculated using the assumption that all current cable franchisees will choose to opt out of their local agreements and choose to provide services under the state contract in FY 2006-07. This is highly unlikely given that the bill does not become effective until January 1, 2007. A more probable projection is that CPD will receive about 650 new complaints in FY 2006-07, arising from 30 jurisdictions for which current franchise agreements have expired or will expire prior to June 30, 2007. Using the assumption that starting on July 1, 2007, all NC cable subscribers will receive services via a state-administered contract, and applying the 1.1 percent complaint rate. CPD would receive a projected 16,300 new complaints in FY 2007-08. However, this projection is highly unlikely, because many of the existing cable franchisees will choose to continue to provide services under agreements with local jurisdictions. In such situations, the cable service providers will continue to have the primary responsibility for handling consumer complaints under existing FCC requirements. The table below summarizes the assumptions discussed above:

ASSUMPTION	FISCAL YEAR	PROJECTED # COMPLAINTS
State-administered contract replaces all local franchise agreements by June 30, 2007.	2006-07	8,100
	2007-08	16,300
State-administered contract replaces all local franchise agreements that have or will expire by January 1, 2007.	2006-07	650
	2007-08	1,300
State-administered contract replaces 1) all local franchise agreements that have or will expire by January 1, 2007; **and** 2) all local agreements in all cities and counties with 25,000 or more residents.	2006-07	4,200
	2007-08	8,400

DOJ reports that in 2004 the Consumer Protection Division received about 17,000 written complaints and an estimated 75,000 telephone inquiries. Currently, each Consumer Protection Specialist handles an average of about 1,700 written and 7,500 telephone complaints for a total of 9,200 per year. Assuming the proposed bill generates 4,200 additional complaints annually and the current productivity rate, CPD would need only one (1) additional specialist position. If CPD receives 16,300 new complaints annually, assuming the current productivity rate, two (2) additional consumer specialist positions would be needed. The survey results and other anecdotal data suggest that many of the new consumer complaints will require minimal handling by the CPD specialist. For example, many customer service complaints concern matters such as missed or late appointments; slow responses, poor attitudes, etc. Related to these were complaints about the cable companies' telephone customer service in which consumers were put on hold too long, got a busy signal, could not reach an actual person, etc. Other complaints are related to technical issues (outages, poor reception, equipment features) costs, or limited program options. For these types of complaints, the CPD specialists' primary function will be to forward the complaint to the cable companies for resolution and to follow up with the consumer to assure that the issue was resolved. These types of complaints will not involve complex analysis or information collection on the part of the CPD specialists. Many of these tasks will be handled via telephone, emails, and automated technology/processes that should 1) minimize the total time a specialist would spend on a complaint and 2) allow the specialists to process multiple complaints concurrently. For these reasons, two (2) additional Consumer Protection Specialist positions would be adequate to handle the expected workload increases generated from HB 2047.

FRD does not recommend any additional resources for DOJ in FY 2006-07 because of the projected CPD workload increase of 650 complaints, less than 1.0 percent, can be handled within the existing continuation budget. With only two more specialist positions, there is no need for the additional supervisory and administrative positions proposed in the DOJ estimate. An Attorney III should be sufficient to provide legal support, rather than an Attorney III Supervisor. Eliminating 12 positions and substituting an Attorney III for the Attorney III Supervisor position will reduce the estimated annual staffing costs from $759,193 to $204,075, a decrease of $555,118. Adjusting the DOJ estimate to remove amounts for office space, equipment, supplies, computers, and other non-personal services line items associated with the 12 positions, will reduce costs by an additional $76,771. **FRD estimates the fiscal impact of HB 2047 for DOJ in FY 2007-08 will be $260,955, including non-recurring start-up costs. In subsequent years, the cost would decrease to $222,525.**

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 Department of Justice, National Association of Telecommunications Officers and Advisors (NATOA)

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 20, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1559*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1559-ARB-104 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
S1559-CSRBx-57

Senator Clodfelter

moves to amend the bill on page 12, line 10, by rewriting the line to read:
"A county or city that used part of its franchise tax revenue in fiscal year 2005-2006 for the operation and support of PEG channels or a publicly owned and operated television station must use the funds distributed to it under subsections (c) and (d) of this section to continue the same level of support for the PEG channels and public stations.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE FINANCE COMMITTEE
Wednesday, June 21, 2006 at noon
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at noon on June 21, 2006, in Room 544 of the Legislative Office Building. Twenty members of the committee were present. Senator John Kerr presided. Panos Harakas and Sadie Cooke of Gastonia, Rachel Hembrer of Winston-Salem, and Paige Hixon of Clemmons served as pages.

SB 1559 – Video Service Competition Act.

Senator Clodfelter was recognized to explain the proposed committee substitute which was carried over from the June 20 Senate Finance committee meeting. Senator Clodfelter offered an amendment (109) and motioned for a favorable report. The motion carried. Josh Stein, Attorney General's Office – Consumer Protection Division, was recognized to speak on the bill. Senator Nesbitt offered an amendment (102 v. 2). Andy Romanet, NC League of Municipalities General Counsel, and Paul Myers, an attorney with the County Commissioners Association, spoke in opposition to the amendment. Senator Nesbitt motioned for its adoption. The motion failed. Senator Apodaca moved for a favorable report for the PCS as amended as the motion carried. Copies of the bill, proposed committee substitute, amendments, summary and fiscal note are attached.

HB 1094 – Wastewater System Approvals/Small Counties.

Senator Snow was recognized to explain the bill. Senator Webster motioned for favorable report and the motion carried. A copy of the bill and the summary are attached.

SB 2012 – SUTA Modifications.

Senator Bingham was recognized to explain the bill. Senator Hoyle moved to adopt the proposed committee substitute for discussion and the motion carried. Senators Hoyle and Albertson moved for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute, and the summary are attached.

SB 2010 – Aircraft Mechanic's Lien.

Senator Hagan was recognized to explain the bill. Senator Kerr moved to adopt the proposed committee substitute for discussion and the motion carried. Senator Hagan offered an amendment and motioned for its adoption. The motion carried. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute, the amendment, and the summary are attached.

SB 2002 – Criminal background Checks.

This bill was removed from the agenda and referred to Senate Judiciary II.

S2043 – Increase Mortgage Lending Fees.

Senator Hoyle was recognized to explain the bill and moved to adopt the proposed committee substitute for discussion. The motion carried. Joe Smith, NC Commissioner of Banks, was recognized to speak in favor of the bill. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

HB 1025 – Winemaking on Premises Permit.

Senator Hoyle was recognized to explain the bill and moved to adopt the proposed committee substitute for discussion. The motion carried. The Reverend Mark Creech of Christian Action League was recognized to speak in opposition to the bill. Due to time constraints, the discussion was stopped and the bill was tentatively moved to the next meeting's agenda.

The meeting adjourned at 1:00 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

Thursday, June 22, 2006

Senator KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **2012** SUTA Modifications.

Draft Number:	55508
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **2043** Increase Mortgage Lending Fees.

Draft Number:	65611
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **2010** Aircraft Mechanics' Lien.

Draft Number:	65612
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Will Quick	Sen. Weinstein
Tom Coley	CWA
John McMillan	MFOS
Katherine Davis	Electricities of NC
Charlene Carey	NC Right to Life
[illegible]	NCACC
David Cess	ESC
Ashley Campbell	Raysdale Liggett
Joseph A. Smith, Jr.	Commissioner of Banks
Dick Carlton	Atty
Bill Welch	AARP
Rob Thompson	NCPRC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Kukla	Ctr. for Responsible Lending
Stephen Moore	The Daily Tar Heel
Mark Creech	CAL
Colleen Kochanek	Smith Moore
[illegible]	[illegible]
Jane Patterson	e-IUC Authority
Herb Crenshaw	Bell South
Robert Wilson	S.O.S
Hallett Montgomery	SOS
[illegible]	UNC
Stephanie Dorko	Charlotte Chamber

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	RJRC
[signature]	City of Raleigh
Chad Johnston	NC Coalition of ~~Rural~~ Community Mental Centers
Rebekah Gonçalves	ACLU-NC
Jill Shotzberger	ACLU-NC
Paula A. Wolf	ACLU-NC
Karl Knapp	DOR
Donna Alderman	DOR
Guy Rufty	NCDOR
Anna Mitchell	NCDOR
Ranc Mayer	NCAA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Andrews	PFFPNC
Steve Slater	Poyner & Spruill
Sue Breckenridge	Time Warner Cable
Brad Fraser	TWC
JR Powell	AOC
Cam Cowe	BPMHL
Sam Metzler	UNC-GA
Ben Eiser	UNC-Gen Admin.
Courtney Crowder	Capitol
Bridget Paschal	Utilities Commission Staff
Daniel Long	NCUC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lemuel W. Hinton	NCUC Staff
Sandra Long	Martin Marietta Materials
Gary Lyons	Sperry Van Ness
LaVoy Spooner	BellSouth
DK McLaughlin	Time Warner Cable
[illegible]	TWC
Jack Stanley	TWC
Chuck Greene	BellSouth
[illegible]	NTI
[illegible]	WCSR
DAVID BARNES	Pryor + Sparrow

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Susanne Steeb	NCRA
Dave Simpson	AOC
Betty Turner	Bank of America
Leslie Bowman Comm.	Cogent
Steve Mull	
Robin P. Staudt	NC Freedom Works (Orange County)
Roy Lofl[illegible]	Citizen
Andrew Haile	BPMHL
Jack Cozort	Womble
Marcus Trathen	BPMHL
Gary Mull	NCAHO

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 21, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCLM

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 21, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kelly Mitchell	UNC-TV
Mark Trawick	Intern

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1559*

Commerce Committee Substitute Adopted 6/13/06

PROPOSED COMMITTEE SUBSTITUTE S1559-CSRBx-57 [v.2]

6/20/2006 11:58:42 AM

Short Title: Video Service Competition Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:

a. Is in effect on January 1, 2007.

b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.

(5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

(7) Secretary. – The Secretary of State.
(8) Video programming. – Defined in G.S. 105-164.3.

"**§ 66-351. State franchising authority.**

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Award of franchise and commencement of service.**

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 57C-1-22 for filing articles of organization.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.
(2) A description and map of the area to be served.
(3) A list of each county and city in which the described service area is located, in whole or in part.
(4) A schedule indicating when service is expected to be offered in the service area.

(b) Commencement of Service. – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a

notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report. The report must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this section.
(7) A report indicating the extent to which the holder has met the customer service requirements under G.S. 66-356(b).
(8) A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted under this section, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

(a) General. – A document filed with the Secretary under this Article must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Secretary under this Article, the person must send a copy of the document to any county or city included in the service area described in the document and to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area described in the document.

The provisions of Article 2 of Chapter 55D of the General Statutes apply to the submission of a document under this Article. A document filed under this Article is a public record as defined in G.S. 132-1. The Secretary must post a document filed under this Article on its Internet Web site or indicate on its Internet Web site that the document has been filed and is available for inspection.

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must

file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service in the area of noncompliance. Forfeiture does not apply to revenue received from cable service provided over a cable system in an area that is adjacent to a service area described in a notice of franchise and notice of service filed by that cable service provider under G.S. 66-352 if the provider obtains a State-issued franchise and files a notice of service that includes this area within 20 days after a civil action for forfeiture is filed. A forfeiture does not affect the liability of the cable service provider for sales tax due under G.S. 105-164.4 on cable service.

A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

"**§ 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 in any of the following circumstances:

a. A notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

b. As of January 1, 2007, a county or city has an existing agreement with more than one cable service provider and at least twenty-five percent (25%) of the households in the franchise areas of the existing agreements are passed by more than one cable service provider.

c. A person provides wireline competition in the franchise area of the existing agreement by offering video programming over wireline facilities to single family households by a method that does not require a franchise under this Article. A notice of termination filed on the basis of wireline competition must

include evidence of the competition in providing video programming service, such as an advertisement announcing the availability of the service, the acceptance of an order for the service, and information on the provider's Web site about the availability of the service. A county or city is allowed 60 days to review the evidence. The effective date of the termination is tolled during this review period. At the end of this period, the termination proceeds unless the county or city has obtained an order enjoining the termination based on the cable service provider's failure to establish the existence of wireline competition in its franchise area.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary. A termination of an existing agreement becomes effective at the end of the month in which the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance that specifically authorizes the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement or local ordinance before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(5) Competitive pressure to respond to service offered by another cable service provider or other provider of video programming.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. Part 76 and emergency alert requirements established by the Federal Communications Commission.

(c) Complaints. – The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to customer complaints concerning cable services. Persistent or repeated violations of the federal customer

service requirements or the terms and conditions of the cable service provider's agreement with customers are unfair or deceptive acts or practices under G.S. 75-1.1.

To facilitate the resolution of customer complaints, the cable service provider must include the following statement on the customer's bill: "If you have a complaint about your cable service, you should first contact customer service at the following telephone number: (insert the cable service provider's customer service telephone number). If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina (insert information on how to contact the Consumer Protection Division of the Attorney General's Office).

(d) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within the later of the following:

(1) 120 days after the cable service provider receives the written request.

(2) 30 days after any interconnection requested under G.S. 66-358(a)(1) is accomplished.

(c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier, and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60 days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"§ 66-358. Transmission of PEG channels.

(a) Service. – A cable service provider operating under a State-issued franchise must transmit a PEG channel by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system within 120 days after it receives a written request for interconnection and may not refuse to interconnect on these terms. The terms include compensation for costs incurred in interconnecting. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All PEG channel programming provided to a cable service provider for transmission must meet the federal National Television System Committee standards or the Advanced Television Systems Committee Standards. If a PEG channel programmer complies with these standards and the cable service provider cannot transmit the programming without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city the equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"§ 66-359. PEG channel grants.

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to the extent possible select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty-five thousand dollars ($25,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

"§ 66-360. Service to public building.

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a residential retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide inside wiring and is not required to provide service that conflicts with restrictions that apply in a program licensing agreement or another contract. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catch line "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based

on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catch line to G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract.**"

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter,~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars ($2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund, established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars ($2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee. A county or city must make this certification by the following dates:

(1) January 15, 2007, for a county or city that imposed a franchise tax payable quarterly or more frequently.

(2) March 15, 2007, for a county or city that imposed a franchise tax payable on any other basis.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or

city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

(j) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition.– A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-296(a) reads as rewritten:

"(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited ~~to:~~to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper ~~repair;~~repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary ~~obstructions;~~obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent ~~domain;~~domain.

(4) The power to close any street or alley either permanently or ~~temporarily;~~temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and ~~bridges;~~bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the ~~surface:~~surface. To the extent a municipality is authorized under other applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly

and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the ~~city; and~~city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273."

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(c), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Consumer Protection Division of the Attorney General's Office must report to the Revenue Laws Study Committee on or before April 1 of each year, beginning April 1, 2008, on the following information concerning cable service complaints the Division has received from cable customers under G.S. 66-356:

(1) The number of customer complaints.

(2) The types of customer complaints.
(3) The different means of resolving customer complaints.

SECTION 19. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law. A person who provides video programming may obtain a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, and thereby become subject to that Article, regardless of whether the video programming the person provides is considered cable service provided under a cable system under that Article or under federal law.

SECTION 20. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 21. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by this act, has on the issues listed in this section to determine if any changes to the law are needed:

(1) Competition in video programming services.
(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.
(3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly

SECTION 22. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1559*
Commerce Committee Substitute Adopted 6/13/06

Short Title: Video Service Competition Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:

a. Is in effect on January 1, 2007.

b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.

(5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

(7) Secretary. – The Secretary of State.

"**§ 66-351. State franchising authority.**

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Award of franchise and commencement of service.**

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 57C-1-22 for filing articles of organization.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in the service area.

(b) Commencement of Service. – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

(1) The effective date of a notice of franchise for that area.

(2) A description and map of the service area.

(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of

the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report. The report must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this section.
(7) A report indicating the extent to which the holder has met the customer service requirements under G.S. 66-356(b).
(8) A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted under this section, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

(a) General. – A document filed with the Secretary under this Article must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Secretary under this Article, the person must send a copy of the document to any county or city included in the service area described in the document and to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area described in the document.

The provisions of Article 2 of Chapter 55D of the General Statutes apply to the submission of a document under this Article. A document filed under this Article is a public record as defined in G.S. 132-1. The Secretary must post a document filed under this Article on its Internet Web site or indicate on its Internet Web site that the document has been filed and is available for inspection.

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service. This forfeiture does not affect the liability of the cable service provider for sales tax due under G.S. 105-164.4 on cable service. A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

"**§ 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 in any of the following circumstances:

a. A notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

b. As of January 1, 2007, a county or city has an existing agreement with more than one cable service provider and at least twenty-five percent (25%) of the households in the franchise areas of the existing agreements are passed by more than one cable service provider.

c. A person provides wireline competition in the franchise area of the existing agreement by offering video programming, as defined in G.S. 105-164.3, over wireline facilities by a method that does not require a franchise under this Article. A notice of termination filed on the basis of wireline competition must include evidence of the competition in providing video programming service, such as an advertisement announcing the availability of the service, the acceptance of an order for the service, and information on the provider's Web site about the availability of the service. A county or city is allowed 60 days to review the evidence. The effective date of the termination is tolled during this review period. At the end of this period, the termination proceeds unless the county or city brings a civil

action to stay the termination based on the cable service provider's failure to establish the existence of wireline competition in its franchise area.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary. A termination of an existing agreement becomes effective at the end of the month in which the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance that specifically authorizes the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement or local ordinance before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is considered an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(5) Competitive pressure to respond to service offered by another cable service provider.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. Part 76 and emergency alert requirements established by the Federal Communications Commission.

(c) Complaints. – The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to customer complaints concerning cable services. Persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers are considered unfair or deceptive acts or practices under G.S. 75-1.1.

To facilitate the resolution of customer complaints, the cable service provider must include the following statement on the customer's bill: "If you have a complaint about your cable service, you should first contact customer service at the following telephone number: (insert the cable service provider's customer service telephone number). If the

cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001, at www.ncdoj.com, or at 1-877-5-NO-SCAM.

(d) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within 120 days after it receives the written request.

(c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier, and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if

it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60 days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of PEG channels by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other

provider's cable system when it receives a written request for interconnection and may not refuse to interconnect on these terms. The terms include compensation for costs incurred in interconnecting. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All PEG channel programming provided to a cable service provider for transmission must meet the federal National Television System Committee standards or the Advanced Television Systems Committee Standards. If a PEG channel programmer complies with these standards and the cable service provider cannot transmit the programming without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city the equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44l(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to the extent possible select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty-five thousand dollars ($25,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

"**§ 66-360. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a residential retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide inside wiring and is not required to provide service

that conflicts with restrictions that apply in a program licensing agreement or another contract. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catch line "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catch line to G.S. 105-164.12B reads as rewritten:

"§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract."

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter.~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars ($2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money

distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund, established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars ($2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by January 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

(j) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition.– A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this

subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-296(a) reads as rewritten:

"(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited ~~to:~~to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper ~~repair;~~repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary ~~obstructions;~~obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent ~~domain;~~domain.

(4) The power to close any street or alley either permanently or ~~temporarily;~~temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and ~~bridges;~~bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the ~~surface;~~surface. In exercising this power, a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all nonmunicipal users of the public right-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the ~~city; and~~city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273."

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more

than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(c), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law. A person who provides video programming may obtain a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, regardless of whether the video programming the person provides is considered cable service provided under a cable system under that Article or under federal law.

SECTION 19. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 20. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any

changes to the law are needed and must report its findings to the 2009 Session of the North Carolina General Assembly:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

SECTION 21. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

SB 1559 (PCS): VIDEO SERVICE COMPETITION ACT

June 20, 2006

Executive Summary for the Senate Finance PCS

- **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 there is wireline competition in the provider's service area
- **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 Finance	**Date:**	June 20, 2006
Introduced by:	Sen. Clodfelter	**Summary by:**	Cindy Avrette
Version:	PCS to Second Edition S1559-CSRB		Committee Counsel

SUMMARY: The proposed Senate Finance committee substitute for 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 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 '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

[1] The Revenue Laws Study Committee staff met separately with representatives of the cable industry, the telephone industry, the cable administrators, and the counties and cities. It also held a series of four meetings with the all the affected parties and solicited comments from the parties on numerous occasions. The staff prepared a survey given to all the local governments in the State to determine their franchise fee collections and other nonmonetary contributions received in accordance with their cable franchise agreements.

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: 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 bill designates the Consumer Protection Division of the Attorney General's Office as the State agency t 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.
- A description and map of the service 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.

- 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 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

[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.

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 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. In addition to any other authority the Attorney General has to respond to consumer complaints, the bill provides that persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers is 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.

- 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.

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).

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 direct the Consumer Protection Division of the Attorney General's Office to report to the Revenue Laws Study Committee on or before April 1 of each year, beginning April 1, 2008, on the number of customer complaints it has received regarding cable service, the types of complaints, and the different means it has used to resolve those complaints.

Section 19 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 20 would provide that the provisions of this act are severable.

Section 21 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 North Carolina General Assembly.

EFFECTIVE DATE: The bill becomes effective January 1, 2007.

S1559e2-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1559 (Second Edition)

SHORT TITLE: Video Service Competition Act.

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

Yes (X) No ( ) No Estimate Available ( )

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	No Impact to General Fund				
Local governments	Possible net gain up to $3.3 million; see Assumptions & Methodology				
EXPENDITURES:					
AG/Dept. of Justice					
Recurring	$0	$222,525	$222,525	$222,525	$222,525
Non-recurring	$0	$38,430	$0	$0	$0
POSITIONS					
AG/Dept. of Justice (cumulative):	0	3.0	3.0	3.0	3.0

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 and creates reporting requirements for the Consumer Protection Division regarding the type and volume of complaints handled;
- Requires the Revenue Laws Study Committee to study the impact of this legislation and report finding to the 2008 session of the North Carolina General Assembly.

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 October 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 October 1, 2005. Currently, all collections of this tax go to the General Fund. Under this legislation, 37% (or 2.5% of the 7.0% general sales tax rate) of satellite tax collections would be shared with local governments.

Based on early Department of Revenue data, satellite tax collections are exhibiting a rapid rate of growth, especially in relation to collections from cable service. This estimate for satellite uses a conservative annual growth rate of 8%.

Fiscal Research estimates that sales tax collections for satellite will be approximately $43.2 million for FY 2005-06. The 37% local share would be $16.0 million based on 2005-06 estimated collections.

Proposed Local Share of Sales Tax Collections by Industry

The chart below illustrates the local share of sales tax collections by industry. **This local share calculation is intended to hold local governments whole with the elimination of local franchise fees and to supply local governments with funds for PEG channel support.** The $65.3 million local share calculated through this distribution equals the estimated 2005 cable franchise fee revenues that would be foregone under this legislation.

[1] Federal law caps local franchise taxes at 5% of gross revenues, suggesting 2% of the 7% state sales tax goes to the state. Fiscal Research Division survey research suggests that not all North Carolina local governments with cable franchises assess franchise fees at the maximum 5% rate, and that the actual value of the tax credit may be somewhat less than 5% of cable's total sales tax liability.

[2] The cost of the cable tax credit was estimated at $65 million in the 2005 Tax Expenditure Report published by the North Carolina Department of Revenue

Proposed Local Share of Sales Tax Collections by Industry	
2005-06 Adjusted	
Industry	Local share
Telecommunications	28,607,502
Cable	20,654,235
Subtotal	*49,261,737*
Satellite	15,991,400
Total	**65,253,137**

Distribution of Sales Tax to Local Governments

Under this bill, the combined 7.23% of sales tax collections on telecommunications, 22.61% of state sales tax collections on cable service and 37% of sales tax collections on home satellite television service would be distributed to North Carolina local governments on a proportional basis. The proportionate share for each local government is calculated by dividing a local government's actual collections, including actual franchise fee collections and any per subscriber charges for PEG support, by the total of all local government cable revenues. The base amount of a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary was imposed during the first six months of FY 2006-07 (July 1, 2006 through January 1, 2007). The purpose of this time period is to capture the effect of franchise fee rate increases enacted by local governments for the 2006-07 fiscal year. The bill also provides that counties or cities that did not impose a cable franchise fee before July 1, 2006, are entitled to a share equal to $2.00 times the most recent population estimate for the city or county in question. Fiscal Research estimates that sixty-five cities and two counties do not currently impose a franchise fee. The total population of those sixty-seven local governments is approximately 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 approximately 25-30 applications within the first six months of 2007. Although the impact on the Secretary of State will be minimal, costs incurred could be offset by the designation of fees for use by the Secretary of State.

Attorney General's Office/Consumer Protection Division

Section 1 designates the Consumer Protection Division (CPD) in the Attorney General's Office/Department of Justice (DOJ) as the State Agency to receive and respond to customer complaints regarding cable services. The Consumer Protection Division currently has 50 positions. To implement and carry out the new requirements, DOJ estimates that 15 new positions will be needed as shown in the table below. Because DOJ proposes to add the positions on June 1, 2006, the total estimated FY 2006-07 costs would be only $166,612. In FY 2007-08, the cost would increase to $892,844 for the full year.

DOJ Estimated Staffing Needs to Implement HB 2047

Grade	Position Classification	# Positions	$ Annual Salary
68	Consumer Protection Specialist	7	40,585
70	Consumer Protection Specialist Supv.	1	44.229
87	Attorney Supv. II	1	95.538
59	Office Assistant IV	3	28.375
65	Admin Assistant II	1	35.770
63	Admin Assistant I	2	33.049
	TOTAL	**15**	**$610,855**

The DOJ estimate is based upon the assumption that one additional consumer protection specialist position is required for every 270,000 cable consumers in the state. No explanation/justification was provided for the remaining positions. There is no further explanation of how DOJ derived the 270,000 figure. Thus, DOJ's estimate of staffing needs is not based upon a projection of additional complaints or other measurable workload increases that would be generated under the proposed bill. It is recommended that the Department use an alternative approach to estimate the number of positions needed, specifically one that attempts to project the increased number of consumer complaints that will be arise as a result of House Bill 2047.

Preliminary data from a national survey indicates that in FY 2004-05, there were about 56,000 consumer complaints in jurisdictions representing a total of 5.3 million cable subscribers. This is equivalent to a "complaint rate" of 1.1 percent, or 1 complaint for every 16,317 subscribers. Using this factor, along with data on the number of cable subscribing households in North Carolina, the Fiscal Research Division (FRD) projects that the Consumer Protection Division would receive up to 4,200 additional complaints in FY 2006-07 and up to16,300 complaints annually in the

following years as a result of HB 2047. The 4,200 estimate was calculated using the assumption that all current cable franchisees will choose to opt out of their local agreements and choose to provide services under the state contract in FY 2006-07. This is highly unlikely given that the bill does not become effective until January 1, 2007. A more probable projection is that CPD will receive about 650 new complaints in FY 2006-07, arising from 30 jurisdictions for which current franchise agreements have expired or will expire prior to June 30, 2007. Using the assumption that starting on July 1, 2007, all NC cable subscribers will receive services via a state-administered contract, and applying the 1.1 percent complaint rate. CPD would receive a projected 16,300 new complaints in FY 2007-08. However, this projection is highly unlikely, because many of the existing cable franchisees will choose to continue to provide services under agreements with local jurisdictions. In such situations, the cable service providers will continue to have the primary responsibility for handling consumer complaints under existing FCC requirements. The table below summarizes the assumptions discussed above:

ASSUMPTION	FISCAL YEAR	PROJECTED # COMPLAINTS
State-administered contract replaces all local franchise agreements by June 30, 2007.	2006-07	8,100
	2007-08	16,300
State-administered contract replaces all local franchise agreements that have or will expire by January 1, 2007.	2006-07	650
	2007-08	1,300
State-administered contract replaces 1) all local franchise agreements that have or will expire by January 1, 2007; **and** 2) all local agreements in all cities and counties with 25,000 or more residents.	2006-07	4,200
	2007-08	8,400

DOJ reports that in 2004 the Consumer Protection Division received about 17,000 written complaints and an estimated 75,000 telephone inquiries. Currently, each Consumer Protection Specialist handles an average of about 1,700 written and 7,500 telephone complaints for a total of 9,200 per year. Assuming the proposed bill generates 4,200 additional complaints annually and the current productivity rate, CPD would need only one (1) additional specialist position. If CPD receives 16,300 new complaints annually, assuming the current productivity rate, two (2) additional consumer specialist positions would be needed. The survey results and other anecdotal data suggest that many of the new consumer complaints will require minimal handling by the CPD specialist. For example, many customer service complaints concern matters such as missed or late appointments; slow responses, poor attitudes, etc. Related to these were complaints about the cable companies' telephone customer service in which consumers were put on hold too long, got a busy signal, could not reach an actual person, etc. Other complaints are related to technical issues (outages, poor reception, equipment features) costs, or limited program options. For these types of complaints, the CPD specialists' primary function will be to forward the complaint to the cable companies for resolution and to follow up with the consumer to assure that the issue was resolved. These types of complaints will not involve complex analysis or information collection on the part of the CPD specialists. Many of these tasks will be handled via telephone, emails, and automated technology/processes that should 1) minimize the total time a specialist would spend on a complaint and 2) allow the specialists to process multiple complaints concurrently. For these reasons, two (2) additional Consumer Protection Specialist positions would be adequate to handle the expected workload increases generated from HB 2047.

FRD does not recommend any additional resources for DOJ in FY 2006-07 because of the projected CPD workload increase of 650 complaints, less than 1.0 percent, can be handled within the existing continuation budget. With only two more specialist positions, there is no need for the additional supervisory and administrative positions proposed in the DOJ estimate. An Attorney III should be sufficient to provide legal support, rather than an Attorney III Supervisor. Eliminating 12 positions and substituting an Attorney III for the Attorney III Supervisor position will reduce the estimated annual staffing costs from $759,193 to $204,075, a decrease of $555,118. Adjusting the DOJ estimate to remove amounts for office space, equipment, supplies, computers, and other non-personal services line items associated with the 12 positions, will reduce costs by an additional $76,771. **FRD estimates the fiscal impact of HB 2047 for DOJ in FY 2007-08 will be $260,955, including non-recurring start-up costs. In subsequent years, the cost would decrease to $222,525.**

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 Department of Justice, National Association of Telecommunications Officers and Advisors (NATOA)

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 20, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1559*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1559-ARB-109 [v.2]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
S1559-CSRBx-57

Senator Clodfelter

moves to amend the bill on page 4, line 28, by rewriting the line to read:

"(2) A cable service provider under an existing agreement that is in effect on January 1, 2007, may terminate";

And on page 4, line 36, by rewriting the line to read:

"agreement with more than one cable service provider for substantially the same franchise area and at";

And on page 5, lines 11 and 12, by inserting a new subdivision between those lines to read:

"(3) A cable service provider under an existing agreement that expired before January 1, 2007, may obtain a State-issued franchise. The provider does not have to terminate the agreement in accordance with subsection (b) of this section because the agreement has expired.";

And on page 7, line 44, by adding a new subsection immediately after that line to read:

"(g) Compliance. – A county or city that has not received PEG channel capacity as required by this section may bring an action to compel a cable service provider to comply with this section.";

And on page 11, lines 34 through 40, by rewriting the lines to read:

2006-2007 fiscal year. A county or city must make this certification by March 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1559*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1559-ARB-109 [v.2]

And on page 14, line 41, by deleting the word "other".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1559*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1559-ARB-102 [v.2]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
S1559-CSRBx-57

Senator Nesbitt

moves to amend the bill on page 10, lines 36 through 40, by rewriting the line to read:
"Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute twenty percent (20%) of the amount to be distributed under this section in accordance with subsection (b) and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:";

And on page 11, lines 3 through 23, by rewriting the lines to read::

"(b) PEG Channel and Broadband Connectivity Fund. -- The PEG Channel and Broadband Connectivity Fund is created as an interest-bearing special revenue fund. The Fund consists of twenty percent (20%) of the revenue to be distributed under this section. The Secretary must transfer to the Fund within 75 days after the end of each quarter one-fourth of the amount to be allocated to it under this subsection. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

The e-NC Authority must use one-half of the revenue in the Fund for broadband connectivity incentive grants. It is the intent of the General Assembly that these funds shall be used to allow at least seventy percent (70%) of the households in each county to have the ability to access broadband services by 2008. Funds for connectivity incentives should be committed to service providers by July 1, 2008. These incentive grants shall be competitive and shall require at least a fifty percent (50%) cash match from the participating service providers. Companies must ensure the number of additional households to be served as a result of this funding. The e-NC Authority may use up to five percent (5%) of these funds to cover its expenses in grant letting and monitoring.

The e-NC Authority must use the remaining revenue in the Fund for PEG channel grants. The money distributed to a county or city for a PEG channel grant must be used

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1559*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1559-ARB-102 [v.2]

by it for the operation and support of PEG channels. The e-NC Authority must allocate the revenues used for PEG channel grants as follows:

(1) Sixty percent (60%) for Public Access channels.
(2) Twenty percent (20%) for Educational Access channels.
(3) Twenty percent (20%) for Government Access channels.";

And on page 8, lines 27 through 43, by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1094*

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/20/06

Short Title: Wastewater System Approvals/Small Counties. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM TO STREAMLINE THE PROCESS FOR THE ISSUANCE OF AN IMPROVEMENT PERMIT OR AN AUTHORIZATION TO CONSTRUCT FOR AN ON-SITE SUBSURFACE WASTEWATER SYSTEM IN CERTAIN COUNTIES BY AUTHORIZING LOCAL HEALTH DEPARTMENTS, AUTHORIZED AGENTS OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND LICENSED SOIL SCIENTISTS TO COMPLETE SOIL AND SITE EVALUATIONS IN THE PARTICIPATING COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. The definitions in G.S. 130A-334 apply throughout this act. For the purposes of this act, "Commission" means the Commission for Health Services. "Licensed soil scientist" has the same meaning as in G.S. 89F-3(3).

SECTION 2.(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 August 2006 and to terminate 1 July 2011 regarding the process for the issuance of an improvement permit for an on-site wastewater system pursuant to Article 11 of Chapter 130A of the General Statutes. A county that meets all of the following criteria may participate in the pilot program:

(1) The population of the county must not exceed 25,000 according to the most recent federal decennial census.

(2) The county must have more than 900 applications for improvement permits or authorizations to construct that are pending before the local health department on the effective date of this act.

(3) The board of county commissioners and the local board of health for the county must both approve a resolution requesting to participate in the pilot program.

SECTION 2.(b) Notwithstanding G.S. 130A-336, the Department of Environment and Natural Resources shall authorize licensed soil scientists and the local health department to evaluate any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system. The local health department shall issue an improvement permit after one of the following has occurred:

(1) A soil and site evaluation has been completed by an authorized agent of the Department or local health department that finds that the site is suitable for a wastewater system.

(2) The local health department receives a completed soil and site evaluation for a wastewater system designed to treat 3,000 gallons per day or less of sewage that has been signed and sealed by a licensed soil scientist that finds that the site is suitable for a wastewater system.

SECTION 2.(c) A licensed soil scientist who submits a completed soil and site evaluation pursuant to this section shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars ($1,000,000) per claim and that shall remain in force for at least six years after the date on which the improvement permit is approved. The licensed soil scientist shall provide the local health department with evidence satisfactory to the local health department that the coverage required by this section is in force. The local health department shall maintain a register of all licensed soil scientists who work in the county that have submitted completed soil and site evaluations under this section.

SECTION 2.(d) An improvement permit issued pursuant to this section shall include:

(1) For permits that are valid for five years, a site plan drawn to scale with setbacks labeled. No permits shall be issued that are valid without expiration.

(2) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.

(3) The type and layout of the proposed wastewater system and its location.

(4) The design wastewater flow and characteristics.

(5) Any proposed landscape, site, drainage, or soil modifications.

(6) A detailed soil profile description of at least two locations within the proposed disposal area. The detailed soil profile descriptions shall include soil taxonomic classifications, horizons, depth, texture, structure, soil wetness conditions, restrictive horizons, matrix color, and redoximorphic colors.

(7) Any other information required by the rules of the Commission.

SECTION 2.(e) An improvement permit issued pursuant to this section shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place

of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

SECTION 2.(f) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to the Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit, not to exceed five years, and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department of Environment and Natural Resources and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

SECTION 2.(g) When a local health department issues an improvement permit or authorization to construct based upon work performed by a licensed soil scientist pursuant to this section, the improvement permit or authorization to construct shall bear a statement that reads: "The soil, site, and system evaluation and documentation necessary to issue this _____ (improvement permit or authorization to construct) was performed by _____ (name of licensed soil scientist), a licensed soil scientist, license number _____ (license number).".

SECTION 2.(h) When a local health department denies an application for an improvement permit or authorization to construct prepared by a licensed soil scientist pursuant to this section, the denial shall include a written report that specifically identifies the provisions of Article 11 of Chapter 130A of the General Statutes or rules adopted pursuant to the Article on which the denial is based.

SECTION 2.(i) A local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct. A licensed soil scientist who reviews a completed application for an improvement permit or authorization to construct under this subsection shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars ($1,000,000) per claim.

SECTION 2.(j) The Department of Environment and Natural Resources shall: (i) specify uniform procedures for the review of an application prepared by a licensed soil scientist; (ii) establish documentation that must be included in the application; (iii) establish the necessary documentation that must be included in the local health department's written permit application review report; and (iv) specify the rights and obligations of each party.

SECTION 2.(k) In addition to any fees authorized under G.S. 130A-39(g), a local board of health may impose an additional fee not to exceed two hundred dollars ($200.00) for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist pursuant to this section.

SECTION 2.(l) Except as provided in this section, the provisions of Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to that Article apply to this section. This section applies only to the counties eligible to participate in the pilot program.

SECTION 3. In order to determine the effectiveness of the pilot program, the Department of Environment and Natural Resources shall evaluate whether: (i) the program resulted in a reduction in the length of time improvement permits or authorizations to construct are pending in the participating counties; (ii) the program resulted in increased system failures or other adverse impacts; and (iii) the program resulted in new or increased environmental impacts. The Department shall annually report its interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission beginning 1 October 2007. The Department shall report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2011.

SECTION 4. Sections 1 and 2 of this act become effective when it becomes law and expire 1 July 2011. Sections 3 and 4 of this act become effective when it becomes law and expire 1 October 2011.

HOUSE BILL 1094:
Wastewater System Approvals/Small Counties

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 21, 2006
Introduced by:	Reps. Gibson, Harrell, Justice, McComas	**Summary by:**	Tim Dodge Legislative Analyst
Version:	Second Edition		

SUMMARY: ***House Bill 1094 would establish a pilot program to modify the approval process for an on-site wastewater system in certain counties. The pilot program would:***

- ***Expand the authority to conduct soil and site evaluations as part of the process for issuance of an improvement permit to include licensed soil scientists, as well as agents of the local health department or the Department of Environment and Natural Resources (DENR).***
- ***Require a licensed soil scientist who submits an application for an improvement permit or an authorization to construct to carry errors and omissions insurance or other appropriate liability insurance with a policy limit of not less than $1,000,000.***
- ***Require the inclusion of certain identifying information on an improvement permit or an authorization to construct that is prepared by based on work provided by a licensed soil scientist.***
- ***Provide that a local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct, provided that the licensed soil scientist carries errors and omissions coverage or other appropriate liability insurance.***
- ***Authorize a local board of health to impose an additional fee not to exceed $200 for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist.***
- ***Direct DENR to evaluate the effectiveness of the program and report its findings annually to the Environmental Review Commission.***

The pilot program would begin no later than 1 August 2006 and would expire 1 July 2011.

[As introduced, this bill was identical to S1122, as introduced by Sen. Albertson, which is currently in House Environment and Natural Resources.]

CURRENT LAW: A three-step process exists for the siting, installation, and operation of an on-site wastewater system. First, an application for an improvement permit must be submitted to the local health department that includes a plat or site plan, a description of the facility the proposed site is to serve, and characteristics of the proposed wastewater system. Once an improvement permit is issued, the local health department must conduct a field investigation to ensure that the system can be installed and operated in compliance with State laws and rules. If the local health department determines that the system can be installed in adequately, the local health department issues an authorization for wastewater system construction. This authorization must be obtained before a building permit will be granted and before construction of the system or the structure can begin. After the system has been installed, the local health department conducts an in-place inspection to ensure the system was installed in compliance

with the improvement permit, the construction authorization, and applicable rules. If the local health department determines that the installed system is in compliance, an operation permit will be issued that allows the system to be placed into operation. The operation permit will be valid as long as the system is operating properly and must be obtained prior to receiving permanent electrical power hookup and an occupancy permit.

BILL ANALYSIS: The bill would establish a pilot program in counties that meet the following requirements:

- The population of the county must not exceed 25,000 according to the most recent federal decennial census.
- The county must have more than 900 applications for improvement permits or authorizations to construct that are pending before the local health department at the time the bill is enacted.
- The board of county commissioners and the local board of health for the county must both approve a resolution requesting to participate in the pilot program.

Under the pilot program the approval process for an on-site wastewater system would be modified as follows:

Expand role of licensed soil scientists: The bill authorizes (i) an agent of DENR; or (ii) a licensed soil scientist to conduct soil and site evaluations as part of the process for issuance of an improvement permit. Current law provides that these inspections and evaluations may only be completed by the local health department.

Permit review: If a permit is issued based on work conducted by a licensed soil scientist, the permit must also include information identifying the licensed soil scientist that completed or evaluated the application. If a local health department denies an application, the bill requires the local health department to include a written report that specifies the statute or rule on which denial is based.

Insurance requirements: The bill requires a licensed soil scientist who submits an application for an improvement permit or an authorization to construct to carry errors and omissions insurance or other appropriate liability insurance with a policy limit of not less than $1,000,000 that must remain in force for at least six years after the date on which the improvement permit or authorization to construct is approved.

Contracting for services: The bill provides that a local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct, provided that the licensed soil scientist carries errors and omissions coverage or other appropriate liability insurance.

Fees: The bill authorizes a local board of health to impose an additional fee not to exceed $200 for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist.

Evaluation of program: The bill directs DENR to evaluate the effectiveness of the program to determine whether: (i) the program resulted in a reduction in the length of time improvement permits or authorizations to construct are pending in the participating counties; (ii) the program resulted in increased system failures or other adverse impacts; and (iii) the program resulted in new or increased environmental impacts. The Department would annually report its findings and recommendations to the

Environmental Review Commission beginning 1 October 2007, and would report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2011.

EFFECTIVE DATE: The provisions establishing the pilot program would become effective when the bill becomes law and expire 1 July 2011. The pilot program would begin no later than 1 August 2006. The final report from DENR to the Environmental Review Commission is due 1 October 2011, at which time the remaining provisions of the bill would expire.

BACKGROUND: On-site wastewater systems treat collected wastewater, typically with one or more septic tanks, and dispose of the treated effluent within a subsurface distribution system in which additional, final treatment is provided by the soils. Local health departments issue the permits for all subsurface wastewater systems. Certain wastewater systems (systems with a projected wastewater flow of 3,000 gallons per day or more, or systems will treat an industrial waste stream) require an engineering review be conducted and state approval of the system plans and specifications prior to issuance of a permit by the local health department. The application review time varies based on the complexity of the permit application and the workload of each local health department.

H1094e2-SMSY

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 2012
PROPOSED COMMITTEE SUBSTITUTE S2012-CSSV-82 [v.3]

6/21/2006 11:22:19 AM

Short Title: SUTA Modifications. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT THE UNEMPLOYEMENT TAX CONTRIBUTION RATE OF A BANKRUPT COMPANY WHOSE ASSETS ARE SOLD IN A BANKRUPTCY SALE IS NOT TRANSFERRED TO A COMPANY THAT BUYS THE ASSETS OF THE BANKRUPT COMPANY AND SHARES NO COMMON OWNERSHIP WITH THE BANKRUPT COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9(c)(4) reads as rewritten:

"(4) Transfer of account. –

a. ~~Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the~~

~~purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. Provided there shall be no transfer of account when (i) a person or entity is not an employer at the time of the acquisition and (ii) the person or entity acquired the business or account primarily for the purpose of obtaining a reduced rate of contribution.~~

1. Mandatory. ~~On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which,~~ When an employer, as defined in G.S. 96-8(5)b., in any manner ~~succeeds to or~~ acquires all of the organization, trade, or business of another employing ~~unit as provided in G.S. 96-8, subdivision (5), paragraph b,~~ unit, the account of the predecessor shall be transferred as of the date of the acquisition ~~of the business~~ to the successor employer for use in the determination of ~~his~~ the successor's rate of contributions. This mandatory transfer does not apply when there is no common ownership between the predecessor and the successor, and the successor acquired the assets of the predecessor in a sale in bankruptcy.

2. Consent. ~~Whenever any individual, group of individuals, or employing unit, who or which,~~ When an employer, as defined in G.S. 96-8(5)b., in any manner ~~succeeds to or~~ acquires a distinct and severable portion of the organization, trade, or business of another employing ~~unit as provided in G.S. 96-8, subdivision (5), paragraph b, that~~ unit, the part of the account of the predecessor ~~which~~ that relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition ~~of the business~~ to the successor employer for use in the determination of ~~his~~ the successor's rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of ~~his~~ the right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an

organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

a1. A new employing unit shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employing unit shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. As used in this sub-subdivision:

1. "Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.
2. A "continuity of control" will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form.

Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

This sub-subdivision shall not modify the provisions of G.S. 96-10(d) – Collections of Contributions Upon Transfer or Cessation of Business.

b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the Commission of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to pay at that rate until the transferring employer qualifies for a reduction, reacquires the

account transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account."

SECTION 2. This act is effective when it becomes law, and applies to acquisitions made on or after September 1, 2003.

SENATE BILL 2012

Short Title:	SUTA Modifications.	(Public)
Sponsors:	Senator Bingham.	
Referred to:	Finance.	

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO RELIEVE A SUCCESSOR EMPLOYER OF THE HIGHER UNEMPLOYMENT CONTRIBUTION RATE OF ITS PREDECESSOR WHEN THERE IS NO COMMON OWNERSHIP OF THE TWO EMPLOYERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9(c)(4) reads as rewritten:

"(4) Transfer of account. –

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and

the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. Provided there shall be no transfer of account when (i) a person or entity is not an employer at the time of the acquisition and (ii) the person or entity acquired the business or account primarily for the purpose of obtaining a reduced rate of contribution.

On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which, in any manner other than provided in this sub-subdivision succeeds to or acquires all of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of his rate of contributions. Whenever any individual, group of individuals, or employing unit, who or which, acquires all of the organization, trade, or business of another employing unit through a sale in bankruptcy and there is no common ownership or control of the employing units, the account of the predecessor shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade, or business. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within

60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within ~~two~~ three years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

a1. A new employing unit shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employing unit shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. As used in this sub-subdivision:

1. "Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow

direction of the internal affairs or conduct of the business enterprise.

2. A "continuity of control" will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

This sub-subdivision shall not modify the provisions of G.S. 96-10(d) – Collections of Contributions Upon Transfer or Cessation of Business.

b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the Commission of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to pay at that rate until the transferring employer qualifies for a reduction, reacquires the account transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 2012: SUTA Modifications

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 21, 2006
Introduced by:	Sen. Bingham	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to First Edition S2012-CSSV-82		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 2012 would relieve a successor employer of the higher unemployment contribution rate of its predecessor when there is no common ownership of the two employers and the successor acquired the assets of the predecessor in a sale in bankruptcy.***

This bill would become effective, retroactively, as of September 1, 2003.

CURRENT LAW: Unemployment tax contributions paid by employers depend on both the experience rating of the employer and the fiscal condition of the system. The Employment Security Commission collects UI taxes and sends them to a main account held by the US Treasury in Washington, DC. Funds are then drawn down by ESC as needed for payment of UI benefits. These benefits are paid to people who lose their job through no fault of their own.

G.S. 96-9(c)(4) provides for the transfer of an employer's account for purposes of determining a successor employer's contribution rate when an employer transfers all or part of its assets to another employer. Under current law, when an employing unit acquires all of the assets of another employing unit, the account of the predecessor must be transferred, as of the date of the acquisition, to the successor employer for use in determining the successor's contribution tax rate.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 2012 creates an exception to the current law by stating that the otherwise mandatory transfer of the predecessor's account to the successor is not required when:

1. An employer acquires all of the assets of another employing business through a sale in bankruptcy; and
2. There is no common ownership of the employing units.

The bill also makes technical and stylistic changes to the statute.

EFFECTIVE DATE: The act would become effective when it becomes law, and apply to acquisitions made on or after September 1, 2003.

S2012e1-SMSV-CSSV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 2010

Judiciary I Committee Substitute Adopted 6/19/06

PROPOSED COMMITTEE SUBSTITUTE S2010-CSRU-90 [v.2]

6/20/2006 9:17:45 PM

Short Title: Aircraft Mechanics' Lien. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATUTORY LIEN FOR UNPAID LABOR, SKILL, OR MATERIALS ON AN AIRCRAFT AND FOR UNPAID STORAGE OF AN AIRCRAFT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 44A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Aircraft Labor and Storage Liens.

"**§ 44A-50. Definitions.**

As used in this Article, the following terms mean:

(1) Aircraft. – As the term is defined in G.S. 63-1(3), or any engine, part, component, or accessory, whether affixed to or separate from the aircraft.

(2) Lienor. – A person entitled to a lien under this Article.

(3) Owner. – As the term is defined in G.S. 44A-1(3) for an aircraft, or any person authorized by an owner, as defined in G.S. 44A-1(3), to perform, contract, or arrange for the provision of labor, skill, materials, or storage with respect to any aircraft.

(4) Person. – Any individual, corporation, association, partnership, whether limited or general, limited liability company, or other entity.

"**§ 44A-55. Persons entitled to a lien on an aircraft.**

Any person who has expended labor, skill, or materials on an aircraft or has furnished storage for an aircraft at the request of its owner has a perfected lien on the aircraft beginning on the date the expenditure of labor, skill, or materials or the storage commenced, for the contract price for the expenditure of labor, skill, or materials or for the storage, or, in the absence of a contract price, for the reasonable worth of the

expenditure of labor, skill, or materials, or of the storage. The lien under this section survives even if the possession of the aircraft is surrendered by the lienor.

"**§ 44A-60. Notice of lien on an aircraft.**

(a) The lien under G.S. 44A-55 expires 120 days after the date the lienor voluntarily surrenders possession of the aircraft, unless the lienor, prior to the expiration of the 120-day period, files a notice of lien in the office of the clerk of court of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft.

(b) The notice of lien shall state all of the following:

(1) The name of the lienor.

(2) The name of the registered owner of the aircraft, if known.

(3) The name of the person with whom the lienor entered into a contract for labor, skill, or materials on the aircraft, or storage of the aircraft.

(4) A description of the aircraft sufficient for identification.

(5) The amount for which the lien is claimed.

(6) The dates upon which the expenditure of labor, skill, materials, or storage was commenced and completed, or, if not completed, the date through which the claimed amount is calculated.

(c) The notice of lien shall be sworn to or affirmed, and subscribed by the lienor, or by someone on the lienor's behalf having personal knowledge of the facts.

(d) The notice of lien shall be in substantially the following form:

'NOTICE OF LIEN ON AIRCRAFT

[Lienor] Lienor, v. [Owner] Owner

Notice is hereby given that [Lienor](name) claims a lien upon _____[aircraft](describe the aircraft) for labor, skill, or materials expended on, and for storage furnished for, this aircraft; that the name of the registered owner or reputed owner, if the aircraft is not registered or the registered owner is not known, is [Owner](name), that the labor, skill, or materials were expended on the aircraft commencing the ____ day of _____, and storage was furnished on the aircraft commencing the ___ day of ___, and the labor, skill, materials, and storage furnished by the lienor [was completed] [is ongoing] on the ____ day of ___; that 120 days have not elapsed since the aircraft was released by the lienor; that the amount lienor demands for the labor, skill, materials, and storage furnished, as of the date hereof is $_____(amount); that no part thereof has been paid except $_____(amount); and that there is now due and remaining unpaid, after deducting all credits and offsets, the sum of $_____(amount), in which amount [Lienor](name) claims a lien upon the aircraft.

(Signed)_____(Lienor)

Address of Lienor_____

State of North Carolina

County of_____

Sworn to (or affirmed) and subscribed before me this day by [name of principal].

Date: _____ [Official Signature of Notary]

_____ [Notary's printed or typed name], Notary Public

_____ My Commission Expires:[Date]

[Official Seal]'

"**§ 44A-65. Notice of lien filed by the clerk of court.**

Upon presentation of a notice of lien pursuant to this Article, the clerk of court shall file the notice of lien and shall index the notice of lien in a record maintained by the clerk for that purpose.

"**§ 44A-70. Priority of a lien on an aircraft.**

The lien under this Article shall have priority over perfected and unperfected security interests.

"**§ 44A-75. Termination of a lien on an aircraft.**

(a) Any lien under this Article shall be terminated upon receipt by the lienor of the full amount owed for the labor, skill, or materials on the aircraft, and for storage of the aircraft, which amount shall not be limited to any amount shown on the notice of lien filed under G.S. 44A-60, if a notice of lien has been filed by the lienor. Upon receipt of the amount owed, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor, and shall, within 20 days following a request in writing by the aircraft owner, file with the clerk of court a notice of satisfaction of lien, if a notice of lien has been filed by the lienor. A notice of satisfaction of lien shall state that the amount owed for the lienor's expenditure of labor, skill, or materials on the aircraft, and for the storage of the aircraft, has been paid and the lien against the aircraft has been terminated. The notice of satisfaction of lien shall be sworn to or affirmed, and subscribed by the lienor or by someone on the lienor's behalf having personal knowledge of the facts. Upon the filing of a notice of satisfaction of lien, the clerk of court shall make an entry of acknowledgment of satisfaction in the index.

(b) The owner may also file with the clerk of court any written document that shows or tends to show the nonexistence, satisfaction, or termination of the lien, which written document shall also be indexed by the clerk of court in the index. The filing by an owner under this subsection shall not terminate a lien.

"**§ 44A-80. Fees.**

The clerk of court shall collect fees for filing, copying and certifying any document under this Article as set forth in G.S. 7A-308.

"**§ 44A-85. Enforcement of lien by sale.**

A lien filed under this Article may be enforced in accordance with G.S. 44A-4, and the proceeds of sale shall be applied as set forth in G.S. 44A-5, except that the three-day time period set forth in G.S. 44A-4(a) for the lienor to file a contrary statement of the amount of the lien at the time of the filing of a complaint by the owner shall be extended to thirty days. An owner may seek immediate possession of an aircraft in accordance with G.S. 44A-4.

"**§ 44A-90. Title of purchaser.**

(a) A purchaser for value at a properly conducted sale under this Article, and a purchaser for value without constructive notice of a defect in the sale, whether or not the purchaser is the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority.

(b) Upon the completion of a sale conducted under this Article, the lienor or a person acting on behalf of the lienor, who conducted the sale shall furnish to the purchaser for value a bill of sale for the aircraft signed by the person who conducted the sale that includes a statement that the sale was conducted in accordance with this Article."

SECTION 2. G.S. 44A-2(a) reads as rewritten:

"(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle or an aircraft in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

(1) The reasonable charges for the services and materials; or

(2) The contract price; or

(3) One hundred dollars ($100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests."

SECTION 3. This act becomes effective October 1, 2006, and applies to labor, skills, or materials furnished on an aircraft, or storage provided for an aircraft, on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S

2

SENATE BILL 2010

Judiciary I Committee Substitute Adopted 6/19/06

Short Title: Aircraft Mechanics' Lien. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATUTORY LIEN FOR UNPAID LABOR, SKILL, OR MATERIALS ON AN AIRCRAFT AND FOR UNPAID STORAGE OF AN AIRCRAFT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 44A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Aircraft Labor and Storage Liens.

"**§ 44A-50. Definitions.**

As used in this Article, the following terms mean:

(1) Aircraft. – As the term is defined in G.S. 63-1(3), or any engine, part, component, or accessory, whether affixed to or separate from the aircraft.

(2) Lienor. – A person entitled to a lien under this Article.

(3) Owner. – As the term is defined in G.S. 44A-1(3) for an aircraft, or any person authorized by an owner, as defined in G.S. 44A-1(3), to perform, contract, or arrange for the provision of labor, skill, materials, or storage with respect to any aircraft.

(4) Person. – Any individual, corporation, association, partnership, whether limited or general, limited liability company, or other entity.

"**§ 44A-55. Persons entitled to a lien on an aircraft.**

Any person who has expended labor, skill, or materials on an aircraft or has furnished storage for an aircraft at the request of its owner has a lien on the aircraft beginning on the date the expenditure of labor, skill, or materials or the storage commenced, for the contract price for the expenditure of labor, skill, or materials or for the storage, or, in the absence of a contract price, for the reasonable worth of the expenditure of labor, skill, or materials, or of the storage. The lien under this section survives even if the possession of the aircraft is surrendered by the lienor.

"**§ 44A-60. Notice of lien on an aircraft.**

(a) The lien under G.S. 44A-55 expires 90 days after the date the lienor voluntarily surrenders possession of the aircraft, unless the lienor, prior to the expiration of the 90-day period, files a notice of lien in the office of the clerk of court of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft.

(b) The notice of lien shall state all of the following:

(1) The name of the lienor.

(2) The name of the registered owner of the aircraft, if known.

(3) The name of the person with whom the lienor entered into a contract for labor, skill, or materials on the aircraft, or storage of the aircraft.

(4) A description of the aircraft sufficient for identification.

(5) The amount for which the lien is claimed.

(6) The dates upon which the expenditure of labor, skill, materials, or storage was commenced and completed, or, if not completed, the date through which the claimed amount is calculated.

(c) The notice of lien shall be sworn to or affirmed, and subscribed by the lienor, or by someone on the lienor's behalf having personal knowledge of the facts.

(d) The notice of lien shall be in substantially the following form:

'NOTICE OF LIEN ON AIRCRAFT

[Lienor] Lienor, v. [Owner] Owner

Notice is hereby given that [Lienor](name) claims a lien upon _____[aircraft](describe the aircraft) for labor, skill, or materials expended on, and for storage furnished for, this aircraft; that the name of the registered owner or reputed owner, if the aircraft is not registered or the registered owner is not known, is [Owner](name), that the labor, skill, or materials were expended on the aircraft commencing the ____ day of _____, and storage was furnished on the aircraft commencing the ____ day of ____, and the labor, skill, materials, and storage furnished by the lienor [was completed] [is ongoing] on the ____ day of ____; that 90 days have not elapsed since the aircraft was released by the lienor; that the amount lienor demands for the labor, skill, materials, and storage furnished, as of the date hereof is $_____(amount); that no part thereof has been paid except $_____(amount); and that there is now due and remaining unpaid, after deducting all credits and offsets, the sum of $_____(amount), in which amount [Lienor](name) claims a lien upon the aircraft.

(Signed)_____(Lienor)

Address of Lienor _____

State of North Carolina

County of _____

Sworn to (or affirmed) and subscribed before me this day by [name of principal].

Date: [Official Signature of Notary]
[Notary's printed or typed name], Notary Public
My Commission Expires:[Date]
[Official Seal]'

"**§ 44A-65. Notice of lien filed by the clerk of court.**

Upon presentation of a notice of lien pursuant to this Article, the clerk of court shall file the notice of lien and shall index the notice of lien in a record maintained by the clerk for that purpose.

"**§ 44A-70. Priority of a lien on an aircraft.**

The lien under this Article shall have priority over perfected and unperfected security interests.

"**§ 44A-75. Termination of a lien on an aircraft.**

Any lien under this Article shall be terminated upon receipt by the lienor of the full amount owed for the labor, skill, or materials on the aircraft, and for storage of the aircraft, which amount shall not be limited to any amount shown on the notice of lien filed under G.S. 44A-60, if a notice of lien has been filed by the lienor. Upon receipt of the amount owed, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor, and shall, within 20 days following a request in writing by the aircraft owner, file with the clerk of court a notice of satisfaction of lien, if a notice of lien has been filed by the lienor. A notice of satisfaction of lien shall state that the amount owed for the lienor's expenditure of labor, skill, or materials on the aircraft, and for the storage of the aircraft, has been paid and the lien against the aircraft has been terminated. The notice of satisfaction of lien shall be sworn to or affirmed, and subscribed by the lienor or by someone on the lienor's behalf having personal knowledge of the facts. Upon the filing of a notice of satisfaction of lien, the clerk of court shall make an entry of acknowledgment of satisfaction in the index. The owner of the aircraft may also file with the clerk of court any written document that shows or tends to show the nonexistence, satisfaction, or termination of the lien, which written document shall also be indexed by the clerk of court in the index.

"**§ 44A-80. Fees.**

(a) The clerk of court may charge for filing any document under this section a fee of twelve dollars ($12.00) for the first four pages, plus one dollar ($1.00) for each additional page.

(b) The clerk of court may charge a fee for furnishing a certified copy of any document filed with the clerk of court under this section. The amount of the fee shall be the same as the fee received for furnishing certified copies of any other instruments recorded by the clerk of court.

"**§ 44A-85. Enforcement of lien by sale.**

A lien filed under this Article may be enforced in accordance with G.S. 44A-4, and the proceeds of sale shall be applied as set forth in G.S. 44A-5.

"**§ 44A-90. Title of purchaser.**

(a) A purchaser for value at a properly conducted sale under this Article, and a purchaser for value without constructive notice of a defect in the sale, whether or not the

purchaser is the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority.

(b) Upon the completion of a sale conducted under this Article, the lienor or a person acting on behalf of the lienor, who conducted the sale shall furnish to the purchaser for value a bill of sale for the aircraft signed by the person who conducted the sale that includes a statement that the sale was conducted in accordance with this Article."

SECTION 2. G.S. 44A-2(a) reads as rewritten:

"(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle or an aircraft in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

(1) The reasonable charges for the services and materials; or

(2) The contract price; or

(3) One hundred dollars ($100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests."

SECTION 3. This act becomes effective October 1, 2006, and applies to labor, skills, or materials furnished on an aircraft, or storage provided for an aircraft, on or after that date.

SENATE BILL 2010:
Aircraft Mechanics' Lien

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 20, 2006
Introduced by:	Sen. Hagan	**Summary by:**	Cindy Avrette
Version:	PCS to Second Edition S2010-CSRU-90		Committee Counsel

SUMMARY: ***Senate Bill 2010 would create a process for filing and enforcing statutory liens for unpaid labor, skill or materials on an aircraft and for unpaid storage of an aircraft. The bill is in finance because it authorizes the clerk of court to collect fees for filing, copying, and certifying the liens. The amount of the fee is the amount set in G.S. 7A-308.***[1]

The proposed Senate Finance committee substitute makes technical, clarifying, and conforming changes to the bill. The bill becomes effective October 1, 2006, and applies to labor, skills, or materials furnished on an aircraft, or storage provided for an aircraft, on or after that date.

CURRENT LAW: G.S. 44A-2(a) grants a lien in personal property, other than a motor vehicle, that a person tows, alters, repairs, stores, services, treats, or improves in the ordinary course of business pursuant to an express or implied contract. The lien is for the contract amount or the reasonable charges for the services and materials. There is no provision for a notice of lien to be filed in connection with this lien.

BILL ANALYSIS: Senate Bill 2010 would create a procedure under which an aircraft mechanic could file a notice of lien for labor, skills and material on an aircraft or for storage of an aircraft when the charges for these services and materials are not paid.

G.S. 44A-50 contains definitions. The definition of an aircraft includes parts of an aircraft furnished, whether or not those parts are affixed to the aircraft.

G.S. 44A-55 grants a lien to a person who provides labor, skills or materials on an aircraft or who stores an aircraft at the request of the owner. The amount of the lien is the contract price for the work or storage, and if no contract, the reasonable worth of the service. The lien survives even if possession is surrendered.

G.S. 44A-60 provides for the filing of a notice of lien with the clerk of court. If possession of the aircraft has been surrendered, a notice must be filed within 120 days of the release of the aircraft in order for the lien to continue.

G.S. 44A-70 gives these liens priority over other perfected and unperfected security interests in the aircraft.

G.S. 44A-75 requires the lienor to release possession of the aircraft upon payment and to file a notice of satisfaction of lien with the clerk.

G.S. 44A-85 provides for the process for enforcing the lien by sale and specifies how the proceeds of the sale are to be distributed. G.S. 44A-4 (attached) permits the aircraft to be sold by public or private sale if the lien is not satisfied within 30 days following the date of maturity. This statute requires notice of the sale to be given to the owner, permits the owner to stay the sale by filing suit contesting the amount of the lien, permits the owner to obtain possession of the aircraft by depositing the amount of the lien with the clerk, sets out the procedures to be followed for conducting a private or a public sale. G.S. 44A-5 (attached) allows the proceeds of the sale to be used to cover the cost of the sale, payment of the obligation secured by the lien, and payment of the balance to the owner.

G.S. 44A-90 provides for the transfer of title to the purchaser of value at a lien sale by a bill of sale.

[1] The fee for filing a document is $6.00 for the first page and .25 for each additional page thereafter. The fee for copying a document is $2.00 for the first page and .25 for each additional page thereafter. The cost for certifying a document is $3.00.

Section 2 makes a conforming change to the statute granting liens for services on other personal property.

EFFECTIVE DATE: The bill becomes effective October 1, 2006 and applies to work furnished or storage provided on or after that date.

BACKGROUND: Federal law, through the Federal Aviation Authority (FAA), governs how title to aircraft are registered and transferred. Under federal law, in order to perfect a security or lien interest in an aircraft, a notice of lien, as permitted under state law, must be filed with the FAA. Because North Carolina, unlike many other states, does not have a process permitting the filing of a notice of lien for mechanics' work on and storage of aircraft, NC mechanics cannot get a secured lien interest on aircraft they service even though NC law grants a lien interest in the aircraft for their charges

Also, because this charges, although a lien on the aircraft, cannot be secured under federal law, under the bankruptcy laws, these liens are not treated as secured so NC mechanics lose the benefit of their liens when the owner of an aircraft they have provided services to files bankruptcy. Mechanics in other states that provided a method for filing a notice of lien are treated as secured creditors under the bankruptcy law.

Walker O. Reagan, counsel to the Senate Judiciary I Committee, substantially contributed to this summary.

S2010e2-SMRB-CSRB

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 2010 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE CSRU-90

Rep.)
Sen.) Hagan

moves to amend the bill on page 3, line 15

( ) WHICH CHANGES THE TITLE

by deleting "(a)" ; and

on page 3, lines 30-33, by deleting the lines.

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 2043
PROPOSED COMMITTEE SUBSTITUTE S2043-CSRO-56 [v.6]

6/21/2006 11:28:06 AM

Short Title: Increase Mortgage Lending Fees. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY CHANGING THE REGISTRATION FEES FOR MORTGAGE LICENSING AND RENEWAL AND BY AUTHORIZING THE COMMISSIONER TO PARTICIPATE IN A NATIONAL LICENSING SYSTEM AND DATABASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.05 reads as rewritten:

"**§ 53-243.05. Qualifications for licensure; issuance.**

(a) Any person, other than an exempt person, desiring to obtain a license pursuant to this Article shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

(1) The applicant's name and address and social security number.

(2) The applicant's form and place of organization, if applicable.

(3) The applicant's proposed method of and locations for doing business, if applicable.

(4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including: (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject; (ii) a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business; (iii) any felony convictions.

(5) With respect to an application for licensing as a mortgage banker or broker, the applicant's financial condition, credit history, and business

history; and with respect to the application for licensing as a loan officer, the applicant's credit history and business history.

(6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each individual who has control of the applicant or who is the managing principal or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision. Refusal to consent to a criminal history record check constitutes grounds for the Commissioner to deny licensure to the applicant as well as to any entity (i) by whom or by which the applicant is employed, (ii) over which the applicant has control, or (iii) as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

(b) In addition to the requirements imposed by the Commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least 18 years of age.

(2) Have satisfactorily completed, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the Commissioner. The course shall consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the Commissioner. In addition, the applicant shall have satisfactorily completed a written examination approved by the Commissioner or possess residential mortgage lending education or experience in residential mortgage lending transactions that the Commissioner deems equivalent to the course.

(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision.

(1a) If an individual applicant to be licensed as a mortgage broker meets all other requirements for licensure under this section but does not meet the requirements of subdivision (1) of this subsection, the individual

applicant may be licensed as an exclusive mortgage broker upon compliance with all of the following:

a. Successfully complete both a residential mortgage-lending course approved by the Commissioner of not less than 40 hours of classroom instruction, and a written examination approved by the Commissioner.

b. Act exclusively as a mortgage broker for a single mortgage banker licensee or single exempt mortgage banker for whom the broker shall be deemed an agent, who shall be responsible for supervising the broker as required by this Article, who shall sign the license application of the applicant, and who shall be jointly and severally liable with the broker for any claims arising out of the broker's mortgage lending activities.

c. Shall be compensated for the broker's mortgage brokering activities on a basis that is not dependent upon the loan amount, interest rate, fees, or other terms of the loans brokered.

d. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience as described under subdivision (1) of this subsection.

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.

(4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection.

(d) Each applicant shall identify one person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Every applicant for initial licensure shall pay a filing fee ~~of~~ not to exceed ~~one thousand dollars ($1,000)~~ one thousand two hundred fifty dollars ($1,250) for licensure as a mortgage broker or mortgage banker or ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) for licensure as a loan officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks.

(f) A mortgage banker shall post a surety bond in the amount of one hundred fifty thousand dollars ($150,000), and a mortgage broker shall post a surety bond in the amount of fifty thousand dollars ($50,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. Any appropriate deposit of cash or securities shall

be accepted in lieu of any bond that is required. An audited financial statement from a qualified lender showing a net worth of two hundred fifty thousand dollars ($250,000) or more shall be accepted in lieu of any bond required.

(g) Any general partner, manager of a limited liability company, or officer of a corporation who individually meets the requirements under subsection (b) of this section shall, upon payment of the applicable fee, meet the qualifications for licensure as a loan officer subject to the provisions of subsection (i) of this section.

(h) Each principal office and each branch office of a mortgage broker or mortgage banker licensed under the provisions of this Article shall be issued a separate license. A licensed mortgage broker or mortgage banker shall file with the Commissioner an application on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and branch manager. A filing fee ~~of~~ not to exceed ~~one hundred dollars ($100.00)~~ seventy-five dollars ($75.00) shall be assessed by the Commissioner for each branch office issued a license.

(i) If the Commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly, the Commissioner shall issue a license to the applicant. In addition, for an applicant qualifying as an exclusive mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage banker relationship is in the public interest."

SECTION 2. G.S. 53-243.06 reads as rewritten:

"**§ 53-243.06. License renewal; termination.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 30th day of June following issuance or on any other date that the Commissioner may determine. The license shall become invalid after that date unless renewed. A license may be renewed 45 days prior to the expiration date by compliance with subsection (b1) of this section and by paying to the Commissioner, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks as the Commissioner may require, a renewal fee as follows:

(1) Licensed mortgage bankers shall pay an annual fee ~~of~~ not to exceed ~~five hundred dollars ($500.00)~~ three hundred seventy-five dollars ($375.00) and ~~one hundred dollars ($100.00)~~ seventy-five dollars ($75.00) for each branch office.

(2) Licensed mortgage brokers shall pay an annual fee ~~of~~ not to exceed ~~five hundred dollars ($500.00)~~ three hundred seventy-five dollars ($375.00) and ~~one hundred dollars ($100.00)~~ seventy-five dollars ($75.00) for each branch office. Licensed exclusive mortgage brokers shall pay an annual fee ~~of~~ not to exceed ~~five hundred dollars ($500.00).~~ three hundred seventy-five dollars ($375.00).

(3) Licensed loan officers and limited loan officers shall pay an annual fee ~~of~~ not to exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00).

(b) If a mortgage banker or mortgage broker license is not renewed prior to the applicable expiration date, then an additional two hundred fifty dollars ($250.00) in

addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. If a loan officer or limited loan officer license is not renewed prior to the applicable expiration date, then an additional fifty dollars ($50.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. In the event a licensee fails to obtain a reinstatement of the license within 90 days after the date the license expires, the Commissioner may require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(b1) When required by the Commissioner, each individual described in G.S. 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal history record check and a set of his or her fingerprints in a form acceptable to the Commissioner. Refusal to consent to a criminal history record check may constitute grounds for the Commissioner to deny renewal of the license of the person as well as the license of any other person by which he or she is employed, over which he or she has control, or as to which he or she is the current or proposed managing principal or a current or proposed branch manager.

(c) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.12 are applicable to the acquiring person.

SECTION 3. Article 19A of Chapter 53 of the General Statutes is amended by adding two new sections to read:

"**§ 53-243.17. Participation in national mortgage licensing system; licensing proprietary software.**

(a) The Commissioner of Banks is authorized to participate in the formation and operation of a centralized and automated licensing system and data depository funded by state mortgage regulators and law enforcement agencies. Pursuant to this authority, the Commissioner may:

(1) Cause funds of the Office of Commissioner of Banks to be applied to the initial capitalization, organizational expenses and operating expenses of a limited liability company, non-profit corporation or foundation or other entity created to operate the licensing system and data depository and to serve as a manager or director of the entity;

(2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and technology licensing agreements necessary to the organization and operation of the entity and the licensing system and data depository; and

(3) Take such further actions as are reasonably necessary to give effect to the provisions of this section.

(b) The Commissioner is authorized to enter into agreements to license the use of the proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage or financial services supervisory agencies of other states.

(c) Notwithstanding any other provision of this section, the Commissioner retains full authority and discretion under this Article to license mortgage brokers, mortgage bankers, loan officers, and limited loan officers and to enforce this Article to its fullest extent. Nothing in this section shall be deemed to be a reduction or derogation of that authority and discretion.

"**§ 53-243.18. Payment of fees.**

Payment of fees specified in this Article shall be made to the Office of Commissioner of Banks or, at the election of the Commissioner, to a national mortgage licensing system, agency, or enterprise designated by the Commissioner."

SECTION 4. The amount set as the maximum amount that may be charged for fees in this act shall be the actual amount of the fee until the Banking Commission adopts rules setting the fee at a lower rate.

SECTION 5. This act becomes effective October 1, 2006.

SENATE BILL 2043:
Increase Mortgage Lending Fees

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 20, 2006
Introduced by:	Sen. Rand	**Summary by:**	Karen Cochrane-Brown
Version:	PCS to First Edition S2043-CSRO-56[v.6]		Staff Attorney

SUMMARY: The Proposed Committee Substitute to Senate Bill 2043 would change the fees that may be charged under the Mortgage Lending Act by establishing maximum amounts and by giving the Banking Commission authority to adopt rules setting the fees in a lower amount when appropriate. The bill would also authorize the Commissioner of Banks to participate in a centralized national licensing system and database funded and administered by state mortgage regulators.

CURRENT LAW:

The Mortgage Lending Act, which was enacted in 2001, is a licensing and regulatory statute for the mortgage lending industry. Under the current law, mortgage bankers, mortgage brokers, and loan officers are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts from licensing:

- depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions),
- life insurance companies,
- governmental lenders,
- nonprofits that make mortgage loans,
- persons that make no more than five loans a year, and
- real estate brokers who do not receive compensation for making loans.

The Commissioner of Banks has broad enforcement powers, including the power to revoke licenses and impose civil fines for violations of the law. Engaging in the mortgage banking or brokering business without a license is a Class I felony.

The licensing and renewal fees established in the Mortgage Lending Act have not been increased since the law's enactment in 2001.

BILL ANALYSIS:

Senate Bill 2043 makes the following changes to the Mortgage Lending Act;

SECTION 1 increases the statutory maximum for licensing of mortgage brokers and mortgage bankers from $1000 to $1,250, and for licensing of loan officers and limited loan officers from $50 to $75. It also lowers the maximum filing fee for branch offices from $100 to $75.

SECTION 2 lowers the maximum license renewal fees as follows: for licensed mortgage bankers and mortgage brokers from $500 to $375, and from $100 to $75 per branch; for licensed exclusive mortgage

brokers from $500 to $375; and raises the maximum fee for licensed loan officers or limited loan officer from $50 to $75. This section also establishes a $50 late fee if a loan officer or limited loan officer fails to renew a license prior to its expiration date. The late fee for mortgage bankers and brokers remains at $250.

SECTION 3 creates two new sections in the Mortgage Lending Act. The new G.S. 53-243.17 authorizes the Commissioner of Banks to participate in the formation and operation of a centralized national licensing system and database funded and administered by participating state mortgage regulators. The new section also authorizes the Commissioner to enter into agreements to license the use of proprietary software owned by the Office of Commissioner of Banks to mortgage and financial services supervisory agencies in other states.

The new G.S. 53-243.18 authorizes the Commissioner to direct that fees established in the Mortgage Lending Act be paid to a national mortgage licensing system, agency or enterprise designated by the Commissioner.

SECTION 4 provides that the amount set as the maximum amount for fees in this act shall be the actual amount of the fee until the Banking Commission adopts rules setting the fee at a lower rate.

EFFECTIVE DATE: This act becomes effective October 1, 2006.

S2043e1-SMRO-CSRO-56v6

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 2043 (First Edition)

SHORT TITLE: Increase Mortgage Lending Fees.

SPONSOR(S): Senator Rand

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund		**No Impact to General Fund**			
OCOB	**$1,268,331**	**$1,596,550**	**$1,596,550**	**$1,596,550**	**$1,596,550**
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of the Commissioner of Banks (OCOB)

EFFECTIVE DATE: October 1, 2006

BILL SUMMARY: Senate Bill 2043 increases the amount of various fees assessed by the Office of Commissioner of Banks (OCOB) and makes other changes to G.S. 53-243.05 and G.S. 53-243.06. The bill:

- Increases the base application fee for licensure as a mortgage broker or mortgage banker from $1,000 to $1,500;
- Increases the base application fee for licensure as a loan officer or limited loan officer from $50 to $100;
- Increases the filing fee for issuance of licenses for principal and branch offices of mortgage bankers and brokers from $100 to $150;
- Increases the base renewal fee for licensed mortgage bankers and mortgage brokers from $500 to $750;
- Increases the base renewal fee for branch offices of licensed mortgage bankers and brokers from $100 to $150 each;

- Increases the annual renewal fee for licensed loan officers from $50 to $100;
- Creates a new $100 late fee for failure to timely renew a license for a loan officer or limited loan officer;
- Increases the surety bond requirements for mortgage bankers and brokers from $250,000 to $500,000 and eliminates the option of depositing cash or securities in lieu of a surety bond;
- Increases the net worth required for waiver of the bond requirement for qualified lenders from $250,000 to $500,000; and,
- Provides for the automatic administrative suspension of a license for failure to maintain an active surety bond.

Senate Bill 2043 provides that all fees are payable to the Commissioner of Banks, a national licensing agency, or an enterprise designated by the Commissioner.

ASSUMPTIONS AND METHODOLOGY: The Office of the Commissioner of Banks, together with the North Carolina Banking Commission, is responsible for the chartering and regulation of North Carolina's state banks and trust companies, as well as the registration and licensing of various financial institutions operating in North Carolina, including check cashers, consumer finance companies, mortgage bankers and brokers, money transmitters, and refund anticipation lenders. OCOB charges a variety of statutorily authorized fees for the registration and licensing of various financial institutions.

Senate Bill 2043 increases the following fees by the amount shown in the far right column:

Fee Increases in Senate Bill 2043			
	Current fee	S 2043	Fee Increase
Licensure			
Mortgage broker or banker	$1,000	$1,500	$500
Loan officer or limited loan officer	$50	$100	$50
Filing fee for principal or branch offices of a mortgage broker or banker	$100	$150	$50
Renewal			
Mortgage broker or banker	$500	$750	$250
Branch office	$100	$150	$50
Loan officers	$50	$100	$50
Late renewal fee for loan officers	None	$100	$100

The chart below shows the projected increase in fee revenue anticipated by the Office of the Commissioner of Banks as a result of these changes. Since this bill contains an October 1, 2006, effective date, the fiscal impact of the fee increases will be less than the total amount shown in the column for Senate Bill 2043. OCOB estimates their total collections for FY 2006-07 will be $3,115,000. Fiscal Research estimates that this amount constitutes an increase in total OCOB fee collections of $1,268,331. Beginning in 2007-08, the annual impact of the fee increases is estimated at $1,596,550 annually.

Increase in OCOB Fee Collections under Senate Bill 2043					
	Number	Total under current fee rates	Total S2043 (full year)	Total increase in fee collections	Percent change over current
Renewals					
Mortgage lenders/brokers	1,500	750,000	1,125,000	375,000	50.0%
Branches	1,500	150,000	225,000	75,000	50.0%
Loan officers	12,500	625,000	1,250,000	625,000	100.0%
Exclusive mortgage brokers	400	200,000	300,000	100,000	50.0%
New applications					
Mortgage lenders/brokers	213	213,000	319,500	106,500	50.0%
Branches	1,430	143,000	214,500	71,500	50.0%
Loan officers	4,871	243,550	487,100	243,550	100.0%
Total		**$2,324,550**	**$3,921,100**	**$1,596,550**	**68.7%**

SOURCES OF DATA: Office of the Commissioner of Banks (OCOB)

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 20, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1025
PROPOSED SENATE COMMITTEE SUBSTITUTE H1025-CSRBx-54 [v.15]

6/21/2006 11:30:28 AM

Short Title: Various ABC Law Changes. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOL BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(16) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(38) Winemaking on premises permit. -- $400.00.

(39) Wine shipper packager permit --$100.00."

SECTION 4. G.S. 18B-1001.1(c) reads as rewritten:

"(c) A wine shipper permittee may contract with the holder of a wine shipper packager permit for the packaging and shipment of wine pursuant to this section. The direct shipment of wine by wine shipper or wine shipper packager permittees ~~made~~ pursuant to this section shall be made by approved common carrier only. Each common carrier shall apply to the Commission for approval to provide common carriage of wines shipped by holders of permits issued pursuant to this section.

Each common carrier making deliveries pursuant to this section shall:

(1) Require the recipient, upon delivery, to demonstrate that the recipient is at least 21 years of age by providing a form of identification specified in G.S. 18B-302(d)(1).

(2) Require the recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the Commission.

(3) Refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification as required by subdivision (1) of this subsection.

(4) Submit any other information that the Commission shall require.

All wine shipper and wine shipper packager permittees shipping wines pursuant to this section shall affix a notice in 26-point type or larger to the outside of each package of wine shipped within or to the State in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY". Any delivery of wines to a person under 21 years of age by a common carrier shall constitute a violation of G.S. 18B-302(a)(1) by the common carrier. The common carrier and the wine shipper or wine shipper packager permittee shall be liable only for their independent acts.'

SECTION 5. G.S. 18B-1001.2 reads as rewritten:

'**§ 18B-1001.2. Additional wine shipping requirements.**

(a) A wine shipper permittee shall:

(1) Compile and submit to the Commission quarterly a summary indicating all wine products shipped, including brand and price of each

product, date of each shipment, quantity of each shipment, and amount of excise and sales tax remitted to the Department of Revenue. The report shall include all wine products shipped on the permittee's behalf under contract with a wine shipper packager.

(2) Register with the Department of Revenue as a wine shipper permittee and provide any additional information required by the Department.

(b) The Commission may adopt rules to carry out the provisions of this section and other related provisions governing the direct shipping of wine."

SECTION 6. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1001.3. Authorization of wine shipper packager permit.**

The holder of a wine shipper packager permit may provide services for the warehousing, packaging and shipment of wine on behalf of a winery holding a wine shipper permit. A wine shipper packager permit authorizes the holder to receive, in closed containers, wine produced by and belonging to a wine shipper permittee, and to place the unopened wine in containers or packaging materials as a service to the wine shipper permittee in connection with the marketing and sale of its wine products. A wine shipper packager may package and return wine products to the wine shipper permittee or, on behalf of the wine shipper permittee, may package and ship wine products in closed containers to individual purchasers inside and outside this State in accordance with the provisions of G.S. 18B-1001.1. The permit may be issued to a USDA-approved company specializing in warehousing and contract packaging.'

SECTION 7. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 ~~seats.~~seats, or to any golf courses owned or leased by the institutions and open to the public for use."

SECTION 8. G.S. 18B-105(a) reads as rewritten:

"(a) General Rule. – No person shall advertise alcoholic beverages in this State except in compliance with this Article and the rules of the Commission."

SECTION 9. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1010. Use of discounts in advertising.**

Advertising for an alcoholic beverage may not include a coupon offering a free alcoholic beverage. A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise by means of a coupon, a membership card, a discount card, or a retailer's loyalty card in the following circumstances:

(1) The permittee may provide a discount coupon for a malt beverage or wine the person sells at retail for off-premises consumption.

(2) The permittee may require a customer to use the permittee's membership card, discount card, or loyalty card when purchasing a malt beverage or wine the person sells at retail for off-premises consumption in order to receive a discounted price on the malt beverage or wine."

SECTION 10. G.S. 18B-603(f2) reads as rewritten:

"(f2) Permits for Special ABC Areas. – The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(2), G.S. 18B-1001(3), G.S. 18B-1001(4), G.S. 18B-1001(5), G.S. 18B-1001(6), and G.S. 18B-1001(10) to qualified persons and establishments located within a Special ABC area as defined in G.S. 18B-101, provided that: (i) if such area is a municipal corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S. 18B-600, which election may be held regardless of the number of registered voters located within the municipal corporation; or (ii) if such area is unincorporated but has within such area a private association or club, the board of such private association or club shall call and conduct a special meeting at which meeting a majority of private association members, club members, lot and home owners, votes and approves the sale of mixed beverages, and the board certifies the results of such meeting to the Alcoholic Beverage Control Commission. The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(3), G.S. 18B-1001(5), and G.S. 18B-1001(10) to a restaurant located on property contiguous to a special ABC area, if, according to the 2000 census, the population of the county in which the area is located does not exceed 30,000 and a city in that county has approved ABC stores and has a population of at least 6,500. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the Special ABC area."

SECTION 11. G.S. 18B-108 reads as rewritten:

"**§ 18B-108. Sales on trains.**

Alcoholic beverages may be sold on railroad trains in this State upon compliance with Article 2C of Chapter 105 of the General Statutes. Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of a rail line that carries at least 60,000 passengers annually."

SECTION 12. G.S. 18B-1001(16) reads as rewritten:

"**§ 18B-1001. Kinds of ABC permits; places eligible.**

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

...

(16) Wine Shop Permit. – A wine shop permit authorizes the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, and authorizes wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. ~~The sale of wine for consumption on the premises shall be limited to those amounts that remain in opened bottles upon the conclusion of an authorized wine tasting, and individual servings shall not exceed four ounces per glass.~~The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6. of Article 8 of Chapter 130A of the General Statutes."

SECTION 13. This act is effective when it becomes law.

H

HOUSE BILL 1025

Short Title:	Winemaking on Premises Permit.	(Public)
Sponsors:	Representatives Luebke; LaRoque and Ross.	
Referred to:	Alcoholic Beverage Control.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR 'WINEMAKING ON PREMISES' BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(16) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(37) Winemaking on premises permit. – $400.00."

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 1025:
Various ABC Law Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 14, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H1025-CSRB		Committee Counsel

SUMMARY: ***House Bill 1025 creates a new "Winemaking on Premises" permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. There is a $400 application fee for the permit. The Proposed Senate Committee Substitute adds six provisions to the bill:***

- ***It would allow a third party business to contract with a wine shipper permittee for the packaging and shipment of wine. (Sections 4-6, Added at the request of Sen. Purcell)***
- ***It would incorporate the contents of Sen. Rand's Senate Bill 2035, which would allow the sale of beer and wine at golf courses owned or leased by constituent institutions of the UNC. (Section 7)***
- ***It would allow a retailer to issue coupons or utilize discount or loyalty cards to provide a discount off the price of beer and wine sold by the retailer for off-premises consumption. (Sections 8 and 9, Added at the request of Sen. Hagan)***
- ***It would allow the ABC Commission to issue beer, wine, and mixed beverage permits to a restaurant that is located in an area that meets the conditions in the bill. The only area that meets these conditions at this time is Transylvania County. (Section 10, Added at the request of Sen. Rand)***
- ***It would allow a beer and wine wholesaler to sale and deliver beer and wine to an officer or agent of a rail line that carries at least 60,000 passengers annually. (Section 11, Added at the request of Sen. Hoyle)***
- ***It would make changes to the wine shop permit. (Section 12, Added at the request of Sen. Hagan)***

WINEMAKING ON PREMISES PERMIT (Sections 1-3): Under G.S. 18B-307 it is generally unlawful for any person without the appropriate ABC permit to:

- Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage
- Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage.
- Manufacture any alcoholic beverage, without first obtaining the applicable ABC permit and revenue licenses.

There are two notable exceptions to the general prohibition against the unlicensed manufacture of alcoholic beverages. G.S. 18B-306 allows an individual to make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests; and G.S. 18B-1001(14) provides for the manufacture of malt beverages pursuant to a "Brew on Premises" permit. A brew on premises permit authorizes the holder to rent the equipment and space necessary to produce malt beverages only; it does not apply to the manufacture of wine.

A Brew on Premises permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in federal law. The statute requires the customer to do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

Sections 1 through 4 of House Bill 1025 would provide for the licensing of commercial establishments in which individuals could purchase ingredients and rent equipment, time, and space to make unfortified wine on the premises for their personal and family use, similar to the current brew on premises permit for making malt beverages. The permit holder will not engage in the actual production of the wine, and all wine must be removed from the premises by the customer and used only for home consumption and the customer's personal use. The fee for the permit is $400. That is same amount as a 'Brew on Premises' permit.

WINE SHIPPER PACKAGER PERMIT (Sections 3-6): Current ABC laws does not provide for third parties to handle wine shipments unless that party takes ownership of the wine. The PCS for House Bill 1025 establishes a 'wine shipper packager' permit and authorizes a wine shipper packager to provide services for the warehousing, packaging, and shipment of wine on behalf of a winery holding a wine shipper permit. The creation of a wine shipper packager permit would allow third party businesses that specialize in warehousing and contract packaging to support the wine industry by providing a means for distribution of wine to customers. A wine shipper packager permit would authorize the holder of the permit to receive, in closed containers, wine produced by and belonging to a wine shipper permittee, and to place the unopened wine in containers or packaging materials in connection with the marketing and sale of the wine products. The cost of the permit would be $100. The permit must be renewed annually.

SALE OF BEER AND WINE AT GOLF COURSES OWNED OR LEASED BY CONSTITUENT INSTITUTIONS OF THE UNC SYSTEM (Section 7): Current law does not permit the sale of beer and wine by a business on the campus or property of a public school or college. There are some exceptions to this rule: regional facilities operated by a facility authority; a hotel or nonprofit alumni organization with a mixed beverage or special occasion permit; and performing arts centers if the seating capacity does not exceed 2000 seats. The PCS for House Bill 1025 would create exception for golf courses owned or leased by the institutions and open to the public. This change in the law is one of the items approved by the Board of Governors for its legislative agenda this session.

USE OF DISCOUNTS IN ADVERTISING AT THE RETAIL LEVEL (Sections 8 and 9): Under current law, no person may advertise alcoholic beverages in the State except in compliance with the rules of the ABC Commission.[1] The rules of the Commission prohibit the use of cents-off coupons or coupons offering free alcoholic beverages as a method of advertising.[2] The PCS for House Bill 1025

[1] G.S. 18B-105.
[2] NCAC 02S.1006.

would give retailers who have on-premises or off-premises beer and wine permits or a wine shop permit the ability to advertise beer and wine by offering a discount coupon for off-premises consumption. The discount may be offered through the use of a permittee's membership card. The advertising may not include a coupon offering a free alcoholic beverage.

RESTAURANT BEER, WINE, AND MIXED BEVERAGE PERMIT (Section 10): Under current law the ABC Commission may only issue permits to qualified applicants in areas specified in G.S. 18B-603. Subsection (f) of G.S. 18B-603 authorizes the Commission to issue certain permits in Special ABC areas. (The definition of a Special ABC area is included below.) The PCS for House Bill 1025 would allow the Commission to issue on-premises beer, wine, and mixed beverage permits to a restaurant located on property that is contiguous to a Special ABC area established before January 1, 1993, that meets both of the following conditions:

- The Special ABC area is located in a county that has a population of less than 35,000, based on the 2000 federal census.
- At least one city within the county with a population in excess of 6,500 has approved ABC stores.

The only county that has a Special ABC area that meets these conditions is Transylvania County.

SALES ON TRAINS (Section 11): Current law permits the sale of alcoholic beverages on trains. However, the agent or officer of a rail line must purchase the alcoholic beverages from a retailer. The PCS for House Bill 1025 would allow a rail line to purchase alcoholic beverages from a wholesaler or a retailer if the rail line carries at least 60,000 passengers annually. This provision would allow the Great Smoky Mountain Railroad to purchase beer and wine from wholesalers.

EFFECTIVE DATE: The bill would be effective when it becomes law.

Brenda Carter, counsel to the House Committee on Alcoholic Beverage Control, contributed to this summary.

H1025e1-SMRB-CSRB

§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

...

(13a) **(See note)** "Special ABC area" means an area that meets the following requirements: Either:

a. The area has fewer than 500 permanent residents, and the area:

1. Is located in a county that borders another state, that has at least one city that has approved the operation of an ABC store, and in which the sale of unfortified wine and malt beverages is permitted countywide or in one city; and
2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

b. The area has more than 500 permanent residents, and the area:

1. Is located in a county:
   I. Where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved;
   II. That borders on a county that has approved the sale of alcoholic beverages countywide and contains an international airport; and
   III. Borders on a county where ABC stores have heretofore been established by petition pursuant to law; and
2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

c. The area is an area of a county where the following requirements are met:

1. The county borders on the Atlantic Ocean and has a seaport supporting oceangoing vessels;
2. ABC stores have been established in the county and the sale of mixed beverages is allowed in six or more municipalities;
3. The population of the county, according to the 2000 census, exceeds 52,000;
4. The tourism economy of the county is made up of more than 3,000 tourism-related jobs; and
5. Tourism expenditures within the county exceed two hundred million dollars ($200,000,000) annually.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 2002
PROPOSED COMMITTEE SUBSTITUTE S2002-PCS85468-LB-117

Short Title: UNC Students/ Criminal Background Checks. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR STUDENTS TO BE ADMITTED TO THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Criminal Background Checks Required for Students to be Admitted to The University of North Carolina."

"**§ 116-265. Criminal background check required for students, fingerprint check may be required.**

(a) Each constituent institution shall require a national and State criminal background check of every person who is to be admitted to the institution.

(b) The Department of Justice may provide a criminal record check to the institution for a person who is accepted for admission to the institution. The institution shall provide to the Department of Justice, along with the request, any additional information required by the Department of Justice, and a form signed by the student consenting to the check of the criminal record. The institution shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

(c) The constituent institution may also require as a condition of admission or enrollment a fingerprint check of the applicant. In such case, the institution shall provide to the Department of Justice the fingerprints of the student, any additional information required by the Department of Justice, and a form signed by the student consenting to the check of fingerprints and other identifying information required by the State or national repositories. The student's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the

State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The institution shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

(d) The Department of Justice may charge each student a fee for conducting the checks of criminal history records authorized by this section.

(e) A prospective student at a constituent institution may have fingerprints taken at any sheriff's office or local law enforcement agency that has the necessary equipment.

(f) A constituent institution may contract with a third party to handle any duties assigned to it under this section."

SECTION 2. This act becomes effective for students first admitted for the Fall 2007 semester and thereafter.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 2002

Short Title:	UNC Students/ Criminal Background Checks.	(Public)
Sponsors:	Senator Hunt.	
Referred to:	Finance.	

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR STUDENTS TO BE ADMITTED TO THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Criminal Background Checks Required for Students to be Admitted to The University of North Carolina."

"**§ 116-265. Criminal background check required for students.**

(a) Each constituent institution shall require a national and State criminal background check of every person who is to be admitted to the institution.

(b) The Department of Justice may provide a criminal record check to the institution for a person who is accepted for admission to the institution. The institution shall provide to the Department of Justice, along with the request, the fingerprints of the student, any additional information required by the Department of Justice, and a form signed by the student consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The student's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The institution shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The Department of Justice may charge each student a fee for conducting the checks of criminal history records authorized by this subsection.

(c) A prospective student at a constituent institution may have fingerprints taken at any sheriff's office or local law enforcement agency that has the necessary equipment."

SECTION 2. This act becomes effective for students first admitted for the Fall 2007 semester and thereafter.

SENATE BILL 2002:
UNC Students/ Criminal Background Checks

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 21, 2006
Introduced by:	Sen. Hunt	**Summary by:**	Trina Griffin
Version:	PCS to First Edition		Committee Counsel
	S2002-PCS85468-LB-117		

SUMMARY: ***The Proposed Committee Substitute for SB 2002 requires each of the 16 constituent institutions of the UNC system to require national and State criminal background checks on every person who is to be admitted. The bill authorizes the constituent institutions to contract with a third party to handle any of the duties required to conduct the background checks. The fee for the background check would be paid to the Department of Justice by the prospective student.***

This act would become effective for students first admitted for the fall 2007 semester and thereafter.

CURRENT LAW: Criminal background checks are not required of entering students admitted to the university system. The admission application does, however, ask if the applicant has ever been convicted of a crime other than a traffic violation. If the applicant answers 'yes' then the application is forwarded to a special committee which examines the specific offense and assesses the risk for admitting the student. The committee may elect to hold a personal hearing with the applicant for further inquiry and explanation.

An applicant may not be compelled to disclose offenses on his or her juvenile record, which would cover offenses committed when the person was less than 16. Also, a person may not be compelled to disclose convictions which have been expunged from the person's record.

BILL ANALYSIS: The Proposed Committee Substitute for SB 2002 would require the UNC system to require national and State criminal background checks of every person to be admitted to the institution. Under the PCS, UNC could obtain the check through a commercial vendor or through the Department of Justice. The bill also authorizes UNC to require, but does not mandate, a fingerprint check. The bill does not, however, establish any criteria by which a constituent institution must make an admissions decision based upon a person's criminal background, nor does it address the potential liability of an institution arising from any act or omission related to carrying out the provisions of the bill.

The information obtained as a result of the criminal background check would be privileged and confidential and would not be considered a public record.

The bill also authorizes the Department of Justice to charge a fee to each student for conducting the checks.

EFFECTIVE DATE: This act would become effective for students first admitted for the fall 2007 semester and thereafter.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 13, 2006

TO: Representative Luebke

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS - H1025

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	No Significant Impact – See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Alcoholic Beverage Control Commission

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: This bill allows the Alcoholic Beverage Control Commission to issue permits for winemaking on premises businesses. The permit would authorize such businesses to sell or rent equipment and provide space for the production of unfortified wine by individual consumers who are at least 21 years old, but only in jurisdictions where unfortified wine sales are permitted. The bill prohibits the manufacture of wine by the permit holder and requires that any wine produced must be for the personal use of the customer only. The bill establishes a permit fee of $400.

The PCS includes the following changes:

- Allows a third party business to contract with a wine shipper permittee for the packaging and shipment of wine.
- Incorporates the contents of Sen. Rand's Senate Bill 2035, which would allow the sale of beer and wine at golf courses owned or leased by constituent institutions of the UNC.
- Allows a retailer to issue coupons or utilize discount or loyalty cards to provide a discount off the price of beer and wine sold by the retailer for off-premises consumption.

ASSUMPTIONS AND METHODOLOGY:
The bill would charge a fee of $400 for each winemaking on premises permit. While it is unknown how many businesses would apply for the permit, a similar permit for brewing beer on the premises currently has no permit holders. Therefore, it is assumed that any revenue generated from the winemaking on premises permit fee will be an insignificant amount.

The PCS also includes a wine shipper packager permit. The permit fee would be $100. It is not known how many permits would be sold, but the fiscal impact is expected to be minimal. The fiscal impact for the addition of SB 2035 and the discount coupon provision is also expected to be insignificant.

SOURCES OF DATA: NC Alcoholic Beverage Control Commission

TECHNICAL CONSIDERATIONS: None

SENATE FINANCE COMMITTEE
Wednesday, June 28, 2006 1:00 pm
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 pm on June 28, 2006, in room 544 of the Legislative Office Building. Thirty-one members of the committee were present. Senator David Hoyle presided. Ginny Hughes and Elizabeth Borden of Goldsboro and Jasmine Brooks and Shannon Brooks of Knightdale served as pages.

HB 990 – Definition of Farmer for Sales and Use Tax.

This bill was removed from the agenda.

HB 1989- Princeton/Smithfield Satellite Annexations.

This bill was removed from the agenda.

HB 2604 – Clayton Annexation.

This bill was removed from the agenda.

SB 1750 – Johnston County Local Act.

This bill was removed from the agenda.

HB 1963 – Revenue Laws Tech. & Motor Fuel Tax Changes.

This bill was removed from the agenda.

HB 2658 – Oak Island Sewer Treatment Fee.

Representative Stiller was recognized to explain the bill. Senator Apodaca motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 1820 – Stem Satellite Annexations.

Representative Lucy Allen was recognized to explain the bill. Senator Albertson motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 1881 – Pink Hill Deannexation.

Representative LaRoque was recognized to explain the bill. Senator Stevens motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 1913 – Red Cross Deannexation.

Representative Almond was recognized to explain the bill. Senator Purcell motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 2491 – Candor Annexation.

Representative Goodwin was recognized to explain the bill. Senator Purcell motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 2549 – Landis Annexation/Planning.

Representative Steen was recognized to explain the bill. Senator Webster motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 2656 – Dortches/Morganton Deannexation.

Representative Church was recognized to explain the bill. Senator Rand motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 2725 – Chapel Hill Annexation.

Senator Kinnaird was recognized to explain the bill. Senator Webster motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 1992 – Shallotte Annexation.

Trina Griffin, staff attorney with the Research Division, was recognized to explain the bill. Senator Stevens motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 2524 – Chocowinity ETJ.

Trina Griffin, staff attorney with the Research Division, was recognized to explain the bill. Senator Albertson motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 1993 – Various Special License Plates.

Representative Glazier was recognized to explain the bill. Senator Kerr moved to adopt a proposed committee substitute for discussion and the motion carried. Sen. Rand offered an amendment and moved for its adoption. The motion carried. Senator Rand motioned for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute, the summary, and the amendment are attached.

HB 1025 – Winemaking on Premises Permit.

Senator Hoyle was recognized to explain the bill. Senator Kerr moved to adopt a proposed committee substitute for discussion and the motion carried. Senator Hoyle offered an amendment and moved for its adoption. The motion carried. Senator Snow was recognized to explain the bill. The bill was pulled from the agenda. A copy of the bill, the proposed committee substitute, the summary and the amendment are attached.

SB 1458 – Rental Car Tax for Transit Changes.

Senator Clodfelter was recognized to explain the bill. Senator Hoyle moved to adopt a proposed committee substitute for discussion and the motion carried. John Lassiter, Charlotte City Councilman and Chair of the Economic Development/Planning Council Committee for Charlotte, was recognized to speak in favor of the bill. Jim Phillips, lobbyist for Avis, Hertz, and Budget rental cars, spoke in opposition to the bill. Senator Hartsell motioned for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

SB 2009 – Public-Private Partnerships for Schools.

Senator Malone was recognized to explain the bill. Senator Kerr moved to adopt a proposed committee substitute for discussion and the motion carried. Howard Lee, Chair of the State Board of Education and former Senator, was recognized to speak in favor of the bill and to answer questions. Canaan Huie, staff attorney with the Bill Drafting Division, was recognized to answer questions. Senator Hartsell offered an amendment to the bill and motioned for the adoption of the amendment. The amendment was not voted on. Leanne Winner, lobbyist for the NC School Boards Association, spoke in favor of the bill. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

The meeting adjourned at 1:55 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Wednesday, June 28, 2006, 12:30 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 990	Definition of Farmer for Sales and Use Tax.	Rep. Starnes
HB 1025	Winemaking on Premises Permit	Rep. Luebke
HB 1820	Stem Satellite Annexations.	Rep. Crawford
HB 1881	Pink Hill Deannexation.	Rep. LaRoque Rep. Wainwright
HB 1913	Red Cross Deannexation.	Rep. Almond
HB 1963	Revenue Laws Tech. & Motor Fuel Tax Changes.	Rep. Luebke
HB 1989	Princeton/Smithfield Satellite Annexations.	Rep. Langdon Rep. Daughtry
HB 1992	Shallotte Annexation.	Rep. Hill
HB 1993	Various Special License Plates	Rep. Pate Rep. Dickson Rep. Glazier Rep. Grady
HB 2491	Candor Annexation.	Rep. Goodwin
HB 2524	Chocowinity ETJ.	Rep. Williams
HB 2549	Landis Annexation/Planning.	Rep. Steen Rep. Coates
HB 2604	Clayton Annexation.	Rep. Daughtry

HB 2656	Dortches/Morganton Deannexation.	Rep. Daughtridge
HB 2658	Oak Island Sewer Treatment Fee.	Rep. Stiller
HB 2725	Chapel Hill Annexation.	Rep. Hackney
		Rep. Insko
SB 1458	Expansion of Royalty Reporting Option.	Senator Hoyle
SB 1750	Johnston County Local Act.	Senator Smith
SB 2009	Public-Private Partnerships for Schools.	Senator Malone

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

CORRECTED REPORT

Wednesday, June 28, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.	**1820**	Stem Satellite Annexations.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**2491**	Candor Annexation.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**2524**	Chocowinity ETJ.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**2549**	Landis Annexation/Planning.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**2656**	Dortches/Morganton Deannexation.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**2658**	Oak Island Sewer Treatment Fee.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**2725**	Chapel Hill Annexation.	
		Sequential Referral:	None
		Recommended Referral:	None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B.	**1458**	Expansion of Royalty Reporting Option.	
		Draft Number:	55515

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 8

Committee Clerk Comments:

Additional Senate Report

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

CORRECTED REPORT

Wednesday, June 28, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **2491** Candor Annexation.
Sequential Referral: None
Recommended Referral: None

H.B. **2524** Chocowinity ETJ.
Sequential Referral: None
Recommended Referral: None

H.B. **2549** Landis Annexation/Planning.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **2656** Dortches/Morganton Deannexation.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **2658** Oak Island Sewer Treatment Fee.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **2725** Chapel Hill Annexation.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1458** Expansion of Royalty Reporting Option.
Draft Number: 55515
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 7

Committee Clerk Comments:
HB 1840 removed.

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 28, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John McMillan	MFOS
Joe Stewart	IPNC
Mark Creech	CAC
Jon Carr	Jordan Price - NC ABC Boards Assn.
Neta Bradley	House LA - 303
Sharon Strowd	State Energy Office
Susanne Streeb	NCRA
Caly Wiggins	Gov's office
Doug Diesing	NCIWRA
David McLeod	NCDACS
Nicole Kreiser	Wake County
W. T. Harton	Southern Wine/Spirits
Mark Benson	Beam Global Affairs
[illegible]	RAM

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 28, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jerusha W Mrs	Wallcounty
Anonymous	NCACC
Donna Alderman	DOR
Francis DeLuca	AFP
D Ann Sloan	ABC
Keith E. Coltrain	Elmore & Wall, PA
Franc Colonna	Triangle Rent A Car
Guy Rudd	NCDOR
Andy Sosel	NCDOR
Chris Velasco	NC Beer & Wine Assn.
Karl Knapp	NCDOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 28, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amy Schilder	HANC
[illegible]	NMLS
Paul Stoll	NCBA
Betty Tuer	BAC
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
PERRI MORGAN	NCICO
Stephanie Dorko	Charlotte Chamber
Amy Harris	NCPMA
Susan Valen[illegible]	Nat[illegible]
Leanne Winner	NCSBA

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 28, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Boyd Cauble	City of Charlotte
Ron Kimble	City of Charlotte
M. TEMPTIAN	HOSPITALITY & TOURISM ALLIANCE

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 28, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	NCASA
Kim Hibbard	NCLM
Johanna Reese	DOT
Jo-Ann Coe Perryman	Smith Hugo Dew
Mike Burriss	Wake County Public Schools
Nancy Wilson	SBE
[illegible]	DPI
Kenneth Phelps	DPI
Cole Taylor	Governor's Office
[illegible]	[illegible]
JOHN LASSITER	CITY OF CHARLOTTE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2658
Committee Substitute Favorable 6/20/06

Short Title: Oak Island Sewer Treatment Fee. (Local)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF OAK ISLAND TO IMPOSE A SEWER TREATMENT FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 8 of S.L. 2004-96 reads as rewritten:

"**SECTION 8.** This act applies only within the ~~Town of Holden Beach~~ Towns of Holden Beach and Oak Island."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 2658:
Oak Island Sewer Treatment Fee

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20, 2006
Introduced by:	Rep. Stiller	**Summary by:**	Judy Collier
Version:	PCS to First Edition H2658-PCS10626		Research Assistant

SUMMARY: House Bill 2658 is a local bill that authorizes the Town of Oak Island to create a fee-supported sewer treatment district. The bill received a favorable report from House Local Government I Committee on June 7, 2006.

The PCS to the First Edition of the bill corrects an error in the long title of the bill.

CURRENT LAW: G.S. 160A-312 authorizes cities to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of a public enterprise, which includes wastewater collection, treatment, and disposal systems of all types. Cities are also authorized to establish a schedule of rates and fees for the use of the services furnished by any public enterprise. Under this authority, only actual users of the particular service may be charged fees for its use. Alternatively, a city may require payment of a periodic availability charge. Under either option, the fees must reflect the cost of the service and could not include capital costs.

BILL ANALYSIS: House Bill 2658 authorizes the Town of Oak Island to create a fee-supported sewer treatment district. The Town would be authorized to impose annual fees for the availability of sewer service within the district. The fees may not exceed the cost of providing the sewer collection facility and the cost of the contract with a county to provide it with the facilities to transport, treat, and dispose of the waste. The fees would be imposed on owners of each dwelling unit or parcel of property that could or does benefit from the availability of sewage treatment. The fees would be collected in the same manner as *ad valorem* taxes. The revenues from the fees would be used only to pay the debt service for the sewer system.

This method of financing would enable the Town to impose the fees on owners of vacant lots, which arguably it could not do under provisions of current law, as well as enable the Town to use the fees for the capital costs associated with constructing the sewer system.

EFFECTIVE DATE: This act would become effective when it becomes law.

BACKGROUND: Similar legislation was enacted for the Town of Holden Beach in 2004.

H2658e1-SMRE-CSRE

Erika Churchill, Committee Counsel to House Local Government I Committee substantially contributed to this summary.

HOUSE BILL 1820
Second Edition Engrossed 6/22/06

Short Title:	Stem Satellite Annexations.	(Local)
Sponsors:	Representative Crawford.	
Referred to:	Local Government I.	

May 10, 2006

A BILL TO BE ENTITLED

ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR VARIOUS MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, City of Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Bladenboro, Calabash, Catawba, Columbia, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Grimesland, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Shallotte, Spencer, Stem, Surf City, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Weldon, Wendell, Windsor, and Zebulon."

SECTION 2. This act is effective when it becomes law, except as to the City of Roanoke Rapids and the Town of Weldon it becomes effective October 1, 2006.

HOUSE BILL 1820:
Stem Satellite Annexations

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Rep. Crawford	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: House Bill 1820 is a local bill that would exempt the City of Roanoke Rapids and the Towns of Grimesland, Stem, and Weldon from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. House Bill 1820 was given a favorable report in House Local Government I and House Finance Committees.

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. **The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.**

If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex the area. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex.

BILL ANALYSIS: House Bill 1820 would permanently exempt the City of Roanoke Rapids and the Towns of Grimesland, Stem, and Weldon from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities and towns (at least 63) from this 10% rule by local act.

H1820e2-SMRE

Martha Walston, counsel to House Finance Committee substantially contributed to this summary.

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

H 1

HOUSE BILL 1881

Short Title:	Pink Hill Deannexation.	(Local)
Sponsors:	Representatives LaRoque and Wainwright (Primary Sponsors).	
Referred to:	Local Government II, if favorable, Finance.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE TOWN OF PINK HILL.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Pink Hill:

The property of Jeffery B. Turner and wife, Linda H. Turner, being further described as: Lot No. 1 as shown upon the map entitled "Survey For Whitford Hill, Pink Hill Township, Lenoir County, North Carolina," which said map appears of record in Cabinet 2, Slide 84, Page 168, Lenoir County Registry. Deed dated October 15, 1984, recorded in Book 813, page 645, Lenoir County Registry.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1881:
Pink Hill Deannexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 27, 2006
Introduced by:	Reps. LaRoque, Wainwright	**Summary by:**	Judy Collier Research Assistant
Version:	First Edition		

SUMMARY: House Bill 1881 is a local bill that de-annexes a lot from the corporate limits of the Town of Pink Hill. The act is effective when it becomes law. The bill received a favorable report from House Local Government II Committee on May 25, 2006 and from House Finance Committee on June 6, 2006.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: House Bill 1881 de-annexes a lot from the corporate limits of the Town of Pink Hill. The owners of the property requested the de-annexation, and the Pink Hill Board of Commissioners approved the request.

EFFECTIVE DATE: The act is effective when it becomes law.

H1881e1-SMRE

Martha Walston, Committee Counsel to House Finance Committee contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1913

Committee Substitute Favorable 5/31/06

Short Title: Red Cross Deannexation. (Local)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF RED CROSS.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Red Cross:

TRACT I (Tax record number 36975):

Beginning at the northwest corner of the property having tax record number 36975, thence in a northeasterly direction (N 43' 03' 56" E) along the northwestern boundary of the above said property for a distance of 1,797 feet to the northeastern corner of the above said property, said corner also being located on the centerline of Hilltop Road, thence in a southeasterly direction with the centerline of Hilltop Road to the southeastern corner of the above said property, said corner also being located on the centerline of Hilltop Road, thence in a southwesterly direction (S 55' 31' 50" W) along the southeastern boundary of the above said property for a distance of 1,653 feet to the southwestern corner of the above said property, thence in a northwestern direction (N 34' 42' 53" W) along the southwestern boundary of the above said property for a distance of 200 feet to the northwestern corner of the above said property, said corner also being the point of beginning.

TRACT II (Tax record number 5819):

Beginning at the northwest corner of the property having tax record number 5819, thence in a northeasterly direction (N 55' 31' 50" E) along the northwestern boundary of the above said property for a distance of 1,653 feet to a point, said point is the intersect of the northwestern property line of the above said property and the centerline of Hilltop Road, thence in a southeasterly direction for a distance of 337 feet and along the centerline of Hilltop Road to a point, said point is the intersect of the southeastern boundary of the above said property and the centerline of Hilltop Road, thence in a southwesterly direction (S 54' 22' 00" W) along the southeastern boundary of the above

said property to the southeastern corner of the above said property, thence in a northwestern direction (N 34' 42' 53" W) along the southwestern boundary of the above said property for a distance of 357 feet to the northwestern corner of the above said property, said corner also being the point of beginning.

SECTION 2. The property described in Section 1 of this act shall revert to the zoning designation established by Stanly County prior to its annexation by the Town of Red Cross, and shall continue under the planning and zoning jurisdiction of Stanly County.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 1913:
Red Cross Deannexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 27, 2006
Introduced by:	Rep. Almond	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: House Bill 1913 is a local bill that de-annexes two tracts from the corporate limits of the Town of Red Cross. The act is effective when it becomes law. The PCS to the 1st Edition of HB 1913 provided that the de-annexed property would revert to the previous Stanly County zoning designation and would be subject to the county's planning and zoning jurisdiction and received a favorable report from House Local Government II Committee on May 31, 2006. The 2nd Edition of HB 1913 received a favorable report from House Finance Committee on June 6, 2006.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: House Bill 1913 de-annexes two tracts from the corporate limits of the Town of Red Cross and provides that the de-annexed property will revert to the previous Stanly County zoning designation and will be subject to Stanly County's planning and zoning jurisdiction. These two tracts were erroneously annexed to the Town of Red Cross.

EFFECTIVE DATE: The act is effective when it becomes law.

H1913e2-SMRE

Martha Walston, Committee Counsel to House Finance Committee contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2491

Short Title:	Candor Annexation.	(Local)
Sponsors:	Representative Goodwin.	
Referred to:	Local Government I, if favorable, Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF CANDOR.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Candor are extended by adding the following described territory:

TRACT 1 (Hicks Property, Deed Book 280, Page 411, Montgomery County Registry)

Beginning at spike in the centerline of SR 1573, being the northwest corner of Roman Catholic Church property as recorded in Deed Book 368, Page 232 in the Montgomery County Registry, thence South 20 degrees 0 minutes East along the western line of said Roman Catholic Church property, also being the existing corporate limit line for the town of Candor, for a distance of 822.5 feet to spike in the centerline of SR 1573, thence North 85 degrees 42 minutes West for a distance of 325.6 feet to a stake in the eastern right of way of US 220 bypass, thence North 0 degrees 14 minutes East along said right of way for a distance of 752.8 feet to a stake in said right of way, thence South 83 degrees 50 minutes East of a distance of 40.5 feet to the point of beginning. Containing 3.14 acres, more or less.

TRACT 2 (CP&L Property, Deed Book 229, Page 478, Montgomery County Registry)

(Hicks Property, Deed Book 280, Page 407, Montgomery County Registry) Beginning at a concrete monument at the northeast corner of Roman Catholic Church property, as recorded in Deed Book 368, Page 232 in the Montgomery County Registry, thence South 87 degrees 57 minutes 8 seconds East along SR 1508 for a distance of 539.93 feet to a concrete monument, thence South 84 degrees 11 minutes East along SR 1508 for a distance of 732.7 feet to a concrete monument, thence South 4 degrees 18 minutes West for a distance of 687.8 feet to a concrete monument on the existing corporate limit line for the town of Candor, also being the northeast corner of the David and Frieda Bruton property as recorded in Deed Book 338, Page 157 in the Montgomery County Registry,

thence North 85 degrees 42 minutes West along said corporate limit line and northern line of said Bruton property for a distance of 732.5 feet to a concrete monument, thence North 89 degrees 26 minutes 15 seconds West along said corporate limit line and northern line of said Bruton property for a distance of 539.78 feet to a concrete monument, being the southeast corner of said Roman Catholic Church property, thence North 0 degrees 35 minutes 14 seconds East along said corporate limit line and eastern line of said Roman Catholic Church property for a distance of 720.72 feet to the point of beginning. Containing 20.6 acres, more or less.

TRACT 3 (Maximum Property, Deed Book 517, Page 418, Montgomery County Registry)

Beginning at an existing iron rod at the intersection of the northern right of way of NC 211 and the existing corporate limit line of the town of Candor, being the southeast corner of the Montgomery County Water System tank property as recorded in Deed Book 224, Page 433 in the Montgomery County Registry, thence North 4 degrees 10 minutes 58 seconds East along eastern line of said Water System property, the western right of way of SR 1508 and said corporate limit line for a distance of 1215.23 feet to an existing iron pipe, the following four calls are along the property either now or formerly owned by Katherine McAuley Kalish as recorded in Deed Book 90, Page 338: (1) North 72 degrees 30 minutes 7 seconds East for a distance of 935.07 feet to an existing iron pipe, (2) South 7 degrees 30 minutes 9 seconds West for a distance of 209.07 feet to an existing iron pipe, (3) North 74 degrees 0 minutes 4 seconds East for a distance of 949.01 feet to an existing iron pipe, (4) North 2 degrees 11 minutes 50 seconds West for a distance of 1255.20 feet to an existing iron pipe, thence South 83 degrees 58 minutes 44 seconds East for a distance of 517.67 feet to an existing iron rod, being the northwest corner of S T Wooten Corp property as recorded in Deed Book 463, Page 60 in the Montgomery County Registry, thence South 6 degrees 50 minutes 20 seconds East along the western line of said S T Wooten property for a distance of 845.50 feet to an existing iron rod, thence North 83 degrees 21 minutes 50 seconds East along the south line of said S T Wooten property to an existing iron rod, thence South 12 degrees 9 minutes 48 seconds East along the Montgomery-Moore county line for a distance of 702.34 feet to a point on the northern right of way of NC 211, thence South 67 degrees 18 minutes 13 seconds West along said right of way for a distance of 194.55 feet to a computed point, thence South 67 degrees 42 minutes 52 seconds West along said right of way for a distance of 293.60 feet to a computed point, thence South 67 degrees 53 minutes 2 seconds West for a distance of 2262.14 feet to a computed point, thence South 68 degrees 11 minutes 3 seconds West along said right of way for a distance of 455.92 feet to the point of beginning. Containing 78.67 acres, more or less.

SECTION 2. This act becomes effective January 1, 2007.

HOUSE BILL 2491: Candor Annexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Rep. Goodwin	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: House Bill 2491 is a local bill that would annex certain described property into the corporate limits of the Town of Candor. The bill received a favorable report from House Local Government I and House Finance Committees.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 2491 would annex three (3) specifically described tracts of land into the existing boundaries of the Town of Candor:

- **TRACT 1**, Hicks Property, as recorded in Deed Book 280, Page 411, Montgomery County Registry, containing 3.14 acres, more or less.
- **TRACT 2**, CP&L Property, as recorded in Deed Book 229, Page 478, Montgomery County Registry, containing 20.6 acres, more or less.
- **TRACT 3**, Maximum Property, as recorded in Deed Book 517, Page 418, Montgomery County Registry, containing 78.67 acres, more or less.

EFFECTIVE DATE: This act would become effective January 1, 2007.

BACKGROUND: The property owners have sought annexation to the Town of Candor because of a need for municipal water and sewer services to the properties described in the bill.

H2491e1-SMRE

H 1

HOUSE BILL 2549

Short Title:	Landis Annexation/Planning.	(Local)
Sponsors:	Representatives Steen and Coates (Primary Sponsors).	
Referred to:	Local Government II, if favorable, Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF LANDIS AND TO AUTHORIZE THE TOWN TO EXERCISE PLANNING AND ZONING POWERS IN THE DESCRIBED AREA PRIOR TO ANNEXATION OF THE AREA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The following described property is added to the corporate limits of the Town of Landis:

TRACT I:

BEGINNING at a point in the center of the Fleming Crossroads and Five Forks Rd on Atwell's line: thence North 33 West with said Road 680 feet to a stake in the center of said Road, corner of Lot 2; thence South 57 West 420 feet to a stake; thence South 15 West 1650 feet to an iron stake; corner of Lot 2; thence North 88West 1318 feet to Carter's line, corner to Lot No. 1; thence South 3-3/4 West 650 feet to a stone, Carter's corner on Chester Deal's line; thence with Chester Deal's line, South 88 East 2359 feet to an iron stake on Atwell's line; thence North 4 East 1929 feet to the Beginning. Containing 71 acres, more or less. SAVE AND EXCEPT the following described real estate conveyed to Latt J. Carter and Wife, Myrtle S. Carter by deed recorded in Deed Book 337 at page 300, Rowan County Registry. Located about One mile North from Saw, near the Mill Bridge Road. Beginning at a stone and an iron pipe, Carter's corner in the line of the C.C. Deal Estate, and runs thence with the Carter line, North 3-3/4 deg. East 242 feet to an iron pipe, a new corner in the Carter Line; thence two new lines as follows: (1) South 86-3/4 deg. East 900 feet to an iron pipe, a new corner, (2) South 3-3/4 deg. West 242 feet to an iron pipe, a new corner in the Carter line; thence with the Carter line, North 86-3/4 deg West, passing the Carter corner, 900 feet to the Beginning, containing 5 acres, more or less.

TRACT II:

BEGINNING at a point on the Northern side of Brown rd. in the line of Leroy Wilhelm, this beginning point lying North 89 East 250.52 feet, more or less, from an old corner of

the C.K. Atwell property near the point where a dirt road intersects Brown Rd., this beginning point also lies south 89 West 1168.48 feet, more or less, from an old corner of C.K. Atwell and Worth Corriher in the line of Leroy Wilhelm, and runs thence along the Wilhelm line, North 89 East 1168.48 feet, more or less, to a stake , a corner of Worth Corriher; thence along the old line, the same being a line of Worth Corriher, due south 1567 feet, more or less, to a stake, an old corner; thence continuing along another line of Worth Corriher, South 89 West 1168.48 feet, more or less, to a point, a new corner, this being the corner of John K. Atwell's tract in the line of Worth Corriher: thence along a new line due North 1567.5 feet, more or less, to a point in the old line, the point of Beginning. Said tract containing 42.048 acres. LESS AND EXCEPT 3.97 Acres more or less. Reference tax parcel ID 223-036

TRACT III:

BEGINNING at a stone in the field on the west side of a dirt road running between Brown Rd. and Patterson Rd., this beginning point being a corner of lots Nos. 4 and 5 as shown on the map of "L.A. Corriher's Mt. Moriah Church Farm", being also a corner of George R. Fleming, Hubert I. Patterson and Leonard Patterson, and also being an old original corner of the C.K. Atwell Property, and runs thence along the old line, the same being the line of Lot No. 5 as shown on the map of the "I.A. Corriher's Mt. Moriah Church Farm" property, South 85 East 381 feet to a state, corner of Tract No. 5 and also an old corner; thence continuing along the old line, the same being a line of Leroy Wilhelm, due south 1699.5, 5 feet to a stake, an old corner; thence continuing along the old line and along Wilhelm's line, North 89 East 250.52 feet to a point, a new corner, this corner lying South 89 East 1168.48 feet from the corner of Sue Evelyn Atwell and Worth Corriher; thence along a new line running due South 1567.5 feet, more or less, to a point, a new corner in the old line, said line being an old line of Worth Corriher; thence with Corriher's line and continuing with the line of Latt J. Carter, South 89 West 745.52 feet; more or less, to a stake, corner of Tract No. 3 as shown on the map of "L.A. Corriher's Mt. Moriah Church Farm", this being a corner of Lamont Goodnight; thence along Goodnight's line and along the line of Tract No. 3 North 4 East 1983 feet to a stone on the North side of Brown Rd.. said stone being in the line of Tract No. 4; thence continuing along the line of Tract 4. North 3-15 East 1373 feet to a stone, the point of BEGINNING.

TRACT IV:

BEGINNING at a stake on bank of branch Sloan Freeze's corner; thence N. 4 E. 14.17 chains to a stone S.G. Pethel's corner; thence S. 24 E. 10.00 chains to a persimmon tree Pethel's corner; thence S. 60 W. 2.60 chains to a cedar; thence N. 80 W. 3.23 chains to an ash; thence S. 77 W. 3.06 chains to poplar; thence S. 76 W. 7.73 chains to the BEGINNING, containing 16 1/10 acres more or less.

TRACT V:

On the Waters of Grant's Creek, BEGINNING at a black jack on Bostian's line and runs South 74 poles to a hickory; thence South 89 West 176 poles to a Spanish oak; thence North 74 poles to a Sourwood; thence North 89 East 176 poles to the BEGINNING, containing (85) acres, more or less. LESS AND EXCEPT all the portion of land located on the west side of Millbridge Rd. containing 32.43 acres more or less.

TRACT VI:
BEGINNING at a nail and cap at the intersection of the center lines of Mill Bridge Rd. (State Road No. 1350) and Concordia Church Rd. (State Rd. No. 1554) and runs thence with the center line of Mill Bridge Road South 6 deg. 45 min West 114 feet to a point in the center line of said rd; thence three new lines with Wilma D. Carrigan as follows: (1) South 84 deg. 30 min. East 566.7 feet to an iron rod; and (3) North 79 deg. 53 min. West 596.8 feet to an iron cap in the center line of Mill Bridge Rd; thence with the center line of Millbridge Rd. South 2 deg. 13 min West 297.9 feet to the point of BEGINNING, and containing 5.2 acres, said description being in accordance with map prepared for Wilma D. Carrigan dated May 25, 1976 by Hudson and Almond Surveyors.
TRACT VII:
BEGINNING at an existing iron, said iron further referenced as being the southeast corner of Ruth Freeze, Larry Freeze, and Valerie Freeze as found in Deed Book 802, page 148 and further referenced as Tax Map 225 Parcel 003 and further referenced as being the northeast corner of Freddie D. Freeze as found in Deed Book 690, Page 895 and further referenced as Tax Map 225, Parcel 062; thence continuing along a new line South 76 deg. 43 min 32 sec East 2,370.31 feet to an existing iron rod being located in the line of a lake for the Town of Landis; thence continuing along border of said lake, South 19 deg. 59 deg. 34 sec. west 97.00 feet to a point; thence continuing South 39 deg. 03 min. 34 sec. West 170.05 feet; thence continuing South 32 deg, 5 min. 04 sec. West 149.67 feet; thence South 35 deg. 33 min 25 sec. West 18.72 feet to a point; thence North 85 deg. 31 min. 52 sec East 100.00 Feet to a point; thence North 51 deg. 35 min. 58 sec. west 148.00 feet to a point; thence continuing North 67 deg. 12 min. 21 sec. West 1,738.38 feet to a point; thence continuing North 86 deg. 41 min 30 sec. West 230.22 feet to a point; thence continuing North 26 deg. 39 min. 38 sec. West 94.19 feet to the point of BEGINNING.
TRACT VIII:
BEGINNING at a computed point in the centerline of N.C. Highway 152 and in the corner of a 3.943 acre tract: thence with said 3.943 acre tract North 15 degrees 32 minutes 56 seconds West passing an existing #5 rebar at 51.14 feet for a total distance of 388.78 feet to an existing #5 rebar in the line of a 3.943 acre tract; thence with said 3.943 acre tract North 21 degrees 44 minutes 35 seconds West passing an existing #5 rebar 201.36 feet for a total distance of 406.96 feet to an existing #5 rebar in the line of a 3.943 acre tract; thence with said 3.943 acre tract North 88 degrees 00 minutes 00 seconds West 67.73 feet to an existing #5 rebar at the corner of a 3.943 acre tract and Harrill S. Wiggins; thence with Wiggins North 02 degrees 00 minutes 00 seconds East passing an existing 1" pipe at 671.74 feet for a total distance of 1329.79 feet to an existing 1" pipe in the corner of Murrah A. Corriher; thence with the Corriher North 88 degrees 00 minutes 00 seconds West 394.32 feet to a set #5 rebar in the corner of Murray A. Corriher; thence with the Corriher North 03 degrees 18 minutes 47 seconds East passing an existing 1.5" pipe at 465.69 feet for a total distance of 632.72 feet to a pipe in R.S. Freeze's line; thence with Freeze North 02 degrees 33 minutes 35 seconds east 4.76 feet to an existing stone in the corner of R.S. Freeze and S.E. Campbell, thence

with Campbell North 42 degrees 19 minutes 54 seconds east 394.74 feet to an existing 36" sweet gum in the corner of S.E. Campbell; thence with Campbell following the courses and distances: (1) South 13degrees 08 minutes 55 seconds East 280.34 feet to an existing ½" pipe; thence (2) South 14degrees 02 minutes 57 seconds West 166.00 feet to an existing #8 rebar; thence (3) South 89 degrees 11 minutes 23 seconds East 974.81 feet to an existing railroad spike in the corner of S.E. Campbell and J.A. Lipe Heirs; thence with Lipe South 02 degrees 42 minutes 38 seconds West 2,024.40 feet to a nail in the corner of Johnsie Deaton Fisher and Wiley Dale Wilson; thence with Wilson North 87 degrees 46 minutes 45 seconds West 15 feet to an existing 5" flat bar in the corner of Wiley Dale Wilson; thence with Wilson South 02 degrees 37 minutes 01 seconds West passing an existing 5" flat bar at 500.66 feet for a total distance of 527.35 feet to a computed point in the centerline of N.C. Highway 152; thence with N.C. Highway 152 South 84 degrees 05minutes 14 seconds West 312.09 feet to the place and point of BEGINNING and containing 51.831 acres as shown on the boundary survey of the Stewart M. Beaver Estate prepared by Rufus Jackson Love, R.L.S. dated September 24, 1996.

TRACT IX:

BEGINNING at a 1" iron spike, said spike being located in centerline of the margin of the right-of-way for Lake Wright Road and further referenced as being located in the common lines of R. Brian Johnson as found in Deed Book 792, Pages 931 and 932, the same being designated in Rowan County Tax Supervisor's Office as being Tax Map 225, Parcel 72 and in the common line of Wallace G. Lyerly as found in Deed Book 571, Page 465, the same being designated in the Rowan County Tax Supervisor's Office as being Tax Map 120, Parcel 4, said point further referenced as being located North 50 deg. 54 min. 16 sec. West 664.96 feet from a computed point, said computed point being located along the centerline of the intersection of Lake Wright Road and N.C. Highway 152, said point further referenced as being located South 80 deg. 19 min. 15 sec. West 267.15 feet from an existing iron spike, said iron spike being the common corner of two separate tracts as purchased by R. Brian Johnson, the same being designated in the Rowan County Tax Supervisor's Office as being Tax Map 225, Parcel 72 and Tax Map 120, Parcel 5; thence, from the point of BEGINNING the following courses and distances: North 50 deg. 54 min. 16 sec. West 389.78 feet to a 4" flat blade, said blade being the common corner of Wallace G. Lyerly and the common corners of Lots Nos. 10 and 11, the Fisher Farm Estates, as found in the Rowan County Register of Deeds Office at Book of Maps, Page 3218; thence continuing North 49 deg. 59 min. 54 sec. West 794.72 feet to a 1-1/4" existing iron rod, said iron rod being the common corner of Lots Nos. 7 and 8; thence continuing North 49 deg. 31 min. 21 sec. West 55.17 feet to a 1/2" iron pin, said iron pin being the common corner of Jeffrey L. McCollum; thence continuing along the common line of Jeffrey L. McCollum North 49 deg. 31 min. 14 sec. West 420.99 feet to a 1/2" existing iron pin, said iron pin being the common corner of J. A. Deaton Properties, LTD, and Jeffrey L. McCollum; thence continuing along the common line of J. A. Deaton Properties, LTD, North 49 deg. 31 min. 14 sec West 421 feet to an existing iron pin, said iron pin being located in the common line of Sandra Lee Sinclair as found in Deed Book 787, Page 828; thence

continuing along the common line of Sandra Lee Sinclair North 1 deg. 31 min. 47 sec. East 451.33 feet to an existing spike, said spike in a leaning 20" maple, said spike further referenced as being the common corner of Sandra Lee Sinclair and Steven E. Campbell as found in Deed Book 565, Page 731; thence continuing along the common line of Steven E. Campbell the following courses and distances: North 1 deg. 47 min. 20 sec East 403.78 feet (passing a nail set in a 1" iron rod .28' Southeast of property line at 203.60 feet) to an existing nail, said nail being located by 5/8" existing iron rod; thence continuing North 47 deg. 00 min. 24 sec. East 618.11 feet (passing a 1" existing iron rod, the same being .61' Northwest of property line at 417.13 feet) to an existing nail by a 5/8" existing iron rod, said iron rod being the common corner of Steven E. Campbell and The Warrior Golf Club, LLC, as found in Deed Book 796, Page 409; thence continuing along the common line of The Warrior Golf Club, LLC, South 88 deg. 24 min. 30 sec. East 776.04 feet to an existing nail by a 1" existing iron rod, the same being the common corner of The Warrior Golf Club, LLC, as designated in Rowan County Tax Supervisor's Office as being Tax Map 225, Parcels 76 and 5; thence continuing along the common line of The Warrior Golf Club, LLC, South 87 deg. 15 min. 46 sec. East. 386.24 feet (passing a ½" existing iron rod at 312.82 feet, the same being the common corner of Thomas E. Tweed as found in Deed Book 712, Page 265) to a new iron pin, said iron pin being located along an existing stone and being the common line of Thomas E. Tweed; thence continuing along the common line of Thomas E. Tweed South 89 deg. 25 min. 33 sec. East 154.3 feet to a new iron pin, said iron pin being located on the right-of-way of Lake Wright Road and being the common corner of Thomas E. Tweed; thence continuing within the margin of the right-of-way for Lake Wright Road South 89 deg. 25 min. 33 sec East 25.64 feet to a computed point, said computed point being the centerline of Lake Wright Road and further referenced as being located North 89 deg. 25 min. 33 sec. West 21.28 feet from the common corner of R. Brian Johnson as found in Deed Book 792, Pages 931 and 932; thence, continuing with the margin of a right-of-way for Lake Wright Road, the following courses and distances: (1) South 13 deg. 22 min. 6 sec. West 620.54 feet; (2) South 12 deg. 47 min. 47 sec. West 599.16 feet; (3) along a curve having a radius of 1227.70 feet with a chord bearing and distance of South 6 deg. 39 min. 15 sec. West 262.70 feet and an arc length of 263.20 feet; (4) South 0 deg. 30 min. 47 sec. West 562,52 feet to a point; (5) along a curve having a radius of 804. 15 feet with a chord bearing and distance of South 4 deg. 43 min. 51 sec. West 118.30 feet and an arc length of 118.40 feet; (6) South 8 deg. 56 min. 58 sec. West 80.89 feet; and (7) along a curve having a radius of 439.02 feet with a chord bearing and distance of 16 deg. 43 min. 26 sec. East 380.40 feet and an arc length of 393.44 feet. LESS AND EXCEPTING, HOWEVER, all of Lots Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, as shown upon the map of WRIGHT FIELD, recorded in Map Book 9995, at Page 4481, Rowan County Registry. The property conveyed herewith is all of Parcel 006 on Rowan County Tax Map 225.

SECTION 1.(b) This section becomes effective September 30, 2007.

SECTION 2. Notwithstanding subsection 1(b) of this act, the Town of Landis may begin to exercise its planning and zoning powers under Article 19 of

Chapter 160A of the General Statutes in the area described in subsection 1(a) of this act after the date that this act becomes law.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 2549:
Landis Annexation/Planning

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Reps. Steen, Coates	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: ***House Bill 2549 is a local bill that would annex certain described property to the corporate limits of the Town of Landis, effective September 30, 2007, and authorizes the Town to begin exercising its planning and zoning powers in the described area prior to the effective date of annexation. The bill received a favorable report from House Local Government II and House Finance Committees.***

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 2549 would annex nine (9) specifically described tracts of land into the existing corporate limits of the Town of Landis.

EFFECTIVE DATE: The annexation becomes effective September 30, 2007. However, this act would become effective when it becomes law.

BACKGROUND: On May 15, 2006, the Town of Landis passed a Resolution in favor of annexing the described properties situated around Lake Wright in Rowan County. The Town has infrastructure in this area and also owns Lake Wright which is a drinking water reservoir. All property owners, including Warrior Golf Club, are in support of this legislation. The nearby municipality of China Grove has no opposition to this special legislation.

H2549e1-SMRE

HOUSE BILL 2549:
Landis Annexation/Planning

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Reps. Steen, Coates	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: ***House Bill 2549 is a local bill that would annex certain described property to the corporate limits of the Town of Landis, effective September 30, 2007, and authorizes the Town to begin exercising its planning and zoning powers in the described area prior to the effective date of annexation. The bill received a favorable report from House Local Government II and House Finance Committees.***

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation.** The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act.** The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation.** This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation.** The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 2549 would annex nine (9) specifically described tracts of land into the existing corporate limits of the Town of Landis.

EFFECTIVE DATE: The annexation becomes effective September 30, 2007. The provision authorizing the town to begin exercising its planning and zoning powers is effective when the act becomes law.

BACKGROUND: On May 15, 2006, the Town of Landis passed a Resolution in favor of annexing the described properties situated around Lake Wright in Rowan County. The Town has infrastructure in this area and also owns Lake Wright which is a drinking water reservoir. All property owners, including Warrior Golf Club, are in support of this legislation. The nearby municipality of China Grove has no opposition to this special legislation.

H2549e1-SMRE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2656*

Committee Substitute Favorable 6/7/06

Short Title: Dortches/Morganton Deannexation. (Local)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES AND OTHER DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF MORGANTON.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Dortches:

Commencing at a magnetic nail located at the intersection of the centerlines of Benvenue Road (NC 43) and South Browntown Road (SR 1527); thence S 52°41'51"E 517.69 feet to an existing iron axle on the northern right-of-way of Benvenue Road, the southwest corner of Falls Road Baptist Church property, Tract A, Map Book 16 Page 391; thence along the common line between Falls Road Baptist Church and James E. Wells, Deed Book 1857 Page 805, N 04°41'26"E 172.85 feet to an iron pipe; thence along the common line between Falls Road Baptist Church and Janet D. Beabout, Deed Book 1674 Page 245, N 04°53'16"E 205.66 feet to an angle iron found; thence along the common line between Falls Road Baptist Church and property now or formerly owned by Sally L. Stancil, et al, N 05°00'54"E 466.60 feet to an iron pipe set, the POINT OF BEGINNING; thence continuing along the same line N 05°00'54"E 506.25 feet to an existing iron axle found, the northwest corner of Tract A, Map Book 16 Page 391; thence along the common line between the church and James R. Byrd and Cheryl D. Byrd, tenants in common, recorded in Deed Book 1900 Page 392, S 85°16'40"E 268.71 feet to an iron pipe set; thence along the existing jurisdictional boundary between the City of Rocky Mount and the town of Dortches a curve being concave to the right and having a radius of 7,900 feet and a chord bearing and distance of S 32°54'31"W 574.36 feet to the point of beginning and containing 1.61 acres and being a portion of Tract A, Map Book 16 Page 391, Stony Creek Township, Nash County Registry, as shown on map by Mack Gay Associates, P.A. November 7, 2005, Project Number P050335.

SECTION 2. Section 1 of this act shall have no effect upon the validity of any liens of the Town of Dortches for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Dortches.

SECTION 3. The following described property is removed from the corporate limits of the City of Morganton:

BEGINNING on a stake in the Morganton Dyeing and Finishing Corp. line, said point being North 88° West 110 feet from the northeast corner of said tract of land described in Book 142, Page 168, of the Burke County Registry; and runs thence North 88° West 165 feet to a stake in Morganton Dyeing & Finishing Corp. line; thence South 0° 30' East 476 feet to a stake alongside margin of Rural Paved Road #1949; thence with margin of said road North 87° 30' East 200 feet to a stake along margin of said road; thence a new line North 4° 15' West 462 feet to the BEGINNING corner in the Morganton Dyeing & Finishing Corp. line.

And being a tract of land located approximately 1.4 miles from the primary corporate limits of the City of Morganton and further described in the Warranty Deed recorded in Book 943, at Page 733 of the Burke County Registry and no other tract whatsoever.

SECTION 4. Section 3 of this act shall have no effect upon the validity of any liens of the City of Morganton for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the City of Morganton.

SECTION 5. The property described in Section 3 of this act shall revert to the Residential Transition zoning classification under the zoning ordinances of the City of Morganton until such time as the city reclassifies the property to another classification under the procedures required by such zoning ordinances.

SECTION 6. This act becomes effective June 30, 2006.

HOUSE BILL 2656:
Dortches/Morganton Deannexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Rep. Daughtridge	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: House Bill 2656 is a local bill that would remove certain described property from the corporate limits of the Town of Dortches and the City of Morganton. The 1st Edition PCS received a favorable report from House Local Government I Committee on June 7, 2006. The 2nd Edition of the bill received a favorable report from House Finance on June 20, 2006.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: House Bill 2656 would remove certain described property from the corporate limits of the Town of Dortches and the City of Morganton. The de-annexation would have no effect for either municipality on the validity of any outstanding liens for ad valorem taxes or special assessments prior to the effective date of the act.

The bill stipulates that pending reclassification by the City of Morganton under its zoning ordinances, the de-annexed Morganton property shall revert to the Residential Transition zoning classification.

EFFECTIVE DATE: The act becomes effective June 30, 2006.

DORTCHES BACKGROUND: The Falls Road Baptist church owns a tract of land containing approximately 53 acres on Highway 43 (Benvenue Road) near Dortches. All, except 1.61 acres, is outside the corporate limits of Dortches. The Church petitioned the Town Board to remove the 1.61 acre parcel from the corporate limits. On January 17, 2006, the Town Board acted favorably on the petition by adopting a resolution requesting legislation to remove the described property from the corporate limits of the Town of Dortches, believing it to be in the best interest of the Town and the owners of the Property.

MORGANTON BACKGROUND: This issue stems from a satellite annexation in the 1990's of a Morganton Dyeing and Finishing Corporation plant, including a house that was located on the plant property. Later, when the company's assets were liquidated in bankruptcy, the house was sold and is now individually owned. It is situated approximately 1.4 miles from the primary corporate limits of the City of Morganton. The current owners, who are paying city taxes without city services, petitioned the City Council to remove their property from the corporate limits. The City is in agreement with the property owners and wants to clear the matter up. The City Council took action on June 5, 2006, voting to request legislation to remove the described property from the corporate limits of the City of Morganton, believing it to be in the best interest of the City and the owners of the Property.

H2656e2-SMRE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2725

Committee Substitute Favorable 6/7/06

Short Title: Chapel Hill Annexation. (Local)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF CHAPEL HILL.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Chapel Hill are extended to include the following described territory:

In Durham County, beginning at a point on the southern right-of-way of I-40, said point also being the southeastern most corner of Tract C (See PB 142, Pg. 188 Durham County, PIN# 0709-01-19-1301); thence from said point and in a southwesterly direction to the northeastern most corner of the Tract: Durham County Pin # 0709-01-18-1906, said point also being on the western right-of-way of Pope Road; thence in a westerly direction and along with Tract #0709-01-18-1906 and the southern right-of-way of Old Chapel Hill-Durham Road; to a point, said point being the northwestern most corner of aforementioned Tract #0709-01-18-1906, thence crossing Old Chapel Hill-Durham Road in a northwesterly direction to a point on the northern right-of-way, said point also being the southwestern most corner of the aforementioned Tract C (#0709-01-19-1301); thence with the northern right-of-way of the Old Chapel Hill-Durham Road in an easterly direction to the place and point of beginning.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 2725:
Chapel Hill Annexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Reps. Insko, Hackney	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: House Bill 2725 is a local bill that would annex certain described territory to the corporate limits of the Town of Chapel Hill. The 2nd Edition of the bill received a favorable report from House Finance Committee on June 20, 2006.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 2725 would annex specifically described territory into the existing corporate limits of the Town of Chapel Hill.

EFFECTIVE DATE: This act would become effective when it becomes law.

BACKGROUND: On May 8, 2006, the Council of the Town of Chapel Hill adopted a Resolution establishing the Town's legislative program that included a request for introduction of a local bill to annex a small portion of right of way along the Durham-Chapel Hill annexation boundary. This parcel is situated within a larger parcel that is already within the Chapel Hill corporate limits and was overlooked during an annexation in 2000. The parcel needs to be within the corporate limits of the Town of Chapel Hill to be eligible for use of local Capital Improvement Plan monies for a future sidewalk.

H2725e2-SMRE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1992*

Committee Substitute Favorable 6/6/06

Short Title: Shallotte Annexation. (Local)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTIES TO THE CORPORATE BOUNDARIES OF THE TOWN OF SHALLOTTE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described properties are added to the corporate boundaries of the Town of Shallotte:

RIVERS EDGE GOLF CLUB AND PLANTATION

PARCEL A

'Beginning at an iron rod in the West R/W of Copas Road located North 20 degrees 32 minutes 38 seconds West a distance of 624.67 feet from a PK nail in the center-line intersection of Copas Road SW and Lake Shore Drive SW, thence from said beginning point South 70 degrees 38 minutes 45 seconds West for a distance of 468.68 feet to an iron rod, thence South 63 degrees 12 minutes 37 seconds West for a distance of 50.85 feet to an iron rod, thence South 66 degrees 17 minutes 49 seconds West for a distance of 188.30 feet to an iron rod, thence North 66 degrees 41 minutes 17 seconds West for a distance of 77.31 feet to an iron rod, thence South 71 degrees 11 minutes 37 seconds West for a distance of 45.45 feet to an iron rod, thence South 55 degrees 45 minutes 25 seconds West for a distance of 744.40 feet, to an iron rod, thence South 51 degrees 29 minutes 26 seconds West for a distance of 185.14 feet to an iron rod, thence South 56 degrees 27 minutes 00 seconds West for a distance of 241.03 feet to an iron rod, thence North 39 degrees 20 minutes 38 seconds West for a distance of 139.09 feet to an iron rod, thence North 57 degrees 22 minutes 08 seconds West for a distance of 52.73 feet to an iron rod, thence North 53 degrees 36 minutes 58 seconds West for a distance of 155.89 feet to an iron rod, thence North 36 degrees 31 minutes 03 seconds West for a distance of 346.31 feet to an iron rod, thence North 69 degrees 19 minutes 12 seconds East for a distance of 191.50 feet to an iron rod, thence North 69 degrees 21 minutes 44 seconds East for a distance of 499.95 feet to an iron rod, thence North 69 degrees 21 minutes 35 seconds East for a distance of 499.53 feet to an iron rod, thence North 69 degrees 26 minutes 17 seconds East for a distance of 336.27 feet to an iron rod, thence

North 69 degrees 27 minutes 11 seconds East for a distance of 406.65 feet to an iron rod, thence South 21 degrees 51 minutes 24 seconds East for a distance of 200.09 feet to an iron rod, thence North 69 degrees 25 minutes 00 seconds East for a distance of 250.54 feet to an iron rod in the west R/W of Copas Rd, thence with said R/W South 23 degrees 28 minutes 26 seconds East for a distance of 201.23 feet to the place and point of beginning, containing 21.0 acres, more or less.'

RIVERS EDGE GOLF CLUB AND PLANTATION

PARCEL B

'Beginning at an iron rod in the West R/W of Copas Road located North 24 degrees 26 minutes 18 seconds West a distance of 189.47 feet from a PK nail in the center-line intersection of Copas Road SW and Lake Shore Drive SW, thence from said beginning point South 75 degrees 38 minutes 54 seconds West for a distance of 136.41 feet to an iron rod, thence South 63 degrees 22 minutes 21 seconds West for a distance of 440.00 feet to an iron rod, thence South 57 degrees 52 minutes 21 seconds West for a distance of 195.21 feet to an iron rod, thence South 56 degrees 19 minutes 56 seconds West for a distance of 101.35 feet to an iron rod, thence South 54 degrees 25 minutes 49 seconds West for a distance of 150.65 feet to an iron rod, thence South 45 degrees 37 minutes 06 seconds West for a distance of 121.53 feet to an iron rod, thence South 58 degrees 46 minutes 59 seconds West for a distance of 114.92 feet to an iron rod, thence South 58 degrees 30 minutes 22 seconds West for a distance of 23.83 feet to an iron rod, thence North 56 degrees 55 minutes 27 seconds West for a distance of 284.86 feet to an iron rod, thence North 44 degrees 10 minutes 16 seconds East for a distance of 773.53 feet to an iron rod, thence North 09 degrees 55 minutes 10 seconds East for a distance of 66.77 feet to an iron rod, thence North 66 degrees 10 minutes 41 seconds East for a distance of 186.95 feet to an iron rod, thence North 63 degrees 02 minutes 45 seconds East for a distance of 49.29 feet to an iron rod, thence North 70 degrees 38 minutes 45 seconds East for a distance of 307.01 feet to an iron rod, thence North 70 degrees 34 minutes 11 seconds East for a distance of 161.77 feet to an iron rod in the west R/W of Copas Road, thence with said R/W South 28 degrees 29 minutes 54 seconds East for a distance of 8.70 feet to an iron rod, thence South 22 degrees 18 minutes 39 seconds East for a distance of 98.04 feet to an iron rod, thence leaving said R/W South 68 degrees 37 minutes 37 seconds West for a distance of 160.19 feet to an iron rod, thence South 20 degrees 05 minutes 11 seconds East for a distance of 90 feet to an iron rod, thence North 68 degrees 39 minutes 21 seconds East for a distance of 160.18 feet to an iron rod in the west R/W of Copas Rd, thence with said R/W South 17 degrees 03 minutes 16 seconds East for a distance of 90.97 feet to an iron rod, thence South 15 degrees 51 minutes 24 seconds East for a distance of 128.79 feet to the place and point of beginning, containing 11.96 acres, more or less.'

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1992:
Shallotte Annexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 27, 2006
Introduced by:	Rep. Hill	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: House Bill 1992 is a local bill that would annex certain described property into the Town of Shallotte. HB 1992 received a favorable report from House Local Government I Committee on May 24, 2006. The PCS to the 1st Edition of the bill, adding Parcel B to the described property, received a favorable report from House Finance Committee on June 6, 2006.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 1992 would annex two specifically described tracts of land into the existing boundaries of the Town of Shallotte:

- Parcel A, Rivers Edge Golf Club and Plantation, containing 21.0 acres, more or less.
- Parcel B, Rivers Edge Golf Club and Plantation, containing 11.96 acres, more or less.

EFFECTIVE DATE: The act would become effective when it becomes law.

H1992e2-SMRE

Erika Churchill, Committee Counsel to House Local Government I Committee substantially contributed to this summary.

H

HOUSE BILL 2524

Short Title:	Chocowinity ETJ.	(Local)
Sponsors:	Representative Williams.	
Referred to:	Local Government II.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT EXPANDING THE EXTRATERRITORIAL PLANNING JURISDICTION OF THE TOWN OF CHOCOWINITY

The General Assembly of North Carolina enacts:

SECTION 1.(a) In addition to any areas where the Town of Chocowinity exercises extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, the Town shall have extraterritorial jurisdiction under that Article in the area described in subsection (b) of this section.

SECTION 1.(b) Description (+/-277.74 ac, Hwy 17, Chocowinity Tws, #12-003254):

Being that certain lot or parcel of land situated in Chocowinity Township, Beaufort County, North Carolina which is more particularly described as follows:

Being the von Eberstein Home Farm, known as "Elmwood", situated on both sides of US Hwy. 17 and also on both sides of the Norfolk-Southern Railroad right-of-way, originally containing 302.5 acres as depicted by the Referenced Worthington Map of Survey.

LESS AND EXCEPTING the following parcels:

---The 4.60 acre parcel conveyed to Roy Tuten by Deed recorded 01/10/1956 in Book 459, Page 292, now Tax Parcel ID #12-002494.

---The 1.00 acre parcel conveyed to David Rowe by Deed recorded 01/21/1956 in Book 460, Page 44, now Tax Parcel ID #12-000023.

---The 0.75 acre parcel conveyed to J.O. Branch by Deed recorded 07/22/1960 in Book 511, Page 183 and by Correction Deed recorded 08/17/1960 in Book 512, Page 69, now Tax Parcel ID #12-002308.

---The 0.50 acre parcel conveyed to Leslie Godley by Deed recorded 08/05/1960 in Book 511, Page 516, now Tax Parcel ID #12-002576.

---The 0.84 acre parcel conveyed to Erma Lee Cook by Deed recorded 08/05/1960 in Book 511, Page 524, now Tax Parcel ID #12-021360.

---The parcel conveyed to A.E. Chandler by Deed recorded 08/08/1960 in Book 511, Page 551 and by Correction Deed recorded 08/17/1960 in Book 512, Page 69, now Tax Parcel ID #12-002671.

---The parcel conveyed to Albert Sutton by Deed recorded 09/22/1960 in Book 513, Page 252, now Tax Parcel ID #12-013129.

---The 1.16 acre parcel conveyed to J.T. Chandler by Deed recorded 09/22/1960 in Book 513, Page 256, now Tax Parcel ID #12-005268.

---The parcel conveyed to William Hodges by Deed recorded 10/06/1960 in Book 513, Page 639, now Tax Parcel ID #12-015763.

---The 1.15 acre parcel conveyed to Glen T. Clark by Deed recorded 10/20/1960 in Book 514, Page 296, now Tax Parcel ID #12-010743.

---The parcel conveyed to Glen T. Clark by Deed recorded 05/22/1961 in Book 521, Page 530, now part of Tax Parcel ID #12-010743.

---The 1.12 acre parcel conveyed to J. B. Wall by Deed recorded 11/01/1961 in Book 527, Page 111, now Tax Parcel ID #12-015266.

---The 0.03 acre parcel conveyed to Eastern North Carolina Natural Gas Company by Deed recorded 06/29/2004 in Book 1402, Page 155, now Tax Parcel ID #15-021048.

---The approximately 0.75, more or less, acre parcel conveyed to D & B Land Group by Deed recorded in Book 1422, Page 707, now Tax Parcel ID #12-032960.

This tract now contains approximately 277.74 acres, more or less, designated as Beaufort County Tax Parcel #12-003254, all in accordance to that Deed recorded in Book 1240, Page 915 of the Beaufort County Registry, that Map recorded in Plat. Cab. A, Slide 84 of the Beaufort County Registry and that Estate recorded in File 69 E 87 of the Pitt County Clerk of Court.

Referenced Map of Survey:

Reference should be made to that Map of Survey by M. M. Worthington, entitled "Map Showing Property of F. H. von Eberstein", dated 03/01/1918 and recorded 09/17/1976 in Plat Cab. A, Slide 84 of the Beaufort County Registry. This Map of Survey is incorporated herein for a more complete and accurate description. Further reference may be made to those Maps of Survey by W. B. Duke, entitled "Plan of Lots Surveyed for W. H. von Eberstein", recorded in Map Book 14 at Pages 49, 59, 60 and 62.

SECTION 2. This act applies to the Town of Chocowinity only.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 2524: Chocowinity ETJ

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Rep. Williams	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: ***House Bill 2524 expands the extraterritorial planning and zoning jurisdiction of the Town of Chocowinity in Beaufort County. The bill received a favorable report from House Local Government II Committee on June 21, 2006.***

CURRENT LAW: Article 19 of Chapter 160 authorizes municipalities to regulate development within their authorized "ETJ," or extraterritorial planning and zoning jurisdiction.

BILL ANALYSIS: House Bill 2524 expands the ETJ of the Town of Chocowinity to include the area of the von Eberstein Home Farm, as described in the bill.

EFFECTIVE DATE: This act is effective when it becomes law.

H2524e1-SMRE

Giles Perry, counsel to House Local Government II Committee substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1993

Committee Substitute Favorable 6/12/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1993-CSRBf-63 [v.1]

Short Title: Various Special License Plates. (Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE FOR A BREAST CANCER AWARENESS SPECIAL PLATE TO SUPPORT SERVICES TO DETECT BREAST CANCER EARLIER, TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE THE FOLLOWING NEW SPECIAL REGISTRATION PLATES: CAROLINA'S AVIATION MUSEUM, EMT, FOX HUNTING, GOLD STAR, GREYHOUND FRIENDS OF NC, KAPPA ALPHA PSI FRATERNITY, LEUKEMIA & LYMPHOMA SOCIETY, LUNG CANCER RESEARCH, NC CHILDREN'S PROMISE, NC STATE PARKS, PRINCE HALL MASON, SUPPORT OUR TROOPS, AND US EQUINE RESCUE LEAGUE, AND TO REPEAL THE SUNSET ON THE HARLEY OWNERS' GROUP AND ROCKY MOUNTAIN ELK FOUNDATION SPECIAL LICENSE PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying

over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Lung Cancer Research.
(16) NC State Parks.
(17) Support Our Troops.
(18) US Equine Rescue League."

SECTION 2. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(3h) Breast Cancer Awareness. – Issuable to the registered owner of a motor ~~vehicle.~~ vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Early Detection Saves Lives" and a representation of a pink ribbon. ~~The Division must receive 300 or more applications for the plate before it may be developed.~~

...

(3n) Carolina's Aviation Museum. – This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Carolina's Aviation Museum" and a logo provided by the museum.

...

(14e) Emergency Medical Technician. – Issuable to an emergency medical technician, as defined in G.S. 131E-155. The plate shall bear the Star of Life logo and the letters "EMT". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(15c) Fox Hunting. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Fox Hunting" and a picture of a foxhound on the left side and a picture of a fox on the right side. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(16b) Greyhound Friends of North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase 'Greyhound Friends of North Carolina' and a picture of a greyhound.

...

(16f) Gold Star Lapel Button. – Issuable to the recipient of the Gold Star lapel button. The plate shall bear the emblem of the Gold Star lapel button and the words "Gold Star". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(20f) Kappa Alpha Psi Fraternity. – Issuable to the registered owner of a motor vehicle. The plate shall bear the fraternity's symbol and name. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(22c) Leukemia & Lymphoma Society. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase and logo provided by The Leukemia & Lymphoma Society that reflects "TEAM IN TRAINING".

...

(22k) Lung Cancer Research. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Lung Cancer Research" and a representation of the American Lung Association's Red Cross.

...

(28k) NC Children's Promise. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "N.C. Children's Promise" and a logo representing the North Carolina Children's Promise organization.

...

(32g) Prince Hall Mason. -- This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Prince Hall Mason" and a picture of the Masonic symbol.

...

(45a) Support Our Troops. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a

picture of a soldier and a child and shall bear the words: "Support Our Troops".

...

(46c) US Equine Rescue League. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "United States Equine Rescue League", and a depiction of two horses in a circle."

SECTION 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Support Our Troops	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Children's Promise	$25.00
NC Coastal Federation	$25.00
Nurses	$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00

The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Breast Cancer Awareness	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Greyhound Friends of North Carolina	$20.00
Guilford Battleground Company	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
US Equine Rescue League	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00
Lung Cancer Research	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
Alpha Phi Alpha Fraternity	$10	$10	0	0
Animal Lovers	$10	$10	0	0
ARC of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Be Active NC	$10	$10	0	0
Breast Cancer Awareness	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Carolina's Aviation Museum	$10	$5	0	0
Coastal Conservation Association	$10	$20	0	0
Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0
Greyhound Friends of North Carolina	$10	$10	0	0
Guilford Battleground Company	$10	$10	0	0
(Effective until June 30, 2006)				
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
HOMES4NC	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Kids First	$10	$15	0	0
Leukemia & Lymphoma Society	$10	$5	0	0
Litter Prevention	$10	$10	0	0
Lung Cancer Research	$10	$5	0	0
March of Dimes	$10	$10	0	0
National Multiple Sclerosis Society	$10	$15	0	0

National Wild Turkey Federation	$10	$15	0	0
NC Agribusiness	$10	$15	0	0
NC Children's Promise	$10	$15	0	0
NC Coastal Federation	$10	$15	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Trout Unlimited	$10	$10	0	0
North Carolina Libraries	$10	$20	0	0
NC Wildlife Habitat Foundation	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	$10	0	$15	0
Personalized	$10	0	$15	$5
Prince Hall Mason	$10	$10	0	0
(Effective until June 30, 2006)				
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$5	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
US Equine Rescue League	$10	$10	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 5. G.S. 20-81.12(b2) is amended by adding a new subdivision to read:

"(b2) State Attraction Plates. – The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account

derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

...

(1i) North Carolina State Parks. – One-half of the revenue derived from the special plate shall be transferred quarterly to Natural Heritage Trust Fund established under G.S. 113-77.7, and the remaining revenue shall be transferred quarterly to the Parks and Recreation Trust Fund established under G.S. 113-44.15."

SECTION 6. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b53) Breast Cancer Awareness. – The Division must receive 300 or more applications for a Breast Cancer Awareness plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Breast Cancer Awareness plates to Friends for an Earlier Breast Cancer Test, Inc., to support services to detect breast cancer earlier.

(b54) Carolina's Aviation Museum. – The Division must receive 300 or more applications for a Carolina's Aviation Museum plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Carolina's Aviation Museum plates to the Carolina's Historic Aviation Commission, a domestic nonprofit corporation, to be used to help continue operation of the Museum.

(b55) Greyhound Friends of North Carolina. – The Division must receive 300 or more applications for a Greyhound Friends of North Carolina plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Greyhound Friends of North Carolina plates to the Greyhound Friends of North Carolina, Inc. to be used for the care and upkeep of retired greyhound racers that are awaiting adoption.

(b56) Leukemia & Lymphoma Society. – The Division must receive 300 or more applications for a Leukemia & Lymphoma Society plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Leukemia & Lymphoma Society plates to the Eastern Chapter of the North Carolina Leukemia & Lymphoma Society, a State-chartered chapter of the national nonprofit organization known as The Leukemia & Lymphoma Society, Inc., a duly registered New York nonprofit corporation. These funds may be divided between the Eastern and Western chapters of the North Carolina Leukemia & Lymphoma Society which shall each use the funds for blood cancer research, awareness, and education.

(b57) Lung Cancer Research. – The Division must receive 300 or more applications for the Lung Cancer Research plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Lung Cancer Research plates to the American Lung Association of North Carolina, Inc., to be used for eliminating lung disease and fostering healthy breathing for all people through prevention, outreach, education, research, and advocacy.

(b58) NC Children's Promise. – The Division must receive 300 or more applications for a N.C. Children's Promise plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Children's Promise plates to The Medical Foundation of North Carolina, Incorporated, to be used to support the North Carolina Children's Promise.

(b59) Prince Hall Mason. – The Division must receive 300 or more applications for a Prince Hall Mason plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Prince Hall Mason plates to The Most Worshipful Prince Hall Grand Lodge of Free and Accepted Masons of North Carolina and Jurisdiction, Inc., to be used for scholarships, family assistance, and other charitable causes.

(b60) Support Our Troops. – The Division must receive 300 or more applications for a Support Our Troops plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Our Troops plates to NC Support Our Troops, Inc., to be used to provide support and assistance to the troops and their families.

(b61) US Equine Rescue League. – The Division must receive 300 or more applications for the US Equine Rescue League plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of US Equine Rescue League plates to the United States Equine Rescue League, Inc., to be used for the care and upkeep of rescued equines."

SECTION 7. Section 8 of S.L. 2001-498 reads as rewritten:

"**SECTION 8.** Section 7 of this act becomes effective at the earliest practical date, but no later than January 1, 2003. The remainder of this act is effective when it becomes law. ~~Sections 1(b), 3(b), 4(b), and 6(b) expire on June 30, 2006.~~"

SECTION 8. As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the Division of Legislative Drafting and Codification to reletter or renumber section subdivisions includes the authority to renumber all the subdivisions in G.S. 20-79.4(b) in sequential and alphabetical order and to eliminate mixed number-letter subdivision designations. This section expires July 1, 2011.

SECTION 9. The increase in the additional fee for the Breast Cancer Awareness special plate, as amended in Section 3 of this act, becomes effective January 1, 2007, and applies to plates issued or renewed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1993

Committee Substitute Favorable 6/12/06

Short Title: Various Special License Plates. (Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE THE FOLLOWING SPECIAL REGISTRATION PLATES: CAROLINA'S AVIATION MUSEUM, EMT, FOX HUNTING, LEUKEMIA & LYMPHOMA SOCIETY, LUNG CANCER RESEARCH, NC CHILDREN'S PROMISE, PRINCE HALL MASON, SUPPORT OUR TROOPS, AND US EQUINE RESCUE LEAGUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.

(2) Rocky Mountain Elk Foundation.

(3) Blue Ridge Parkway Foundation.

(4) Friends of the Appalachian Trail.

(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Lung Cancer Research.
(16) Support Our Troops.
(17) US Equine Rescue League."

SECTION 2. G.S. 20-79.4(b)(22a) is recodified as G.S. 20-79.4(b)(22f); G.S. 20-79.4(b)(45a) is recodified as G.S. 20-79.4(b)(45b); and G.S. 20-79.4(b)(46a) is recodified as 20-79.4(b)(46f).

SECTION 3. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(3n) Carolina's Aviation Museum. – This plate is issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Carolina's Aviation Museum" and a logo provided by the museum.

...

(14e) Emergency Medical Technician. – Issuable to an emergency medical technician, as defined in G.S. 131E-155. The plate shall bear the Star of Life logo and the letters "EMT". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(15c) Fox Hunting. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Fox Hunting" and a picture of a foxhound on the left side and a picture of a fox on the right side. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(22c) Leukemia & Lymphoma Society. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase and logo provided by The Leukemia & Lymphoma Society that reflects "TEAM IN TRAINING".

...

(22k) Lung Cancer Research. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Lung Cancer Research" and a representation of the American Lung Association's Red Cross.

...

(28k) NC Children's Promise. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "NC Children's Promise" and a logo representing the NC Children's Promise organization.

...

(32g) Prince Hall Mason. – This plate is issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Prince Hall Mason" and a picture of the Masonic symbol.

...

(45a) Support Our Troops. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture of a soldier and a child and shall bear the words: "Support Our Troops".

...

(46c) US Equine Rescue League. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "United States Equine Rescue League", and a depiction of two horses in a circle."

SECTION 4. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Support Our Troops	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00

Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Children's Promise	$25.00
NC Coastal Federation	$25.00
Nurses	$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Guilford Battleground Company	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
US Equine Rescue League	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00
Lung Cancer Research	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None

100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 5. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
Alpha Phi Alpha Fraternity	$10	$10	0	0
Animal Lovers	$10	$10	0	0
ARC of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Be Active NC	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Carolina's Aviation Museum	$10	$5	0	0
Coastal Conservation Association	$10	$20	0	0
Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0
Guilford Battleground Company	$10	$10	0	0
(Effective until June 30, 2006)				
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
HOMES4NC	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Kids First	$10	$15	0	0
Leukemia & Lymphoma Society	$10	$5	0	0
Litter Prevention	$10	$10	0	0

Lung Cancer Research	$10	$5	0	0
March of Dimes	$10	$10	0	0
National Multiple Sclerosis Society	$10	$15	0	0
National Wild Turkey Federation	$10	$15	0	0
NC Agribusiness	$10	$15	0	0
NC Children's Promise	$10	$15	0	0
NC Coastal Federation	$10	$15	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Trout Unlimited	$10	$10	0	0
North Carolina Libraries	$10	$20	0	0
NC Wildlife Habitat Foundation	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	$10	0	$15	0
Personalized	$10	0	$15	$5
Prince Hall Mason	$10	$10	0	0
(Effective until June 30, 2006)				
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$5	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
US Equine Rescue League	$10	$10	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 6. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b53) Carolina's Aviation Museum. – The Division must receive 300 or more applications for a Carolina's Aviation Museum plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Carolina's Aviation Museum plates to the Carolina's Historic Aviation Commission, a domestic nonprofit corporation, to be used to help continue operation of the Museum.

(b54) Leukemia & Lymphoma Society. – The Division must receive 300 or more applications for a Leukemia & Lymphoma Society plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Leukemia & Lymphoma Society plates to the Eastern Chapter of the North Carolina Leukemia & Lymphoma Society, a State-chartered chapter of the national nonprofit organization known as The Leukemia & Lymphoma Society, Inc., a duly registered New York nonprofit corporation. These funds may be divided between the Eastern and Western chapters of the North Carolina Leukemia & Lymphoma Society which shall each use the funds for blood cancer research, awareness, and education.

(b55) Lung Cancer Research. – The Division must receive 300 or more applications for the Lung Cancer Research plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Lung Cancer Research plates to the American Lung Association of North Carolina, Inc., to be used for eliminating lung disease and fostering healthy breathing for all people through prevention, outreach, education, research, and advocacy.

(b56) NC Children's Promise. – The Division must receive 300 or more applications for a N.C. Children's Promise plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Children's Promise plates to The Medical Foundation of North Carolina, Incorporated, to be used to support the N.C. Children's Promise.

(b57) Prince Hall Mason. – The Division must receive 300 or more applications for a Prince Hall Mason plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Prince Hall Mason plates to The Most Worshipful Prince Hall Grand Lodge of Free and Accepted Masons of North Carolina and Jurisdiction, Inc., to be used for scholarships, family assistance, and other charitable causes.

(b58) Support Our Troops. – The Division must receive 300 or more applications for a Support Our Troops plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Our Troops plates to NC Support Our Troops, Inc., to be used to provide support and assistance to the troops and their families.

(b59) US Equine Rescue League. – The Division must receive 300 or more applications for the US Equine Rescue League plate before the plate may be developed.

The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of US Equine Rescue League plates to the United States Equine Rescue League, Inc., to be used for the care and upkeep of rescued equines."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1993:
Various Special License Plates

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 27, 2006
Introduced by:	Reps. Glazier, Dickson, Grady, Pate	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to Second Edition H1993-CSRB		

SUMMARY: ***House Bill 1993 authorizes the Division of Motor Vehicles to develop eight new special registration plates. The bill becomes effective when it becomes law. The proposed Senate committee substitute adds the following provisions to the bill:***

- ***It increases the additional fee for 'Breast Cancer Awareness' special plate from $10 to $20. The additional fee revenue will be transferred to Friends for an Earlier Breast Cancer Test, Inc. to be used to support services to detect breast cancer earlier. (Sen. Hagan, SB 1202)***
- ***It authorizes the Division of Motor Vehicles to issue the following new special plates:***
  - ***Gold Star. (Sen. Atwater, SB 1736)***
  - ***Kappa Alpha Psi Fraternity (Sen. Graham, SB 1773)***
  - ***Greyhound Friends of North Carolina (Requested by Sen. Berger)***
  - ***North Carolina State Parks (Requested by Sen. Albertson)***
- ***It removes the sunset on the special plates for Harley Owners' Group and Rocky Mountain Elk Foundation special license plates. Both of these plates have been issued.***
- ***It authorizes the Reviser of the Statutes to number the special plates sequentially.***

CURRENT LAW: The Division of Motor Vehicles is authorized to issue more than 100 special license plates. As a general rule, the fee for a special registration plate is the regular vehicle registration fee plus a $10 special registration plate fee.[1] The $10 special registration plate fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, $1,000,000 is annually appropriated to provide operating assistance for ten Visitor Centers.[2] The Centers are located in Brunswick, Camden, Carteret, Caswell, Columbus, Macon, McDowell, Transylvania, Tyrell, and Watauga Counties.[3] The remaining revenue in the account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Human Resources to promote travel accessibility for disabled persons (17%).

The cost of some special plates includes a fee in addition to the $10 special registration plate fee. In those instances, the first $10 goes to the special registration plate fund and the remainder is transferred quarterly to designated beneficiaries of the additional fee amount.

---

[1] One registration plate is issued free of charge to a recipient of the Congressional Medal of Honor, a 100% Disabled Veteran, or an ex-prisoner of war. Four special registration plates are exempt from the $10 special plate fee: active member of the National Guard, Legion of Valor, Purple Heart Recipient, and the Silver Star Recipient.

[2] There are 12 Visitors' Centers. The two centers that do not receive State funding are located in Dare County.

[3] Each Visitor's Center receives $100,000.

BILL ANALYSIS: House Bill 1993 authorizes the Division of Motor Vehicles to issue eight new special registration plates. All of the plates authorized must meet the 300 minimum plate requirement[4] and all of the plates authorized require the $10 special registration plate fee that is credited to the Special Registration Plate Account. The bill provides that the following new plates would not have to be a 'First in Flight' plate[5]:

- Lung Cancer Research
- North Carolina State Parks
- Support Our Troops
- US Equine Rescue League

The following chart details the plates authorized by this bill, the cost of each plate, and how the additional revenues derived from the plates, if any, will be distributed and used.

Purposes	Additional Fees
Breast Cancer Awareness. – The General Assembly authorized the issuance of this special plate in 2003. This bill would increase the fee for the plate in order to allow the additional fee revenue generated from the sale of the plates to be used to support services to detect breast cancer earlier. ***Sponsor:*** *Sen. Hagan (SB 1202)*	**$20.00**
Carolina's Aviation Museum. – Founded in 1991, the museum is dedicated to preserving the aviation heritage of North and South Carolina. The Museum is located in Charlotte, NC. The additional fee revenue generated from the sale of the plates must be used by the Carolinas Historic Aviation Commission to help continue operation of the Museum. ***Sponsor:*** *Representatives Vinson and Faison (HB 2683)*	**$15.00**
Emergency Medical Technician. – Issuable to an emergency medical technician. There is already a special plate authorized for firefighters and rescue squads. ***Sponsor:*** *Representative Harrison and Glazier (HB 2073)*	**$10.00**
Fox Hunting. – Fox hunting is a growing sport and an economic factor in eastern North Carolina. ***Sponsor:*** *Representative Crawford (Requested amendment)*	**$10.00**
Gold Star. – Issuable to the recipient of the Gold Star lapel button. A Gold Star lapel button is issuable to the immediate family members of a person who lost his or her life in active military service.	**$10.00**
Greyhound Friends of North Carolina. – The additional fee revenue generated from the sale of the plate will be transferred to Greyhound Friends of North Carolina, Inc. to be used for the care and upkeep of retired greyhound racers that are awaiting adoption. ***Sponsor:*** *Sen. Berger (requested)*	**$20.00**
Kappa Alpha Psi Fraternity. – The plate will bear the fraternity's symbol and name. ***Sponsor:*** *Sen. Graham (SB 1773)*	**$10.00**

[4] There are 96 organizations trying to obtain the 300 minimum plate applications. Some of the organizations have been trying to meet this minimum number since 1992.

[5] The design of plates that are not 'First in Flight' plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. G.S. 20-63(b).

Leukemia and Lymphoma Society. – The additional fee revenue generated from the sale of the plate will be transferred to the Eastern Chapter of the North Carolina Leukemia & Lymphoma Society. The funds may be divided between the Eastern and Western chapters of the North Carolina Leukemia & Lymphoma Society. The funds must be used for blood cancer research, awareness, and education. ***Sponsor:*** *Representatives Weiss; Capps, and Faison (HB 2511)*	**$15.00**
Lung Association. – The additional fee revenue generated from the sale of the plate will be transferred to the American Lung Association of North Carolina, Inc. to be used for eliminating lung disease and fostering healthy breathing for all people through prevention, outreach, education, research, and advocacy. ***Sponsor:*** *Representative Harrison, Martin, Fisher, Haire; Glazier (HB 2072)*	**$15.00**
Prince Hall Mason – The additional fee revenue derived from the sale of the plate will be transferred to The Most Worshipful Prince hall Grand Lodge of Free and Accepted Masons of North Carolina and Jurisdiction, Inc. to be used for scholarships, family assistance, and other charitable causes. ***Sponsor:*** *Representative Pierce, Wainwright; and Faison (HB 2690)*	**$20.00**
NC Children's Promise. – The North Carolina's Children's Promise is a statewide initiative to promote North Carolina's Children's Hospital. Its mission is to secure financial and community resources to provide comprehensive, family-centered healthcare for children of North Carolina. It began in 2002 as a partnership between the N.C. Children's Hospital and the Curtis Media Group. The additional fee revenue generated from the sale of the plates will be transferred to The Medical Foundation of North Carolina, Incorporated, to be used to support the N.C. Children's Promise. ***Sponsor:*** *Representative Insko (HB 2459)*	**$25.00**
NC State Parks. – There is a special plate category for State attractions. The cost of a State attraction plate is $30. This bill adds to the category of State attraction plates the authorization for DMV to issue a NC State Parks plate. The additional fee revenue generated from the sale of the plate will be divided equally between the Natural Heritage Trust Fund and the Parks and Recreation Trust Fund. ***Sponsor:*** *Sen. Albertson (requested)*	**$30.00**
Support Our Troops. – Support Our Troops is a nonprofit organization whose purpose is to provide financial assistance to the troops and their families. The additional fee revenue generated from the sale of the plate will be used to provide support and assistance to the troops and their families. ***Sponsor:*** *Representative Glazier, Dickson, Grady, Pate; Blackwood, Cleveland, Current, Faison, Harrison, McGee, Pierce, Preston, Rapp, Setzer, Spear, Steen, Underhill, Vinson, Wainwright, and Weiss (HB 1993)*	**$30.00**
U. S. Equine Rescue League. – The United States Equine Rescue League's mission is to save, protect, and rehabilitate equines in need. It rescues an average on one hundred equines a year. The additional fee revenue generated from the sale of the plate will be used for the care and upkeep of rescued equines. ***Sponsor:*** *Representative Underhill (HB 2245)*	**$20.00**

H1993e2-SMRB-CSRB

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1993

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1993-ARBf-115 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [YES]
H1993-PCS60839-RBf-61

Senator Rand

moves to amend the bill on page 1, lines 2 through 12,by rewriting the line to read:
"AN ACT TO INCREASE THE FEE FOR A BREAST CANCER AWARENESS SPECIAL PLATE TO SUPPORT SERVICES TO DETECT BREAST CANCER EARLIER; TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE THE FOLLOWING NEW SPECIAL REGISTRATION PLATES: CAROLINA'S AVIATION MUSEUM, EMT, FOX HUNTING, GOLD STAR, GREYHOUND FRIENDS OF NC, KAPPA ALPHA PSI FRATERNITY, LEUKEMIA & LYMPHOMA SOCIETY, LUNG CANCER RESEARCH, NC CHILDREN'S PROMISE, NC STATE PARKS, PRINCE HALL MASON, SUPPORT OUR TROOPS, AND US EQUINE RESCUE LEAGUE; TO ELIMINATE THE REGISTRATION PLATE FEE REQUIREMENT FOR INDIVIDUALS WHO QUALIFY FOR THE LEGION OF VALOR SPECIAL REGISTRATION PLATE; TO ADD THE DUCKS UNLIMITED SPECIAL PLATE TO THE LIST OF PLATES NOT REQUIRED TO HAVE A "FIRST IN FLIGHT" BACKGROUND; AND TO REPEAL THE SUNSET ON THE HARLEY OWNERS' GROUP AND ROCKY MOUNTAIN ELK FOUNDATION SPECIAL LICENSE PLATES.";

And on page 2, lines 18 and 19, by inserting a new subdivision between those lines to read and by renumbering the remaining subdivisions accordingly:
"(15) Ducks Unlimited.";

And on page 4, lines 10 through 12, by rewriting the lines to read:
"registration plate to a recipient of ~~the Congressional Medal of Honor,~~ a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war. All other special

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1993

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1993-ARBf-115 [v.1]

registration plates, including additional ~~Congressional Medal of Honor,~~ Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1993 DATE _____

~~S. B. No.~~ _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line s 18-19

( ) WHICH CHANGES THE TITLE

by inserting the following:

"(15) Duck Unlimited."

and on page 4, lines 10 and 12, by striking through "~~Congressional Medal of Honor~~" and adding immediately thereafter the following:

"Legion of Valor".

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1025
PROPOSED SENATE COMMITTEE SUBSTITUTE H1025-CSRBx-54 [v.15]

6/21/2006 11:30:28 AM

Short Title: Various ABC Law Changes. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOL BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(16) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(38) Winemaking on premises permit. -- $400.00.

(39) Wine shipper packager permit --$100.00."

SECTION 4. G.S. 18B-1001.1(c) reads as rewritten:

"(c) A wine shipper permittee may contract with the holder of a wine shipper packager permit for the packaging and shipment of wine pursuant to this section. The direct shipment of wine by wine shipper or wine shipper packager permittees ~~made~~ pursuant to this section shall be made by approved common carrier only. Each common carrier shall apply to the Commission for approval to provide common carriage of wines shipped by holders of permits issued pursuant to this section.

Each common carrier making deliveries pursuant to this section shall:

(1) Require the recipient, upon delivery, to demonstrate that the recipient is at least 21 years of age by providing a form of identification specified in G.S. 18B-302(d)(1).

(2) Require the recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the Commission.

(3) Refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification as required by subdivision (1) of this subsection.

(4) Submit any other information that the Commission shall require.

All wine shipper and wine shipper packager permittees shipping wines pursuant to this section shall affix a notice in 26-point type or larger to the outside of each package of wine shipped within or to the State in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY". Any delivery of wines to a person under 21 years of age by a common carrier shall constitute a violation of G.S. 18B-302(a)(1) by the common carrier. The common carrier and the wine shipper or wine shipper packager permittee shall be liable only for their independent acts.'

SECTION 5. G.S. 18B-1001.2 reads as rewritten:

'§ 18B-1001.2. Additional wine shipping requirements.

(a) A wine shipper permittee shall:

(1) Compile and submit to the Commission quarterly a summary indicating all wine products shipped, including brand and price of each

product, date of each shipment, quantity of each shipment, and amount of excise and sales tax remitted to the Department of Revenue. The report shall include all wine products shipped on the permittee's behalf under contract with a wine shipper packager.

(2) Register with the Department of Revenue as a wine shipper permittee and provide any additional information required by the Department.

(b) The Commission may adopt rules to carry out the provisions of this section and other related provisions governing the direct shipping of wine."

SECTION 6. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1001.3. Authorization of wine shipper packager permit.**

The holder of a wine shipper packager permit may provide services for the warehousing, packaging and shipment of wine on behalf of a winery holding a wine shipper permit. A wine shipper packager permit authorizes the holder to receive, in closed containers, wine produced by and belonging to a wine shipper permittee, and to place the unopened wine in containers or packaging materials as a service to the wine shipper permittee in connection with the marketing and sale of its wine products. A wine shipper packager may package and return wine products to the wine shipper permittee or, on behalf of the wine shipper permittee, may package and ship wine products in closed containers to individual purchasers inside and outside this State in accordance with the provisions of G.S. 18B-1001.1. The permit may be issued to a USDA-approved company specializing in warehousing and contract packaging.'

SECTION 7. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 ~~seats.~~seats, or to any golf courses owned or leased by the institutions and open to the public for use."

SECTION 8. G.S. 18B-105(a) reads as rewritten:

"(a) General Rule. – No person shall advertise alcoholic beverages in this State except in compliance with this Article and the rules of the Commission."

SECTION 9. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1010. Use of discounts in advertising.**

Advertising for an alcoholic beverage may not include a coupon offering a free alcoholic beverage. A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise by means of a coupon, a membership card, a discount card, or a retailer's loyalty card in the following circumstances:

(1) The permittee may provide a discount coupon for a malt beverage or wine the person sells at retail for off-premises consumption.

(2) The permittee may require a customer to use the permittee's membership card, discount card, or loyalty card when purchasing a malt beverage or wine the person sells at retail for off-premises consumption in order to receive a discounted price on the malt beverage or wine."

SECTION 10. G.S. 18B-603(f2) reads as rewritten:

"(f2) Permits for Special ABC Areas. – The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(2), G.S. 18B-1001(3), G.S. 18B-1001(4), G.S. 18B-1001(5), G.S. 18B-1001(6), and G.S. 18B-1001(10) to qualified persons and establishments located within a Special ABC area as defined in G.S. 18B-101, provided that: (i) if such area is a municipal corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S. 18B-600, which election may be held regardless of the number of registered voters located within the municipal corporation; or (ii) if such area is unincorporated but has within such area a private association or club, the board of such private association or club shall call and conduct a special meeting at which meeting a majority of private association members, club members, lot and home owners, votes and approves the sale of mixed beverages, and the board certifies the results of such meeting to the Alcoholic Beverage Control Commission. The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(3), G.S. 18B-1001(5), and G.S. 18B-1001(10) to a restaurant located on property contiguous to a special ABC area, if, according to the 2000 census, the population of the county in which the area is located does not exceed 30,000 and a city in that county has approved ABC stores and has a population of at least 6,500. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the Special ABC area."

SECTION 11. G.S. 18B-108 reads as rewritten:

"**§ 18B-108. Sales on trains.**

Alcoholic beverages may be sold on railroad trains in this State upon compliance with Article 2C of Chapter 105 of the General Statutes. Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of a rail line that carries at least 60,000 passengers annually."

SECTION 12. G.S. 18B-1001(16) reads as rewritten:

"**§ 18B-1001. Kinds of ABC permits; places eligible.**

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

...

(16) Wine Shop Permit. – A wine shop permit authorizes the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, and authorizes wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. ~~The sale of wine for consumption on the premises shall be limited to those amounts that remain in opened bottles upon the conclusion of an authorized wine tasting, and individual servings shall not exceed four ounces per glass.~~The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6. of Article 8 of Chapter 130A of the General Statutes."

SECTION 13. This act is effective when it becomes law.

HOUSE BILL 1025:
Various ABC Law Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 14, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H1025-CSRB		Committee Counsel

SUMMARY: House Bill 1025 creates a new "Winemaking on Premises" permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. There is a $400 application fee for the permit. The Proposed Senate Committee Substitute adds six provisions to the bill:

- *It would allow a third party business to contract with a wine shipper permittee for the packaging and shipment of wine. (Sections 4-6, Added at the request of Sen. Purcell)*
- *It would incorporate the contents of Sen. Rand's Senate Bill 2035, which would allow the sale of beer and wine at golf courses owned or leased by constituent institutions of the UNC. (Section 7)*
- *It would allow a retailer to issue coupons or utilize discount or loyalty cards to provide a discount off the price of beer and wine sold by the retailer for off-premises consumption. (Sections 8 and 9, Added at the request of Sen. Hagan)*
- *It would allow the ABC Commission to issue beer, wine, and mixed beverage permits to a restaurant that is located in an area that meets the conditions in the bill. The only area that meets these conditions at this time is Transylvania County. (Section 10, Added at the request of Sen. Rand)*
- *It would allow a beer and wine wholesaler to sale and deliver beer and wine to an officer or agent of a rail line that carries at least 60,000 passengers annually. (Section 11, Added at the request of Sen. Hoyle)*
- *It would make changes to the wine shop permit. (Section 12, Added at the request of Sen. Hagan)*

WINEMAKING ON PREMISES PERMIT (Sections 1-3): Under G.S. 18B-307 it is generally unlawful for any person without the appropriate ABC permit to:

- Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage
- Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage.
- Manufacture any alcoholic beverage, without first obtaining the applicable ABC permit and revenue licenses.

There are two notable exceptions to the general prohibition against the unlicensed manufacture of alcoholic beverages. G.S. 18B-306 allows an individual to make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests; and G.S. 18B-1001(14) provides for the manufacture of malt beverages pursuant to a "Brew on Premises" permit. A brew on premises permit authorizes the holder to rent the equipment and space necessary to produce malt beverages only; it does not apply to the manufacture of wine.

A Brew on Premises permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in federal law. The statute requires the customer to do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

Sections 1 through 4 of House Bill 1025 would provide for the licensing of commercial establishments in which individuals could purchase ingredients and rent equipment, time, and space to make unfortified wine on the premises for their personal and family use, similar to the current brew on premises permit for making malt beverages. The permit holder will not engage in the actual production of the wine, and all wine must be removed from the premises by the customer and used only for home consumption and the customer's personal use. The fee for the permit is $400. That is same amount as a 'Brew on Premises' permit.

WINE SHIPPER PACKAGER PERMIT (Sections 3-6): Current ABC laws does not provide for third parties to handle wine shipments unless that party takes ownership of the wine. The PCS for House Bill 1025 establishes a 'wine shipper packager' permit and authorizes a wine shipper packager to provide services for the warehousing, packaging, and shipment of wine on behalf of a winery holding a wine shipper permit. The creation of a wine shipper packager permit would allow third party businesses that specialize in warehousing and contract packaging to support the wine industry by providing a means for distribution of wine to customers. A wine shipper packager permit would authorize the holder of the permit to receive, in closed containers, wine produced by and belonging to a wine shipper permittee, and to place the unopened wine in containers or packaging materials in connection with the marketing and sale of the wine products. The cost of the permit would be $100. The permit must be renewed annually.

SALE OF BEER AND WINE AT GOLF COURSES OWNED OR LEASED BY CONSTITUENT INSTITUTIONS OF THE UNC SYSTEM (Section 7): Current law does not permit the sale of beer and wine by a business on the campus or property of a public school or college. There are some exceptions to this rule: regional facilities operated by a facility authority; a hotel or nonprofit alumni organization with a mixed beverage or special occasion permit; and performing arts centers if the seating capacity does not exceed 2000 seats. The PCS for House Bill 1025 would create exception for golf courses owned or leased by the institutions and open to the public. This change in the law is one of the items approved by the Board of Governors for its legislative agenda this session.

USE OF DISCOUNTS IN ADVERTISING AT THE RETAIL LEVEL (Sections 8 and 9): Under current law, no person may advertise alcoholic beverages in the State except in compliance with the rules of the ABC Commission.[1] The rules of the Commission prohibit the use of cents-off coupons or coupons offering free alcoholic beverages as a method of advertising.[2] The PCS for House Bill 1025

[1] G.S. 18B-105.
[2] NCAC 02S.1006.

would give retailers who have on-premises or off-premises beer and wine permits or a wine shop permit the ability to advertise beer and wine by offering a discount coupon for off-premises consumption. The discount may be offered through the use of a permittee's membership card. The advertising may not include a coupon offering a free alcoholic beverage.

RESTAURANT BEER, WINE, AND MIXED BEVERAGE PERMIT (Section 10): Under current law the ABC Commission may only issue permits to qualified applicants in areas specified in G.S. 18B-603. Subsection (f) of G.S. 18B-603 authorizes the Commission to issue certain permits in Special ABC areas. (The definition of a Special ABC area is included below.) The PCS for House Bill 1025 would allow the Commission to issue on-premises beer, wine, and mixed beverage permits to a restaurant located on property that is contiguous to a Special ABC area established before January 1, 1993, that meets both of the following conditions:

- The Special ABC area is located in a county that has a population of less than 35,000, based on the 2000 federal census.
- At least one city within the county with a population in excess of 6,500 has approved ABC stores.

The only county that has a Special ABC area that meets these conditions is Transylvania County.

SALES ON TRAINS (Section 11): Current law permits the sale of alcoholic beverages on trains. However, the agent or officer of a rail line must purchase the alcoholic beverages from a retailer. The PCS for House Bill 1025 would allow a rail line to purchase alcoholic beverages from a wholesaler or a retailer if the rail line carries at least 60,000 passengers annually. This provision would allow the Great Smoky Mountain Railroad to purchase beer and wine from wholesalers.

EFFECTIVE DATE: The bill would be effective when it becomes law.

Brenda Carter, counsel to the House Committee on Alcoholic Beverage Control, contributed to this summary.

H1025e1-SMRB-CSRB

§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

...

(13a) **(See note)** "Special ABC area" means an area that meets the following requirements: Either:

a. The area has fewer than 500 permanent residents, and the area:

1. Is located in a county that borders another state, that has at least one city that has approved the operation of an ABC store, and in which the sale of unfortified wine and malt beverages is permitted countywide or in one city; and
2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

b. The area has more than 500 permanent residents, and the area:

1. Is located in a county:
   I. Where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved;
   II. That borders on a county that has approved the sale of alcoholic beverages countywide and contains an international airport; and
   III. Borders on a county where ABC stores have heretofore been established by petition pursuant to law; and
2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

c. The area is an area of a county where the following requirements are met:

1. The county borders on the Atlantic Ocean and has a seaport supporting oceangoing vessels;
2. ABC stores have been established in the county and the sale of mixed beverages is allowed in six or more municipalities;
3. The population of the county, according to the 2000 census, exceeds 52,000;
4. The tourism economy of the county is made up of more than 3,000 tourism-related jobs; and
5. Tourism expenditures within the county exceed two hundred million dollars ($200,000,000) annually.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1025

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1025-ARB-112 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H1025-CSRBx-54

Senator Hoyle

moves to amend the bill on page 4, lines 12 through 32, by deleting those lines and by renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1963*

Committee Substitute Favorable 6/5/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1963-CSSVx-80 [v.9]

6/28/2006 10:57:44 AM

Short Title: Revenue Laws Tech. & Motor Fuel Tax Changes. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.82(a) reads as rewritten:

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of ~~Agriculture and Consumer Services~~ Commerce under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on

the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount ~~so determined~~ shall ~~in no case~~ not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each ~~such~~ corporation ~~plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified~~ nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege ~~tax, which is hereby levied~~ tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein provided.~~ provided in this section. The tax imposed in this section shall ~~in no case~~ not be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each ~~such~~ corporation in this State. Appraised value of tangible property including real estate ~~shall be~~ is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. ~~Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term "total actual investment in tangible property" as used in this section ~~shall be construed to mean~~ means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming ~~such~~ this deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that ~~such~~ the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to ~~such~~ the devices,

plants or equipment, that ~~such~~ the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose ~~thereof~~ is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas ~~shall be~~ is treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to ~~such~~ pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

SECTION 3.(a) G.S. 105-130.2 reads as rewritten:

"...

(4a) Gross income. – Defined in section 61 of the Code.

~~(4a)~~(4b) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.

..."

SECTION 3.(b) G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in G.S. ~~105-130.2(5).~~105-130.2(4b)."

SECTION 4.(a) G.S. 105-130.47(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~ wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(b) G.S. 105-151.29(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the

fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(c) G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(27) To ~~publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.~~provide a report required under this Chapter.

...

(30) **(Effective for business activities occurring on or after May 1, 2005)** To ~~publish the information required under G.S. 105-129.54 and to~~ prove that a business does not meet the definition of "small business" under Article 3F of this Chapter because the annual receipts of the business, combined with the annual receipts of all related persons, exceeds the applicable amount.

...

~~(32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly.~~

...

(34) **(Effective for taxable years on or after January 1, 2005)** To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of the Department of Commerce and with the regional film ~~commissions and to publish the reports required under those sections.~~commissions.

...

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer.

..."

SECTION 5.(a) G.S. 105-164.3(49) reads as rewritten:

"(49) Use. ~~Means and includes the~~ The exercise of any ~~right or power~~ right, power, or dominion whatsoever over tangible personal property or a service by ~~a~~ the purchaser ~~thereof and includes, but is not limited to, any~~ of the property or service. The term includes withdrawal from

storage, distribution, installation, affixation to real or personal property, ~~or~~ and exhaustion or consumption of the tangible personal property or service by the owner or ~~purchaser thereof, but purchaser.~~ The term does not include the sale of tangible personal property or a service in the regular course of business."

SECTION 5.(b) G.S. 105-164.16(a) reads as rewritten:

"(a) General. – Sales and use taxes are payable quarterly, monthly, or semimonthly as specified in this section. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property or services that ~~was~~ were purchased or received during the reporting period and ~~is~~ are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed."

SECTION 6. G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 7. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Sales tax part of purchase price.**

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this

Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer."

SECTION 8.(a) G.S. 105-164.13(1a) reads as rewritten:

"(1a) Sales of the following to a farmer, as defined in subdivision (1) of this section:

a. A container ~~sold to a farmer, as defined in subdivision (1) of this section,~~ used for a purpose set out in ~~that~~ subdivision (1) of this section or in packaging and transporting the farmer's product for sale.

b. A grain, feed, or soybean storage facility, and parts and accessories attached to the facility."

SECTION 8.(b) G.S. 105-164.13(4e) is repealed.

SECTION 9. G.S. 105-164.14(k) reads as rewritten:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a refund allowed in subsections (a1), (g), (h), (i), ~~and (j)~~(j), and (l) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 10. G.S. 105-164.15A reads as rewritten:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 11. G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina."

SECTION 12.(a) G.S. 105-233 and G.S. 105-234 are repealed.

SECTION 12.(b) G.S. 105-236 reads as rewritten:

"**§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.**

(a) Penalties. – ~~Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:~~The following civil penalties and criminal offenses apply:

(1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution ~~in this State~~ to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

...

~~(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.~~

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1."

SECTION 12.(c) G.S. 105-449.48 and G.S. 105-449.127 are repealed.

SECTION 12.(d) G.S. 105-449.49 reads as rewritten:

"**§ 105-449.49. Temporary permits.**

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State for three days without registering the vehicle in

accordance with G.S. ~~105-449.47 for not more than three days.~~ 105-449.47. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 13.(a) G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender ~~is not required to obtain a separate license~~ and who transports fuel is considered to be licensed as a motor fuel ~~transporter if the distributor or blender does not transport motor fuel for others for hire.~~transporter."

SECTION 13.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of ~~imported or exported~~ motor fuel.**

(a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this State or exports motor fuel from this State~~ must file a monthly informational return with the Secretary that shows motor fuel ~~received or delivered for import or export~~ transported in this State by the transporter during the month. ~~This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

(b) Content. – The return required by this section is due by the 25th day of the month following the month covered by the return. The return must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of

motor fuel received, the date the motor fuel was received, and the destination state of the fuel."

SECTION 14.(a) G.S. 105-449.60 is amended by adding a new subdivision to read:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

...

(10a) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel."

SECTION 14.(b) G.S. 105-449.88A reads as rewritten:

"**§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.**

~~(a) Exempt Cards at Rack. – When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.~~

(b) Exempt ~~Cards at Retail.~~ Card or Code. – ~~An "exempt card or code" is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.~~ An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or ~~exempt access card~~ code is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

SECTION 14.(c) G.S. 105-449.90 reads as rewritten:

"**§ 105-449.90. When tax return and payment are due.**

(a) Filing Periods. – The excise tax imposed by this Article is payable when a return is due. A return is due ~~annually, quarterly,~~annually or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

~~A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.~~

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 3rd of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. – A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

~~(c) Quarterly Filers. – A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.~~

(d) Monthly Filers on 22nd. – The following persons must file a monthly return by the 22nd of each month:

(1) A refiner.
(2) A supplier.
(3) A bonded importer.
(4) A blender.
(5) A tank wagon importer.
(6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
(7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 3rd. – An occasional importer must file a monthly return by the third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 23; 1997-60, s. 11.)"

SECTION 14.(d) G.S. 105-449.93 reads as rewritten:

"**§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for licensed distributors and some licensed importers.**

~~(a) Deduction. – A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder's intent to resell the fuel in an exempt sale:~~

~~(1) A licensed distributor.~~
~~(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.~~

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a

discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State."

SECTION 14.(e) G.S. 105-449.94 is repealed.

SECTION 14.(f) G.S. 105-449.97(d) reads as rewritten:

"(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or ~~an exempt access~~ code to a person that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

SECTION 14.(g) G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
   a. Heating.
   b. Drying crops.
   c. A manufacturing process.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It has a dispensing device that is not suitable for use in fueling a highway vehicle."

SECTION 15.(a) G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month."

SECTION 15.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.**

(a) Requirement. – A motor fuel transporter that imports motor fuel into this State or exports motor fuel from this State must file a monthly informational return with the Secretary that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. – The return required by this section ~~is due by the 25th day of the month following the month covered by the return. The return~~ must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(c) Due Date. – The return required by this section is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 15.(c) G.S. 105-449.102(a) reads as rewritten:

"(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel."

SECTION 15.(d) G.S. 105-449.137(b) reads as rewritten:

"(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due ~~monthly within 25 days after the end of each month.~~ on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary."

SECTION 15.(e) G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of each month~~ on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of ~~G.S. 105-449.100.~~G.S. 105-449.90.

(1) Motor fuel.

(2) Alternative fuel used to operate a highway vehicle.

(3) Kerosene."

SECTION 16.(a) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 16.(b) G.S. 105-449.107 reads as rewritten:

"**§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.**

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due

on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.
(2) A solid waste compacting vehicle.
(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.
(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.
(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. Article 5F of this Chapter determines the amount of privilege tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

SECTION 17. G.S. 105-449.120(a)(3a) is repealed.

SECTION 18. The catch line of G.S. 105-249.2 reads as rewritten:

"**§ 105-249.2. Due date extended and penalties waived for certain military personnel or ~~individuals~~ persons affected by a presidentially declared disaster.**"

SECTION 19. The catch line of G.S. 143B-437.71 reads as rewritten:

"§ 143B-437.71. One North Carolina Fund established as a ~~nonreverting account.~~special revenue fund."

SECTION 20.(a) G.S. 153A-155(d) reads as rewritten:

"(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 20.(b) G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 21. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 22. The introductory language for Section 59.2 of S.L. 2005-435 reads as rewritten:

"**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:".

SECTION 23. The introductory language of Section 4 of S.L. 2005-413 reads as rewritten:

"**SECTION 4.** ~~G.S. 105-129.15(7) reads~~ Subdivisions (6) and (7) of G.S. 105-129.15 read as rewritten:".

SECTION 24. Section 1(a) of S.L. 2005-261 reads as rewritten:

"**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. ~~105-164(a)(1).~~105-164.4(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 25. G.S. 160A-537(d) reads as rewritten:

"(d) Effective Date. – The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city ~~council.~~council. except that if the governing body in the resolution states that general obligation bonds are anticipated to be authorized for the project. it may make the resolution effective immediately upon its adoption. but no ad valorem tax may be levied for a partial fiscal year."

SECTION 26. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section ~~for estates of decedents dying on or after January 1, 2002, is the maximum credit for state death taxes allowed under section 2011 of the Code without regard to the phase-out and termination of that credit under subdivision (b)(2) and subsection (f) of that section and without regard to~~ is the amount of the state death tax credit that, as of December 31, 2001, would have been allowed under section 2011 of the Code against the federal taxable estate. The tax may not exceed the amount of federal estate tax due under the Code. The federal taxable estate and the amount of the federal estate tax due are determined without taking into account the deduction for state death taxes allowed under Section 2058 of the ~~Code.~~ Code and the credits allowed under sections 2011 through 2015 of the Code.

If any property in the estate is located in a state other than North Carolina, the amount of tax payable depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by the lesser of the amount of the death tax paid the other state or an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of

which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 27. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity and telecommunications service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year. ~~The Secretary shall make an annual report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly by March 1 of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of this subsection over the preceding year.~~

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b), (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.

(3) A metropolitan sewerage district or a metropolitan water district in this State.

(4) A water and sewer authority created under Chapter 162A of the General Statutes.

(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.

(6) A sanitary district.

(7) A regional solid waste management authority created pursuant to G.S. 153A-421.

(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.

(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
(18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.
(21) The University of North Carolina Health Care System.
(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

SECTION 28. G.S. 105-278(a) reads as rewritten:

"(a) Real property designated as a historic ~~structure or site property~~ by a local ordinance adopted pursuant to G.S. ~~160A-400.7~~ 160A-399.4 or designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160A-400.5 is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287."

SECTION 29. G.S. 106-452 is repealed.

SECTION 30. Section 4 of this act is effective for taxable years beginning on or after January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. Section 26 of this act is effective when it becomes

law, and applies to the estates of decedents dying on or after January 1, 2005. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

HOUSE BILL 1963*
Committee Substitute Favorable 6/5/06

Short Title: Revenue Laws Tech. & Motor Fuel Tax Changes. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.82(a) reads as rewritten:

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of ~~Agriculture and Consumer Services~~ Commerce under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount ~~so determined~~ shall ~~in no case~~ not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each ~~such~~ corporation ~~plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified~~ nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege ~~tax, which is hereby levied~~ tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein provided.~~ provided in this section. The tax imposed in this section shall ~~in no case~~ not be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each ~~such~~ corporation in this State. Appraised value of tangible property including real estate ~~shall be~~ is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. ~~Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term "total actual investment in tangible property" as used in this section ~~shall be construed to mean~~ means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming ~~such~~ this deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that ~~such~~ the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to ~~such~~ the devices, plants or equipment, that ~~such~~ the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management

Commission or local air pollution control program and that the primary purpose ~~thereof~~ is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas ~~shall be~~ is treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to ~~such~~ pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

SECTION 3.(a) G.S. 105-130.2 reads as rewritten:

"...

(4a) Gross income. – Defined in section 61 of the Code.

~~(4a)~~(4b) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.

..."

SECTION 3.(b) G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in G.S. ~~105-130.2(5).~~105-130.2(4b)."

SECTION 4.(a) G.S. 105-130.47(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased ~~or purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~ wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(b) G.S. 105-151.29(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~wages on which ~~the production company remitted~~

withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(c) G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

~~(32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly.~~

...

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer."

SECTION 5.(a) G.S. 105-164.3(49) reads as rewritten:

"(49) Use. – Means and includes the exercise of any right or power or dominion whatsoever over tangible personal property or over any service subject to tax under this Article by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, distribution, installation, affixation to real or personal property, or exhaustion or consumption of tangible personal property or any service subject to tax under this Article by the owner or purchaser thereof, but does not include the sale of tangible personal property or of any service subject to tax under this Article in the regular course of business."

SECTION 5.(b) G.S. 105-164.16(a) reads as rewritten:

"(a) General. – Sales and use taxes are payable quarterly, monthly, or semimonthly as specified in this section. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property or services sourced to this State that ~~was~~ were purchased or received during the reporting period and ~~is~~ are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed."

SECTION 6. G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 7. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Sales tax part of purchase price.**

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer."

SECTION 8.(a) G.S. 105-164.13(1a) reads as rewritten:

"(1a) Sales of the following to a farmer, as defined in subdivision (1) of this section:

a. A container ~~sold to a farmer, as defined in subdivision (1) of this section,~~ used for a purpose set out in ~~that~~ subdivision (1) of this section or in packaging and transporting the farmer's product for sale.

b. A grain, feed, or soybean storage facility, and parts and accessories attached to the facility."

SECTION 8.(b) G.S. 105-164.13(4e) is repealed.

SECTION 9. G.S. 105-164.14(k) reads as rewritten:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a refund allowed in subsections (a1), (g), (h), (i), ~~and (j)~~(i), and (l) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 10. G.S. 105-164.15A reads as rewritten:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 11. G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina."

SECTION 12.(a) G.S. 105-233 and G.S. 105-234 are repealed.

SECTION 12.(b) G.S. 105-236 reads as rewritten:

"**§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.**

(a) Penalties. – ~~Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:~~The following civil penalties and criminal offenses apply:

(1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution ~~in this State~~ to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

...

~~(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.~~

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1."

SECTION 12.(c) G.S. 105-449.48 and G.S. 105-449.127 are repealed.

SECTION 12.(d) G.S. 105-449.49 reads as rewritten:

"**§ 105-449.49. Temporary permits.**

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State for three days without registering the vehicle in accordance with G.S. ~~105-449.47 for not more than three days.~~ 105-449.47. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 13.(a) G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender ~~is not required to obtain a separate license~~ and who

transports fuel is considered to be licensed as a motor fuel ~~transporter if the distributor or blender does not transport motor fuel for others for hire.~~transporter."

SECTION 13.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of ~~imported or exported~~ motor fuel.**

(a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this State or exports motor fuel from this State~~ must file a monthly informational return with the Secretary that shows motor fuel ~~received or delivered for import or export~~ transported in this State by the transporter during the month. ~~This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

(b) Content. – The return required by this section is due by the 25th day of the month following the month covered by the return. The return must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel."

SECTION 14.(a) G.S. 105-449.60 is amended by adding a new subdivision to read:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

...

(10a) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel."

SECTION 14.(b) G.S. 105-449.88A reads as rewritten:

"**§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.**

~~(a) Exempt Cards at Rack. – When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.~~

(b) Exempt ~~Cards at Retail.~~ Card or Code. – ~~An "exempt card or code" is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.~~ An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or ~~exempt access card~~ code is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

SECTION 14.(c) G.S. 105-449.90 reads as rewritten:

"**§ 105-449.90. When tax return and payment are due.**

(a) Filing Periods. – The excise tax imposed by this Article is payable when a return is due. A return is due ~~annually, quarterly,~~annually or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

~~A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.~~

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 3rd of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. – A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

~~(c) Quarterly Filers. – A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.~~

(d) Monthly Filers on 22nd. – The following persons must file a monthly return by the 22nd of each month:

(1) A refiner.
(2) A supplier.
(3) A bonded importer.
(4) A blender.
(5) A tank wagon importer.

(6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.

(7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 3rd. – An occasional importer must file a monthly return by the third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 23; 1997-60, s. 11.)"

SECTION 14.(d) G.S. 105-449.93 reads as rewritten:

"**§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for licensed distributors and some licensed importers.**

~~(a) Deduction. – A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder's intent to resell the fuel in an exempt sale:~~

~~(1) A licensed distributor.~~

~~(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.~~

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State."

SECTION 14.(e) G.S. 105-449.94 is repealed.

SECTION 14.(f) G.S. 105-449.97(d) reads as rewritten:

"(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or ~~an exempt access~~ code to a person that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

SECTION 14.(g) G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
   a. Heating.
   b. Drying crops.
   c. A manufacturing process.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It has a dispensing device that is not suitable for use in fueling a highway vehicle."

SECTION 15.(a) G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.
(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.
(3) The number of gallons of motor fuel gained or lost at the terminal during the month."

SECTION 15.(b) G.S. 105-449.101 reads as rewritten:

"§ 105-449.101. **Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.**

(a) Requirement. – A motor fuel transporter that imports motor fuel into this State or exports motor fuel from this State must file a monthly informational return with the Secretary that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. – The return required by this section ~~is due by the 25th day of the month following the month covered by the return. The return~~ must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(c) Due Date. – The return required by this section is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 15.(c) G.S. 105-449.102(a) reads as rewritten:

"(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel."

SECTION 15.(d) G.S. 105-449.137(b) reads as rewritten:

"(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due ~~monthly within 25 days after the end of each month.~~ on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary."

SECTION 15.(e) G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the

General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of each month~~ on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of ~~G.S. 105-449.100.~~G.S. 105-449.90.

(1) Motor fuel.

(2) Alternative fuel used to operate a highway vehicle.

(3) Kerosene."

SECTION 16.(a) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 16.(b) G.S. 105-449.107 reads as rewritten:

"**§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.**

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.

(2) A solid waste compacting vehicle.

(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.

(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.

(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.

(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.

(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. Article 5F of this Chapter determines the amount of privilege tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

SECTION 17. G.S. 105-449.120(a)(3a) is repealed.

SECTION 18. The catch line of G.S. 105-249.2 reads as rewritten:

"**§ 105-249.2. Due date extended and penalties waived for certain military personnel or ~~individuals~~ persons affected by a presidentially declared disaster.**"

SECTION 19. The catch line of G.S. 143B-437.71 reads as rewritten:

"**§ 143B-437.71. One North Carolina Fund established as a ~~nonreverting account.~~special revenue fund.**"

SECTION 20.(a) G.S. 153A-155(d) reads as rewritten:

"(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 20.(b) G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or

before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 21. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 22. The introductory language for Section 59.2 of S.L. 2005-435 reads as rewritten:

"**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:".

SECTION 23. The introductory language of Section 4 of S.L. 2005-413 reads as rewritten:

"**SECTION 4.** ~~G.S. 105-129.15(7) reads~~ Subdivisions (6) and (7) of G.S. 105-129.15 read as rewritten:".

SECTION 24. Section 1(a) of S.L. 2005-261 reads as rewritten:

"**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. ~~105-164(a)(1).~~ 105-164.4(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 25. Section 4 is effective for taxable years beginning on or after January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. The remainder of this act is effective when it becomes law.

HOUSE BILL 1963:
Revenue Laws Tech. & Motor Fuel Tax Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Trina Griffin and Cindy Avrette Committee Counsel
Version:	H1963-CSSVx-80		

SUMMARY: House Bill 1963 makes several technical, clarifying, and administrative changes to the revenue laws and related statutes and to the motor fuel tax laws to improve collection and administration. Sections 1, 2, 7, 19, 21, 22, 23, 24, 27, and 28 are technical changes. Sections 3, 5, 6, 8, 12, 18, and 26 are clarifying changes. Sections 4, 9, 10, 11, 20, and 25 make administrative changes. Sections 13 through 17 are changes to the motor fuel tax laws designed to improve collection and administration efforts.

House Bill 1963 is a recommendation of the Revenue Laws Study Committee. Senate Bill 1453, introduced by Senate Hartsell, is a companion bill.

Changes made by the proposed committee substitute are in bold type below:

BILL ANALYSIS: This bill makes the following changes:

Section	Explanation
1	Corrects a departmental reference since S.L. 2005-380 transferred the NC Grape Growers Council from the Department of Agriculture and Consumer Services to the Department of Commerce.
2	Removes obsolete language and makes other stylistic changes. This statutory subsection makes two obsolete references to including the appraised value of intangible property in the appraised value base. This language became obsolete with the repeal of the intangibles tax effective for tax years beginning on or after January 1, 1995. The Department of Revenue does not require intangible property to be included in the appraised value base.
3(a) & (b)	Defines the term "gross income" in the corporate income tax law by reference to section 61 of the Code, which is the same definition that is currently found in the individual income tax law. Section 20(b) is a conforming change.
4	Section 4 relates to the new film incentives tax credit enacted last year. Subsections (a) and (b) make clarifying changes to the film incentives in both the corporate and individual provisions. First, the term "highly compensated individual" is limited to individuals who are compensated for services and does not include individuals who may sell goods in excess of the one-million-dollar limitation. The term is also amended Second, the exclusion of amounts paid to highly compensated individuals is clarified so that it is clear that the exclusion applies whether the individual is paid directly by the production or by an unrelated third-party. It is not uncommon for a production company to contract with a separate entity for the services of actors or other professionals involved in a production. Third, the statutes are amended so that withholdings must be remitted in order for compensation to qualify as a qualifying expense, but that withholding does not necessarily have to be performed by the

	production company. Subsection (c) makes changes to the confidentiality statute, one of which is related to the film incentives tax credit. It adds a new subdivision (36), which allows the Department of Revenue to provide to a production company claiming a film production credit information used by the Department to adjust the amount of the credit claimed by the production company. It also repeals subdivision (32), which allows the Department of Revenue to provide to Department of Public Instruction and the Fiscal Research Division reports regarding sales and use tax refunds received by school administrative units. This provision was enacted last year. However, Section 32(b) of S.L. 2005-435 amended the definition of tax information to exclude governmental agency refunds. Therefore, an exception is not needed in the confidentiality statute since the information is no longer confidential tax information. **It also rewrites (27) to create a generic exception for reports required by law rather than listing out specific statutes and makes conforming changes.**
5(a) & (b)	In 2005, the General Assembly made the use tax applicable to services sourced to this State. Section 21(a) is a conforming change which amends the definition of "use" to include services. Section 21(b) is a conforming change to the statute regarding use tax returns.
6	Corrects an inadvertent omission. In last year's budget bill, there was a rewrite of this statutory section on use tax. A credit should be allowed for both sales and use tax paid to another state, but the revised statute only provides a credit for sales tax paid. There was no intent to change the application of the tax and so, this section adds the phrase "or use" back into the statute.
7	Makes a grammatical change to the statute.
8(a) & (b)	Clarifies that the exemption from sales tax for sales of grain, feed, or soybean storage facilities and accessories only applies to sales made to farmers. This was one of the items previously subject to the 1%, $80 maximum rate of tax. The 1% rate was imposed on sales to farmers of grain, feed, or soybean storage facilities and accessories. Last year, to conform to the Streamlined Agreement, the General Assembly exempted these items from sales tax. However, the new exemption language did not limit the exemption to farmers.
9	Last year, a sales and use tax refund was authorized for the purchase of fuel by interstate passenger air carriers and by motorsports racing team or sanctioning body. Under current law, the Department of Revenue is required annually to publish the number of taxpayers claiming certain sales and use tax refunds. This section would add these categories of refunds to the reporting requirement.
10	Clarifies the effective date for a rate increase with regard to prepayments of service. In 2005, the General Assembly enacted G.S. 105-164.15A, which addresses the effective date for rate increases and decreases to taxable services, but the statute does not specifically address prepayments of service.
11	Provides a credit against the privilege tax for sales and use tax, or a similar type of tax,

	paid to another state. Currently, there is no specific provision for credits in the newly enacted Article 5F.
12	Section 12 makes changes to various penalty statutes. Section 12(a) repeals two misdemeanor statutes relating to the willful failure to comply with the tax laws and aiding and abetting in the violation of the tax laws. These violations are covered by G.S. 105-236(9) and therefore are unnecessary. Section 12(b) reorganizes the penalties statute and makes some technical and clarifying changes. It divides the former statutory section into three subsections: subsection (a) lists the various penalties available to the Department of Revenue for violations of the tax laws; subsection (b) is a recodification of the principle previously set out in subdivision (11), which states that a violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh; and subsection (c) restates language previously found at the beginning of the statute directing the disposition of the penalty proceeds to the Civil Penalty and Forfeiture Fund. This subsection also deletes an obsolete requirement to avoid the penalty for a bad check, which states that a person had sufficient funds in a bank account "in this State." Since the Department does not follow this requirement, it is being deleted. Section 12(c) repeals G.S. 105-449.127, which provides that civil penalties assessed for violation of the motor fuels tax laws be credited to the Highway Fund. G.S. 105-449.48 provides that fees collected for the issuance of temporary permits for motor carriers and all civil penalties collected for violations of the motor carrier laws be credited to the Highway Fund. Section 12(d) repeals this statute and moves the fee disposition language to G.S. 105-449.49. The repeal of these two statutes redirects from the Highway Fund to the Civil Penalty and Forfeiture Fund civil penalty proceeds collected under these two articles as required by *North Carolina School Boards Assn. v. Moore*. In July of 2005, the North Carolina Supreme Court held in *North Carolina School Boards Assn. v. Moore* that the penalties assessed under Chapter 105 are imposed as a monetary payment for a taxpayer's noncompliance with a mandate of the Revenue Act, that they are punitive in nature, and, as such, they are subject to Article IX, Section 7 of the NC Constitution requiring those funds be remitted to the Civil Penalty and Forfeiture Fund for use by the schools.
13(a) & (b)	Section 13 would give the Department the ability to cross match all motor fuel to ensure compliance with the motor fuel tax laws. Under current law, the Department may cross-match information regarding fuel entering the State and fuel leaving the State, but it cannot cross-match information regarding the intrastate movement of motor fuel. The Department has a new fuel tracking system that will better enable it to monitor the movement of fuel. The Department expects the system to be operational by the last quarter of this fiscal year. Section 13 makes the statutory changes necessary to enable the Department to review intrastate movements of fuel by providing that anyone who transports fuel must be licensed as a transporter and that all transporters must file informational returns on all movements of motor fuel. Section 13(a) provides that all people who transport motor fuel will be licensed as a motor fuel transporter. Under current law, a person licensed as a distributor or blender is

	considered to be licensed as a motor fuel transporter if the person transports the fuel for others for hire. This section would remove the exception for persons who transport their own fuel so that any distributor or blender who transports fuel – whether for hire or for their own use – would also be considered licensed as a transporter. Section 13(b) provides that a transporter must file an informational return showing deliveries of motor fuel. Under current law, only interstate movements of fuel must be reported on a monthly informational return. The change in this section of the bill would require such a return for all deliveries of fuel. This change would become effective July 1, 2007.
14	Section 14 would provide that all motor fuel leaving the terminal rack would be subject to the motor fuel excise tax. The Department requested this change to reduce the areas of evasion and inadvertent duplicate refunds. Under current law, a licensed distributor or importer may remove fuel from a terminal without paying the tax if the person has an exempt card issued by the supplier. This section would remove the ability of distributors and importers to use exempt cards at the terminal rack. Instead, they would be able to obtain a monthly refund on any sales of fuel to exempt entities.[1] This change would conform North Carolina's law to the laws of the surrounding states who do not allow untaxed gasoline or undyed fuel to leave their terminals without the imposition of the tax. Section 14(a) puts the definition of 'exempt card or code' in the definitional statute for the motor fuel article. Section 14(b) repeals the portion of the statute that allows fuel to be removed from the terminal without paying the tax. Section 14(c) repeals the requirement of a quarterly return and makes conforming changes. Section 14(d) removes the deduction a licensed distributor or importer may make for tax exempt fuel taken from the terminal rack because the ability to obtain the fuel without paying the tax is repealed in section 14(b). Section 14(e) repeals the statute requiring a licensed distributor or importer who obtains fuel at the terminal rack with an exempt card to file a quarterly reconciling return. Section 14(f) makes conforming changes. Section 14(g) provides a monthly refund procedure for a distributor who sells diesel fuel to an airport. A refund procedure already exists for sales of motor fuel to the other listed exempt entities.
15	Section 15 would establish a common due date for all motor fuel tax due and informational returns. Under current law, most of the monthly tax returns are due on the 22nd day of the month following the month covered by the return. Informational returns are due on the 25th day of the month following the month covered by the return. These sections provide that all monthly returns are due on the 22nd day of the month following the month covered by the return.
16	Adds a reference to the privilege tax imposed under Article 5F, which was enacted last year, with regard to refunds of motor fuels tax allowed for nonhighway use of a vehicle. A refund of motor fuels tax allowed for the nonhighway use of a vehicle is to be reduced by the amount of sales and use tax owed based on the method set out in G.S. 105-449.107. Prior to January 1, 2006, the amount of sales tax due was based on either

[1] G.S. 105-449.88 exempts the following entities from the motor fuel excise tax if it is sold to them for their use: the federal government, the State, local boards of education, charter schools, community colleges, counties, municipalities, and airports.

	the general State and local rates of tax or the 1% rate imposed on sales of fuel to farmers and manufacturers. Effective January 1, 2006, sales of fuel to farmers and manufacturers are subject to the new 1% privilege tax. Currently, these two statutes refer only to the sales and use taxes levied in Article 5.
17	Section 17 would remove the misdemeanor for taxpayers failing to pay the destination state taxes collected to that state. This provision was put into the law when North Carolina first moved to tax-at-the-rack. Today, all of the surrounding states have destination state tax laws. North Carolina does not collect and remit the taxes to those states, therefore this misdemeanor is no longer needed.
18	Amends the caption of G.S. 105-249.2 by replacing the word "individuals" with the word "persons." This statute provides, in part, that no penalties may be assessed for any period in which the time for filing a federal return or for paying a federal tax is extended because of a presidentially declared disaster. The relief provided by this statute is applied by the Department of Revenue equally to all tax entities, including businesses, and not just individuals.
19	Amends the caption of the statute to reflect what the statute actually provides. G.S. 143B-437.71(a) states, "The One North Carolina Fund is established as a special revenue fund in the Department of Commerce."
20	Section 20(a) and (b) conform the date an occupancy tax return is due to the date that the occupancy taxes are due.
21	Corrects an incorrect statutory reference.
22	Corrects an incorrect statutory reference.
23	Corrects introductory language from a 2005 session law.
24	Corrects an incorrect statutory reference within a local session law.
25	**Allows a municipality to create a municipal service district effective upon the adoption of the resolution creating it, rather than waiting for the first day of the next fiscal year, if general obligation bonds are anticipated to be authorized for the project. However, it provides that no ad valorem tax may be levied for a partial fiscal year.**
26	**Amends the state estate tax statute by clarifying that state estate tax liability may not exceed federal estate tax liability determined without regard to the deduction for state death taxes or certain federal credits. The Department of Revenue currently interprets the statute as limiting the state estate tax in this way, but the Estate Planning Section of the NC Bar Association has requested that clarifying language be put in the statute. This change will not change the way in which estate tax is calculated.**
27	**Repeals a reporting requirement related to sales and use tax refunds allowed to local school administrative units. This reporting requirement is unnecessary since the General Assembly changed the law in 2005 to redirect State sales and use tax revenues refundable to LEAs to the State Public School Fund.**
28	**Corrects an incorrect statutory reference.**

29	**Repeals as archaic G.S. 106-452, which sets the maximum charges for handling and selling tobacco on the floor of tobacco warehouses.**

EFFECTIVE DATE: Section 4 is effective for taxable years beginning on or after January 1, 2006. Sections 13 of the act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. The remainder of this act is effective when it becomes law.

H1963e1-SMSV-CSSVx-80

SENATE BILL 1458:
Rental Car Tax for Transit Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition S1458-CSRB		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 1458 would authorize Mecklenburg County to levy a vehicle rental tax on short-term lease or rental of vehicles. The bill would become effective when it becomes law.***

CURRENT LAW: In 1997, the General Assembly authorized Mecklenburg County to levy an additional ½ cent sales tax. The proceeds of the tax must be used for c

That same year, the General Assembly also authorized a regional public transportation authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the business of renting private passenger motor vehicles and motorcycles. The tax applies only to short-term rentals, i.e., rentals for a period of less than one year. The tax will be collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. This optional highway use tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority would be 13%. Each authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

BILL ANALYSIS: The PCS for Senate Bill 1458 would amend the 1997 law to authorize a county that may impose an additional ½ cent sales and use tax for public transit to also levy a vehicle rental tax. The county must allocate the proceeds of any vehicle rental tax it imposes to the largest city in the county that operates a public transportation system. The city must use the money to finance, construct, operate, and maintain local public transportation systems. Unlike the additional sales tax revenue, the revenue from this tax may be used to supplant and replace existing general fund revenues allocated to public transportation.

S1458e1-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1458*
PROPOSED COMMITTEE SUBSTITUTE S1458-CSRBf-64 [v.1]

6/28/2006 11:37:20 AM

Short Title: Rental Car Tax for Transit Changes. (Public)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS OF G.S. 105-550 TO PERMIT THE USE OF THE VEHICLE RENTAL TAX BY CERTAIN REGIONAL PUBLIC TRANSPORTATION ENTITIES THAT OPERATE BY INTERLOCAL AGREEMENT AMONG THE MUNICIPALITIES IN A SINGLE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 1997-417 is amended by adding a new section to read:

"**SECTION 3.1.** Any county where Section 1 of this act applies shall be considered to be an authority for the purpose of Section 3 of this act. Any reference to the board of trustees of an authority under Section 3 of that act means the board of commissioners as that section applies to a county under this section. Funds may be used only for financing, constructing, operating, and maintaining local public transportation systems, and the county shall appropriate and transfer the proceeds of the tax to the largest city in that county operating a public transportation system."

SECTION 2. G.S. 105-510(b), as enacted by Section 1 of S.L. 1997-417, reads as rewritten:

"(b) Use. – A county must allocate the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds only for financing, constructing, operating, and maintaining local public transportation systems. Any other unit of local government may use the net proceeds distributed to it under this Article only for financing, constructing, operating, and maintaining local public transportation systems. Every unit of government shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation ~~systems.~~ systems, except that if a unit receives the proceeds from an additional tax dedicated to public transportation, such proceeds may be used to supplant or replace existing funds or other resources."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 2009*
PROPOSED COMMITTEE SUBSTITUTE S2009-CSLYx-72 [v.9]

6/27/2006 4:12:22 PM

Short Title: Public-Private Partnerships for Schools. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW CAPITAL LEASE FINANCING FOR PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 37 of Chapter 115C is amended by adding a new section to read:

"**§ 115C-531. Capital leases of school buildings and school facilities.**

(a) Definitions. – The following definitions apply in this section:

(1) Capital lease. – A capital lease as defined by generally accepted accounting principles, regardless of how the parties describe the agreement.

(2) Private developer. – The entity with which the school board enters into a capital lease or build-to-suit lease under the provisions of this section.

(b) Authorization. – Local boards of education may enter into capital leases of real or personal property for use as school buildings or school facilities. The capital lease may relate to an existing building or a new school building to be constructed. The term of any capital lease, including any renewal periods, shall not exceed 40 years from the expected date that the local board of education will take occupancy of the property that is the subject of a capital lease. Subdivisions (c) and (d) of G.S. 115C-521 do not apply to a capital lease entered into under this section.

(c) Construction, Repairs, and Renovation. – The provisions of G.S. 115C-530(b) apply to a capital lease under this section. A capital lease entered into under this section may provide that the private developer is responsible for providing, or contracting for, construction, repair, or renovation work. Construction, repair, or renovation work undertaken or contracted by a private developer is not subject to the requirements of Article 8 of Chapter 143 of the General Statutes. Construction, repair, or renovation work undertaken or contracted by the private developer involving the estimated

expenditure of three hundred thousand dollars ($300,000) or more is subject to the provisions of G.S. 115C-532.

(d) Nonsubstitution Clause. – A capital lease may not contain a nonsubstitution clause that restricts the right of a local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by the capital lease.

(e) No Deficiency Judgment; No Pledge of Taxing Power. – No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. A capital lease shall state that it does not constitute a pledge of the taxing power or full faith and credit of the local board of education or board of county commissioners.

(f) Budgetary Accounting. – A capital lease entered into under this section shall be considered a continuing contract for capital outlay and is subject to G.S. 115C-441(c1); provided, however, notwithstanding any provision of G.S. 115C-441(c1) or G.S. 115C-426, in each fiscal year the appropriation of funds by the county for the payment of amounts due under the capital lease shall be at the discretion of the board of county commissioners.

(g) Local Government Commission Approval. – Capital leases entered into under this section are subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five-hundred-thousand-dollar ($500,000) threshold applies.

(h) No Agreements on Student Assignment. – A capital lease may not contain any provision with respect to the assignment of specific students or students from a specific area to any specific school.

(i) Lien Laws Not Affected. – The provisions of Article 2 of Chapter 44A of the General Statutes apply to any real property, improvement to the real property, and rights that flow with the real property that is subject to a capital lease under this section. Real property that is subject to a capital lease under this section is subject to liens and foreclosure actions in the same manner and to the same extent as if the property were owned in fee simple by a private entity.

"**§ 115C-532. Additional provisions applicable to build-to-suit capital leases.**

(a) Definitions. – The definitions of G.S. 115C-531 apply in this section. In addition, for the purposes of this section, the following definitions apply:

(1) Build-to-suit capital lease. – A capital lease that provides for the construction of new facilities or the renovation of existing facilities by the private developer, the cost of which is estimated to be greater than three hundred thousand dollars ($300,000).

(2) Prime contractor. – A contractor who contracts directly with the private developer or the private developer's construction manager at

risk, if any, for construction, repair, or renovation work under this section.

(b) Contract Provisions. – A build-to-suit capital lease may include contractual provisions by the private developer regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease. A local board of education may also enter into a separate agreement or series of related agreements regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease; provided all agreements are approved by the board of county commissioners in connection with the approval of the build-to-suit capital lease.

(c) Approval by Local Board of Education. – Before entering into a build-to-suit capital lease pursuant to this section, the local board of education shall adopt a resolution as provided in this subsection. Before adopting the resolution required by this subsection, the local board of education shall publish a notice of its intent to enter into a build-to-suit capital lease at least 10 days in advance of the date of the meeting at which the action is contemplated and in a newspaper having general circulation within the geographic area served by the local board of education. The notice shall include, at a minimum, the date, time, and place of the meeting, a description in brief and general terms of the subject of the lease, the name of the other party to the lease, and an indication of the board's intent to take action to authorize the lease at the indicated meeting. The resolution shall provide the following:

(1) That entering into the build-to-suit capital lease for one or more specified buildings or facilities is in the unit's best interests under all the circumstances. In making this evaluation, the local board of education may consider the time, cost, and quality of design, engineering, and construction, including the time required to begin and the time required to complete a particular activity; occupancy costs, including lease payments, life-cycle maintenance, repair, and energy costs; and any other factors the board deems relevant.

(2) That the private developer is qualified to provide, either alone or in conjunction with other identified and associated persons, the products and services called for under the proposed capital lease and any related agreements. The local board of education shall make this determination taking into account any factors the local board deems relevant, including the knowledge, skill, and reputation of the provider and its associated persons, the goals and plans of providers for utilization of minority business enterprises, and the costs to be incurred by the local board of education.

(d) Additional Requirements Regarding Design Services. – Required design and engineering services shall be performed by an engineer, to the extent permitted under G.S. 83A-13(b), or a licensed architect. Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a). All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance

apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section.

(e) Additional Requirements Regarding Construction Services. – A private developer is required to seek competition and minority business participation in connection with all construction work under this section in accordance with the following provisions

(1) A private developer shall either (i) solicit bids from prime contractors for all construction work under this section or (ii) select a construction manager at risk through a qualification based process in which case the selected construction manager at risk shall solicit bids from all of its prime contractors for all construction work under this section.

(2) The private developer or its construction manager at risk may prequalify contractors. The prequalification criteria, if any, shall be determined by the local board of education and the private developer to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the private developer and the local board of education.

(3) A private developer and its construction manager at risk, if any, shall comply with the requirements applicable to a public entity pursuant to G.S. 143-128.2 and prime contractors shall comply with the provisions of G.S. 143-128.2 applicable to contractors, except the private developer and its construction manager shall adopt the local board of education's minority participation goal. The local board of education shall require the private developer to submit its plan for compliance with G.S. 143-128.2 for approval by the local board of education prior to the private developer soliciting bids under this subsection.

(4) A private developer or its construction manager at risk shall publicly advertise at least thirty days in advance of the bid date in a newspaper having general circulation within the geographic areas served by the local board of education, shall open bids publicly, and shall award each contract to the lowest responsible, responsive, and prequalified bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the private developer and the local board of education and included in the bid solicitation. A private developer or its construction manager at risk shall enter into the construction contracts directly with the successful bidder. After the award of a contract or contracts, the private developer or its construction manager at risk and any contractor may negotiate and reach agreement with the successful bidder on modifications to all aspects of the contract, including the time for performance, the scope of the work, and the price to be paid.

(5) The local board of education, in its discretion, may require the private developer to provide a performance and payment bond for construction work in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes and may require the private developer to provide a bond or other appropriate guarantee to cover any other guarantees, products, or services to be provided by the private developer.

(f) Predevelopment Agreements with Private Developer Authorized. – Local boards of education may enter into predevelopment agreements with a private developer in advance of entering into a build-to-suit capital lease. Predevelopment agreements with private developers shall be approved by the board of county commissioners. Predevelopment agreements may include provisions for each of the following:

(1) Site selection, land acquisition, and site preparation, including such services as wetlands delineation, archaeological review, and State and local government land-use permitting.

(2) Building programming and design, including both architectural and engineering services pursuant to subsection (d) of this section.

(g) Real Estate Transfer Authorized. – Notwithstanding any contrary provisions of law, a city, county, or local board of education may, pursuant to the procedures in G.S. 160A-267, sell, lease, or otherwise transfer real or personal property to any private developer for construction, repair, or renovation of a school facility under a build-to-suit capital lease entered into pursuant to this section. The conveying unit may subject the property to any covenants, conditions, or restrictions as the unit deems to be necessary to carry out the purposes of this section. The disposition of property pursuant to this subsection is not subject to the requirements of G.S. 115C-518. No transfer by a local board of education under this subsection shall occur unless it is approved by the board of county commissioners.

(h) Additional Permitted Lease Terms. – In recognition of the potential economic and technical utility of build-to-suit capital leases, which include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time, and the potential desirability of a single point of responsibility for these matters in connection with build-to-suit capital leases, any build-to-suit capital lease may include provisions imposing responsibility on the private developer or any identified affiliated entity for any of the following matters:

(1) Site selection, land acquisition, and site preparation, including wetlands delineation, archaeological review, and State and local government land-use permitting.

(2) Facility programming, planning, and design, including both architectural and engineering services.

(3) Qualification and prequalification of contractors and subcontractors.

(4) Construction and construction management.

(5) Financing.

(6) Facility maintenance and repairs.

(7) Energy usage guarantees.

(8) Transfer of ownership of the leased property to a local government entity at the end of the lease term.

(9) Any other guaranties, products, and services as the local board of education may determine.

(i) Letter of Credit. – A private developer shall provide an irrevocable letter of credit for the benefit of laborers and materialmen in an amount not less than five percent (5%) of the total cost of the improvements which are the subject of the build-to-suit capital lease and shall maintain the letter of credit throughout the construction of the project and for the succeeding six-month period."

SECTION 3. G.S. 143-129(e) is amended by adding a new subdivision to read:

"(e) Exceptions. – The requirements of this Article do not apply to:

...

(12) Build-to-suit capital leases with a private developer under G.S. 115C-532."

SECTION 4. This act applies only to local school administrative units approved by the State Board of Education for participation in the pilot program to evaluate the utility of capital leases in assisting local school administrative units with capital facility needs. The State Board of Education shall select up to eight local school administrative units for participation in the pilot program and shall give priority to large local school administrative units with pressing capital facility needs. The State Board of Education shall make a report on the pilot program to the 2007 and 2008 Regular Sessions of the 2007 General Assembly.

SECTION 5. This act is effective when it becomes law and is repealed effective July 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 2009*

Short Title:	Public-Private Partnerships for Schools.	(Public)
Sponsors:	Senators Malone; and Stevens.	
Referred to:	Finance.	

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW CAPITAL LEASE FINANCING FOR PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 37 of Chapter 115C is amended by adding a new section to read:

"**§ 115C-531. Capital leases of school buildings and school facilities.**

(a) Definitions. – The following definitions apply in this section:

(1) Capital lease. – A capital lease as defined by generally accepted accounting principles, regardless of how the parties describe the agreement.

(2) Private developer. – The entity with which the school board enters into a capital lease or build-to-suit lease under the provisions of this section.

(b) Authorization. – Local boards of education may enter into capital leases of real or personal property for use as school buildings or school facilities. The capital lease may relate to an existing building or a new school building to be constructed. The term of any capital lease, including any renewal periods, shall not exceed 40 years from the expected date that the local board of education will take occupancy of the property that is the subject of a capital lease. Subdivisions (c) and (d) of G.S. 115C-521 do not apply to a capital lease entered into under this section.

(c) Construction, Repairs, and Renovation. – The provisions of G.S. 115C-530(b) apply to a capital lease under this section. A capital lease entered into under this section may provide that the private developer is responsible for providing, or contracting for, construction, repair, or renovation work. Construction, repair, or renovation work undertaken or contracted by a private developer is not subject to the requirements of Article 8 of Chapter 143 of the General Statutes. Construction, repair, or renovation work undertaken or contracted by the private developer involving the estimated expenditure of three hundred thousand dollars ($300,000) or more is subject to the provisions of G.S. 115C-532.

(d) Nonsubstitution Clause. – No capital lease may contain a nonsubstitution clause that restricts the right of a local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by the capital lease.

(e) No Deficiency Judgment; No Pledge of Taxing Power. – No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. A capital lease shall state that it does not constitute a pledge of the taxing power or full faith and credit of the local board of education or board of county commissioners.

(f) Budgetary Accounting. – A capital lease entered into under this section shall be considered a continuing contract for capital outlay and is subject to G.S. 115C-441(c1); provided, however, notwithstanding any provision of G.S. 115C-441(c1) or G.S. 115C-426, in each fiscal year the appropriation of funds by the county for the payment of amounts due under the capital lease shall be at the discretion of the board of county commissioners.

(g) Local Government Commission Approval. – Capital leases entered into under this section are subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five-hundred-thousand-dollar ($500,000) threshold applies.

"**§ 115C-532. Additional provisions applicable to build-to-suit capital leases.**

(a) Definitions. – The definitions of G.S. 115C-531 apply in this section. In addition, for the purposes of this section, the following definitions apply:

(1) Build-to-suit capital lease. – A capital lease that provides for the construction of new facilities or the renovation of existing facilities by the private developer, the cost of which is estimated to be greater than three hundred thousand dollars ($300,000).

(2) First-tier subcontractor. – A subcontractor who contracts directly with the private developer for all construction, repair, or renovation work under this section.

(b) Contract Provisions. – A build-to-suit capital lease may include contractual provisions by the private developer regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease. A local board of education may also enter into a separate agreement or series of related agreements regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease; provided all agreements are approved by the board of county commissioners in connection with the approval of the build-to-suit capital lease.

(c) Approval by Local Board of Education. – Before entering into a build-to-suit capital lease pursuant to this section, the local board of education shall adopt one or more resolutions that satisfy the conditions of this subsection. Before adopting the

resolutions required by this subsection, the local board of education shall publish a notice of its intent to enter into a build-to-suit capital lease at least 10 days in advance of the date of the meeting at which the action is contemplated and in a newspaper having general circulation within the geographic area served by the local board of education. The notice shall include, at a minimum, the date, time, and place of the meeting, a description in brief and general terms of the subject of the lease, the name of the other party to the lease, and an indication of the board's intent to take action to authorize the lease at the indicated meeting. The resolutions shall provide the following:

(1) That entering into the build-to-suit capital lease for one or more specified buildings or facilities is in the board's best interests under all the circumstances. In making this evaluation, the local board of education may consider the time, cost, and quality of design, engineering, and construction, including the time required to begin and the time required to complete a particular activity; occupancy costs, including lease payments, life-cycle maintenance, repair, and energy costs; and any other factors the board deems relevant.

(2) That the private developer is qualified to provide, either alone or in conjunction with other identified and associated persons, the products and services called for under the proposed capital lease and any related agreements. The local board of education shall make this determination taking into account any factors the local board deems relevant, including the knowledge, skill, and reputation of the provider and its associated persons, the goals and plans of providers for utilization of minority business enterprises, and the costs to be incurred by the local board of education.

(d) Additional Requirements Regarding Design Services. – Required design and engineering services shall be performed by a licensed architect or engineer, who may be an employee or other affiliate of the private developer. Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a). All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section. The provisions of G.S. 143-64.31 do not apply to design services for projects under a build-to-suit capital lease pursuant to this section.

(e) Additional Requirements Regarding Construction Services. –

(1) A private developer shall prequalify and solicit bids from first-tier subcontractors for all construction work under this section. The prequalification criteria shall be determined by the local board of education and the private developer to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the private developer and the local board of education.

(2) A private developer and first-tier subcontractors shall comply with G.S. 143-128.2. The local board of education shall require the private developer to submit its plan for compliance with G.S. 143-128.2 for approval by the local board of education prior to the private developer soliciting bids under this subsection.

(3) A private developer shall open bids and shall award each contract to the lowest responsible, responsive, and prequalified bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the private developer and the local board of education and advertised as part of the bid solicitation. A private developer shall enter into the construction contracts directly with the successful bidder. After the award of a contract or contracts, the private developer and any contractor may continue to negotiate and reach agreement on modifications to all aspects of the contract, including the time for performance, the scope of the work, and the price to be paid.

(4) The local board of education, in its discretion, may require the private developer to provide a performance and payment bond for construction work in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes and may require a bond or other appropriate guarantee to cover any other guarantees, products, or services to be provided by the private developer.

(f) Predevelopment Agreements with Private Developer Authorized. – Local boards of education may enter into predevelopment agreements with a private developer in advance of entering into a build-to-suit capital lease. Predevelopment agreements with private developers shall be approved by the board of county commissioners. Predevelopment agreements may include provisions for each of the following:

(1) Site selection, land acquisition, and site preparation, including such services as wetlands delineation, archaeological review, and State and local government land-use permitting.

(2) Building programming and design, including both architectural and engineering services pursuant to subsection (d) of this section.

(g) Real Estate Transfer Authorized. – Notwithstanding any contrary provisions of law, a city, county, or local board of education may, pursuant to the procedures in G.S. 160A-267, sell, lease, or otherwise transfer real or personal property to any private developer for construction, repair, or renovation of a school facility under a build-to-suit capital lease entered into pursuant to this section. The conveying unit may subject the property to any covenants, conditions, or restrictions as the unit deems to be necessary to carry out the purposes of this section. The disposition of property pursuant to this subsection is not subject to the requirements of G.S. 115C-518. No transfer by a local board of education under this subsection shall occur unless it is approved by the board of county commissioners.

(h) Additional Permitted Lease Terms. – In recognition of the potential economic and technical utility of build-to-suit capital leases, which include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time, and the potential desirability of a single point of responsibility for these matters in connection with build-to-suit capital leases, any build-to-suit capital lease may include provisions imposing responsibility on the private developer or any identified affiliated entity for any of the following matters:

(1) Site selection, land acquisition, and site preparation, including wetlands delineation, archaeological review, and State and local government land-use permitting.

(2) Facility programming, planning, and design, including both architectural and engineering services.

(3) Qualification and prequalification of contractors and subcontractors.

(4) Construction and construction management.

(5) Financing.

(6) Facility maintenance and repairs.

(7) Energy usage guarantees.

(8) Transfer of ownership of the leased property to a local government entity at the end of the lease term.

(9) Any other guaranties, products, and services as the local board of education may determine."

SECTION 3. G.S. 143-129(e) is amended by adding a new subdivision to read:

"(e) Exceptions. – The requirements of this Article do not apply to:

...

(12) Build-to-suit capital leases with a private developer under G.S. 115C-532."

SECTION 4. This act applies only to local school administrative units approved by the State Board of Education for participation in the pilot program to evaluate the utility of capital leases in assisting local school administrative units with capital facility needs. The State Board of Education shall select up to eight local school administrative units for participation in the pilot program and shall give priority to large local school administrative units with pressing capital facility needs. The State Board of Education shall make a report on the pilot program to the 2007 and 2008 Regular Sessions of the 2007 General Assembly. There is appropriated from the General Fund to the State Board of Education the sum of one hundred thousand dollars ($100,000) for the 2006-2007 fiscal year to implement the pilot program.

SECTION 5. This act becomes effective July 1, 2006.

SENATE BILL 2009:
Public-Private Partnerships for Schools

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 25, 2006
Introduced by:	Sen. Malone	**Summary by:**	Canaan Huie Committee Counsel
Version:	PCS to First Edition S2009-CSLYx-72		

SUMMARY: ***By allowing for capital leases of school facilities, this bill would make significant changes relating to school construction in North Carolina. The bill would be effective when it became law and would be repealed effective July 1, 2011.***

CURRENT LAW: Under current North Carolina law, local school administrative units are responsible for providing for adequate public school facilities. Local governments have several options for financing the provision of public school facilities. Local governments may finance the provision of school facilities through direct appropriations for construction, through the issuance of special indebtedness or general obligation indebtedness (provided that the general obligation indebtedness is approved by a voter referendum), and through the use of operating leases. Currently, local school administrative units are not allowed to enter into capital leases with respect to school facilities.

Capital leases differ from operating leases in several respects. In general, a capital lease is one that is considered to have the economic characteristics of ownership. To determine whether a lease is a capital lease or an operating lease, one must look at a number of different provisions in the lease. Under generally accepted accounting principles, a capital lease is a non-cancelable contract satisfying one or more of the following conditions:

- Legal title to the property is transferred to the lessee.
- The lease contains bargain or nominal purchase options.
- The lease term equals or exceeds 75% of the asset's useful life.
- The present value of the minimum lease payments equals or exceeds 90% of the asset's fair market value.

BILL ANALYSIS: This bill authorizes a pilot program that would allow local school administrative units to enter into capital leases of real or personal property for use as school buildings or facilities. The State Board of Education would select no more than eight local school administrative units to participate in this program and would report on the program to the 2007 and 2008 Regular Sessions of the 2007 General Assembly. In selecting schools for the pilot program, the State Board of Education must give priority consideration to local school administrative units with pressing capital facility needs. In addition, this bill lays out a framework for the capital leases and in the process of doing so allows for many exceptions to existing law relating to public school construction.

The bill would allow local school administrative units to enter into capital leases for school facilities and to allow for those leases to contain an agreement relating to construction, repairs, or renovations. In doing so, the bill contains two exceptions to general existing law. Under current North Carolina law, no local board of education may contract for the erection of a school facility unless the property on which the building is to be located is owned in fee simple by the local unit. In addition, under current law, all construction and repairs must be under the control and direction of the local board of education. This

bill would clarify that when the building is the subject of a capital lease, the board is not required to own the property and the lease may provide that the lessor is responsible for repairs and renovations.

All capital leases would be subject to the following limitations:

- The lease could not contain a clause that restricts the right of the local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by a capital lease.
- Each capital lease would be required to contain a clause specifying that it did not constitute a pledge of the taxing power or full faith and credit of the of the local board of education or board of county commissioners. This provision clarifies that a capital lease is not a general obligation of the local unit. Further, the bill provides that no deficiency judgment could be rendered against a local board of education or other local government unit under the lease.
- A capital lease would be considered a continuing capital outlay and would be subject to the provisions of G.S. 115C-441(c1). That provision generally allows a local board of education to enter into a contract for continuing capital outlay provided that the budget resolution includes an appropriation for the current fiscal year, an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums authorized under the contract, and the contracts are approved by the board of county commissioners in a resolution that binds the board to appropriate sufficient sums in later fiscal years. For capital leases, however, the resolution by the board of county commissioners would require only that the board make appropriations in later years in their discretion.
- A capital lease would be subject to approval by the Local Government Commission to the extent that the lease satisfied one or more of the conditions relating to financing agreements requiring approval by the LGC. These conditions are a) the agreement extends for at least 5 years, b) the agreement obligates the unit to pay sums of money to another, regardless of whether the other is a payee, or the agreement obligates the unit to payments of over $500,000.
- A capital lease could not contain any agreement with respect to student assignment.
- The property subject to a capital lease would be subject to the provisions of Article 2 of Chapter 44A of the General Statutes. That Article is the general law dealing with liens of laborers, mechanics, and materialmen with respect to real property.

In addition to the general provisions listed above, numerous additional provisions would apply to a "build-to-suit capital lease." A build-to-suit capital lease would be defined as a lease that provided for construction or renovation the cost of which was estimated to exceed $300,000. The following provisions would apply to build-to-suit capital leases.

- Before entering into a build-to-suit capital lease, the local board of education would be required to adopt a resolution approving the lease. The board would be required to provide at least 10 days' notice of the meeting at which the board planned to adopt the resolution approving the lease. The notice would be required to include a brief description of the lease and the name of the other party to the lease. The resolution adopted by the board must include a finding that the capital lease was in the best interests of the unit and that the private developer (the lessor) was qualified to provide the products and services called for under the lease.

- All required design and engineering services would be required to be performed by a qualified person and would be required to be in compliance with general requirements related to construction of school facilities.
- Private developers would be required to seek competition and minority business participation in connection with the construction work. The private developer would be required to conduct a competitive bidding process which could include prequalification of subcontractors. The private developer would be required to comply with general law regarding minority business participation in public projects, but would be required to adopt the minority business participation goals of the local board of education. The local board of education would be required to approve of the private developer's plan for compliance with minority business participation prior to the private developer seeking bids.
- The board of education could require the private developer to provide performance or payment bonds in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. That Article provides for model provisions for performance bonds related to public construction contracts.
- A local board of education could enter into a predevelopment agreement with a private developer. Predevelopment agreements would be required to be approved by the board of county commissioners and may involve such areas as site selection or building design.
- A local government unit would be authorized to sell, lease, or other transfer real property to a private developer for construction, repair, or renovation of a school facility under a capital lease without following general procedures related to the disposition of property.
- Each capital lease would require that the private developer provide an irrevocable letter of credit of not less than 5% of the total costs of the improvements for the benefit of laborers and materialmen.

EFFECTIVE DATE: This bill would be effective when it became law and would be repealed effective July 1, 2011.

S2009e1-SMLY-CSLYx-72

2006

SENATE
FINANCE

COMMITTEE
MINUTES

SENATE FINANCE COMMITTEE
Thursday, June 29, 2006 1:00 pm
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:30 pm on June 28, 2006, in room 544 of the Legislative Office Building. Thirty-one members of the committee were present. Senator John Kerr presided.

SB 1750 – Johnston County Local Act.

This bill was removed from the agenda.

HB 2289 – Asheville Franchise Tax Amendment.

Senator Apodaca was recognized to explain the bill. Senator Berger motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 1989 – Princeton/Smithfield Satellite Annexations.

Senator Stevens was recognized to explain the bill. Senator Berger motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 2604 – Clayton Annexation.

Senator Stevens was recognized to explain the bill. Senator Hunt motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

SB 1964 – Internet Data Center Facilities Tax Exemption.

Senator Dalton was recognized to explain the bill. Senator Hoyle motioned to adopt the proposed committee substitute and the motion carried. Senator Dalton motioned for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute, and the summary are attached.

HB 1048 – Governor's DWI Task Force Recommendations.

Senator Clodfelter was recognized to explain the bill and offered an amendment. Senator Albertson moved to adopt the amendment and the motion carried. Senator Nesbitt was recognized to offer a technical amendment and moved for its adoption. The motion carried. Senator Albertson moved to adopt the bill as a proposed committee substitute as amended. The motion carried. A copy of the bill, the amendments, and the summary are attached.

HB 143 – Exempt Agri-Tourism from Privilege Tax.

Representative Coates was recognized to explain the bill. Senator Kerr moved to adopt the proposed committee substitute and the motion carried. Canaan Huie, a staff attorney with the Bill Drafting Division, was recognized to answer questions. Senator Hoyle motioned for a

favorable report and the motion carried. A copy of the bill, the proposed committee substitute, and the summary are attached.

SB 1487 – Dental Hygiene Law Changes.

Senator Nesbitt was recognized to explain the bill. Senator Webster motioned for a favorable report and the motion carried. A copy of the bill and the summary are attached.

S1187 – Tryon Palace Fund/Interest Bearing.

Senator Bland was recognized to explain the bill. Senator Hartsell motioned for a favorable report and the motion carried. A copy of the bill is attached.

HB 1963 – Revenue Laws Tech. & Motor Fuel Tax Changes.

Senator Clodfelter was recognized to explain the bill. Senator Albertson moved to adopt the proposed committee substitute for discussion and the motion carried. Gerry Cohen, director of the Bill Drafting Division, was recognized to answer questions. Senator Hartsell motioned for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute and the summary are attached.

HB 2047 – Video Service Competition Act.

Senator Clodfelter was recognized to explain the bill and moved to adopt the proposed committee substitute for discussion. The motion carried. Senator Cowell offered an amendment (120 v. 2) and moved for its adoption. The motion failed. Senator Cowell offered a second amendment (110 v. 1) and motioned for its adoption. The motion failed. Senator Nesbitt offered an amendment (117 v. 2) and moved for its adoption. After discussion, Senator Nesbitt withdrew his amendment. Senator Apodaca moved for a favorable report and the motion carried.

The meeting adjourned at 2:50 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Thursday, June 29, 2006, 1:30 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 143	Exempt Agri-Tourism from Privilege Tax.	Rep. Coates
HB 1048	Governor's DWI Task Force Recommendations.	Rep. Hackney
HB 1989	Princeton/Smithfield Satellite Annexations	Rep. Daughtry
HB 1963	Revenue Laws Tech. & Motor Fuel Tax Changes.	Rep. Luebke
HB 2047	Video Service Competition Act.	Rep. Carney Rep. McComas Rep. Luebke Rep. Wainwright
HB 2289	Asheville Franchise Tax Amendment.	Rep. Goforth Rep. Fisher Rep. Sherrill
HB 2604	Clayton Annexation	Rep. Daughtry
SB 1187	Tryon Palace Fund/Interest-Bearing.	Senator Bland
SB 1487	Dental Hygiene Law Changes.	Senator Nesbitt
SB 1750	Clayton Satellite Annexation	Senator Smith
SB 1964	Internet Data Center Facilities Tax Exemption.	Senator Dalton

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amy Sines	DENR
Peg Dorer	Conference of D.A.s
Matt Osborne	AOC
Amy Shilder	HANC/LANC
Rev. Mark Creech	CAL
Paula A. Wolf	ACLU-NC
Rebekah Edgerton	ACLU-NC
David Cartner	NC-Bar Assoc.
Matt Gradley	House Staff
Holly Bryan	NCATL
CP Medlin	NCATL

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Susanne Sykes	NCRA
Elizabeth Dalton	NCRMA
David Crawford	AIA NC
Duke [illegible]	[illegible]
Lydia Varn	NCACC
Ed Turlington	
Doug Byrd	Commerce
Patricia Rawls	NACC
David McLeod	NCDACS
Martha Glass	NCDACS
Cathy Matthews	DMV

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Karl Knapp	DOR
	AHOD / LLPP
	AARP
Cathy McConnell	AARP ne
Byron Nelson	Nelson Associates
Kelly McCall	UNC-TV
Mack Tawick	Donald Beaver Intern

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kyle Wallace	Time Warner Cable - Raleigh
Johanna Reese	DOT
Floyd Landis	Phonak
Jeff Wolfe	Daily Bulletin
Bobby Fraser	TWC
Cara Cruz	BPONC
Stephanie Dorko	Charlotte Chamber
John McKay	Gov Office
Betty Turner	BAC
Kim Hibbard	NCLM
Jack McMillan	NFIB
Jane Mayer	NCACC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Charles Pittman	E-NC Authority
Dona Powell	NCDOR
Donna Aldeman	NCDOR
Gary Harris	NC PMA
Jeff Mixon	Civitas
Joal Brown	NCSOS
Anthony Allison	VCCC
Jon Carr	Jordan Price -
Bill Rowe	NC Justice Center
Jill Shotzberger	ACLU-NC
Sonia Schmidt	NC Justice Center
Mary Nunnelee	Regional Council

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 29, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
W. Timothy Holmes	DOR

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Thursday, June 29, 2006

Senator KERR,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1187** Tryon Palace Fund/Interest-Bearing.
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1) **1487** Dental Hygiene Law Changes.
Sequential Referral: None
Recommended Referral: None

S.B. **1964** Internet Data Center Facilities Tax Exemption.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1989** Princeton/Smithfield Satellite Annexations.
Sequential Referral: None
Recommended Referral: None

H.B. **2289** Asheville Franchise Tax Amendment.
Sequential Referral: None
Recommended Referral: None

H.B. **2604** Clayton Annexation.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **2009** Public-Private Partnerships for Schools.
Draft Number: 85484
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1993** Various Special License Plates

Draft Number:	60839
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 8

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

CORRECTED REPORT

Friday, June 30, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **143** Exempt Agri-Tourism from Privilege Tax.

Draft Number:	70791
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1963** Revenue Laws Tech. & Motor Fuel Tax Changes.

Draft Number:	50756
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1048** Governor's DWI Task Force Recommendations.

Draft Number:	30617
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

Senate Finance Report II for June 30, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2289*

Short Title:	Asheville Franchise Tax Amendment.	(Local)
Sponsors:	Representatives Sherrill, Goforth, and Fisher (Primary Sponsors).	
Referred to:	Local Government II, if favorable, Finance.	

May 22, 2006

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTER OF THE CITY OF ASHEVILLE RELATING TO AN AGREEMENT MAKING A FULL AND FINAL SETTLEMENT OF DISPUTED MATTERS RELATING TO THE AMOUNT OF FRANCHISE TAX DUE THE CITY BY TWO PUBLIC UTILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The language added to Section 389 of Chapter 16 of the Private Laws of 1923 by Chapter 652 of the 1993 Session Laws reads as rewritten:

"; provided, however, the imposition and payment of taxes, authorized by this section, on and by Carolina Power & Light Company and Public Service Company of North Carolina, Inc., their successors or assigns, shall be governed by that Agreement dated the 24th day of May 1994, by and among the City of Asheville, Carolina Power & Light Company, and Public Service Company of North Carolina, Inc., which Agreement was approved and authorized to be executed by the Asheville City Council by its Resolution Number 94-96, and which Agreement is spread upon the official minutes of the City Council of the same ~~date.~~ date; provided that said Agreement has been amended by Amendment to Agreement dated the 22nd day of November 2005 by and among the City of Asheville and Carolina Power & Light Company, with the consent of Public Service Company of North Carolina, Inc., which Amendment was approved and authorized to be executed by the Asheville City Council by its Resolution Number 05-218, and which Amendment is spread upon the official minutes of the City Council of the same date."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 2289:
Asheville Franchise Tax Amendment

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 29, 2006
Introduced by:	Reps. Sherrill, Goforth, Fisher	**Summary by:**	Trina Griffin Committee Counsel
Version:	First Edition		

SUMMARY: HB 2289 amends the Asheville City Charter regarding the utility franchise taxes paid by Progress Energy (formerly Carolina Power & Light, aka CP&L) to the City. The amendment provides that the payment of taxes shall be governed by an Amendment to Agreement dated November 22, 2005. The act would become effective when it becomes law.

CURRENT LAW: In the 1940s, the General Assembly adopted a uniform method for assessing utility franchise taxes on certain regulated utilities as well the distribution of those revenues to North Carolina municipalities. Prior to that time, utility franchise taxes varied from city to city, and each municipality had its own utility franchise tax. However, the local taxes were not entirely pre-empted by the State law because it allowed a local tax provided it did not exceed the tax imposed as of January 1, 1947.

During the 1980s and the 1990s, the amount of the utility franchise tax paid to Asheville by CP&L and Public Service Gas Company came into dispute. In 1994, the parties resolved the matter through an agreement ("1994 Agreement") that provided for a fixed payment by CP&L to the City. Because the 1994 Agreement had the effect of modifying the authority of the City to impose a franchise tax amount that differed from the amount imposed by it in 1947, and because the amount that was charged in 1947 was governed by the City Charter, the 1994 Agreement had to be added (by reference) to the City Charter. This was accomplished by Chapter 652 of the 1993 Session Laws.

During the same general period of time (1989 and 2000), the City attempted to annex an unincorporated area on the south side of town which included the Lake Julian Power Plant. On both occasions the courts invalidated the attempted annexations. Concurrent with the attempted annexations, the City and CP&L began negotiations about the Lake Julian Power Plant. The City and CP&L have come to an agreement that resolves the issues under litigation by foreclosing the possibility of future annexation attempts and the City will realize some revenue, based upon the value of the Power Plant.

BILL ANALYSIS: House Bill H2289 would further amend the Asheville City Charter to incorporate an Amendment to the 1994 Agreement (2005 Amendment). The amendment to the Charter is necessary because the 2005 Amendment changes the 1994 Agreement and also affects the City's powers regarding annexation. Under the terms and conditions of the 2005 Amendment, the modification to the City Charter must occur by November 1, 2008, for the Amendment to be effective.

The information contained in this summary is based upon the Staff Report dated 11/22/05 by Mr. Robert W. Oast, Jr., City Attorney to the Asheville Mayor and City Council.

Kory Goldsmith, counsel to House Local Government II, substantially contributed to this summary.

H2289e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1989

Committee Substitute Favorable 5/31/06

Short Title: Princeton/Smithfield Satellite Annexations. (Local)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWNS OF PRINCETON AND SMITHFIELD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Bladenboro, Calabash, Catawba, Columbia, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Surf City, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, and Zebulon."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1989:
Princeton/Smithfield Satellite Annexations

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 27, 2006
Introduced by:	Reps. Langdon, Daughtry	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: ***House Bill 1989 is a local bill that would exempt the towns of Princeton and Smithfield from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing town or city. The PCS to the 1st Edition of HB 1989, adding Smithfield, received a favorable report from House Local Government II Committee on May 31, 2006. The 2nd Edition of HB 1989 received a favorable report from House Finance Committee on June 6, 2006.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. **The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.**

If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex the area. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex.

BILL ANALYSIS: House Bill 1989 would permanently exempt the towns of Princeton and Smithfield from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities and towns (at least 63) from this 10% rule by local act.

EFFECTIVE DATE: This act would become effective when it becomes law.

H1989e2-SMRE (Martha Walston, Counsel to House Finance Committee substantially contributed to this summary.

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

HOUSE BILL 2604*

Short Title:	Clayton Annexation.	(Local)
Sponsors:	Representative Daughtry.	
Referred to:	Local Government I, if favorable, Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY IN JOHNSTON COUNTY TO THE CORPORATE LIMITS OF THE TOWN OF CLAYTON.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Clayton are extended to include the following described territory:

All of Tract One, containing 457.815 acres, as shown on a map entitled "Map for Jack E. Norwood and wife, Gloria A. Norwood, and N.C.S.U. Foundation, Inc. and Marty Flynn" dated April 14, 2005, and recorded on four sheets in Plat Book 66 at Page 209-212 Johnston County Registry, reference to which is hereby made for metes and bounds directions and distances, the Southwest boundary being the Neuse River, the Southeast boundary being along the meanders of Mark Creek, the Northeast boundary being the center line of Pritchard Road (S.R.#1714) and the Northwest boundary being a new line shown on Sheets One, Three, and Four.

AND

That certain tract or parcel of land in Wilders Township, Johnston County, North Carolina, more particularly described as follows:

BEGINNING at an iron stake in the Smithfield Road in Dewey's line or at Dewey's corner, and running thence along said road S 31 degrees 30' E 574.9 feet, S 27 degrees 30' E 109.6 feet, S 13 degrees 45' E 96.4 feet, S 5 degrees 15' W 134.4 feet, and S 6 degrees 30' W 554.4 feet to an iron pipe, newly established corner between R. L. Whitfield and wife and Jesse W. Cole and A. L. Crumpacker, thence N 86 degrees W 254 feet to an iron pin; thence S 61 degrees 45' W 2720 feet to an iron pipe; thence S 82 degrees 30' W 444 feet to a stake; thence S 78 W 376 feet to a stake; thence S 36 degrees 15' W 100 feet to a stake: thence S 4 degrees 45' W 242 feet to an iron stake; thence S 44 degrees W 379 feet to an iron stake; thence S 37 W 925 feet to an iron stake; thence S 65 W 125 feet to a pine and iron stake: thence N 68 W 1420 feet to an iron pipe; thence S 75 degrees 45' W 3030 feet to a white oak on the bank of Neuse River; thence N 6 degrees 15' E 1611 feet to a stake, Williamson's line; thence with

Williamson's line S 87 degrees 30 minutes E 2845 feet to a stake: thence continuing with Williamson's line N 4 E 289.7 feet to a stake; thence continuing with Williamson's line S 86 degrees 30' E 1353 feet to a stake; thence continuing with Williamson's line N 4 degrees 45' E 2695 feet to an iron stake, Dewey's line; thence with said Dewey's line N 75 degrees 30' E 1744 feet to an iron stake; thence continuing with Dewey's line S 00 degrees 50' W 396 feet to an iron stake; thence continuing with Dewey's line S 89 degrees 10' E 2100 feet to the BEGINNING, containing 354 acres, more or less, according to plat and survey of C. B. Fulghum, C.E., made in July, 1945, of record in Plat Book 4, page 185 in the office of the Register of Deeds of Johnston County, and being the same tract or parcel of land conveyed to R. L. Whitfield and wife by C. A. Pope and wife, and conveyed to J. M. Gregory and W. D. Parker by R. L. Whitfield and wife, Sudie P. Whitfield by deed dated June 16, 1947, and recorded in Book 470, page 217, Johnston County Registry, subject to the establishment of a dividing line between the lands of the said R. L. Whitfield and wife and Jesse W. Cole and A. L. Crumpacker by a written instrument dated October 9, 1945, and recorded in Book 443, page 290, Johnston County Registry.

This tract is known as Grantor's W. D. Parker Tract 8686.

Excluding from the descriptions above is any property not located in Johnston County.

SECTION 2. This act becomes effective June 30, 2006.

HOUSE BILL 2604: Clayton Annexation

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Rep. Daughtry	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: House Bill 2604 is a local bill that would annex certain described property in Johnston County to the corporate limits of the Town of Clayton. The bill received a favorable report from House Local Government I Committee on June 7, 2006 and House Finance Committee on June 20, 2006.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 2604 would annex two (2) specifically described tracts of land into the existing corporate limits of the Town of Clayton:

- All of Tract One, as shown on a map entitled "Map for Jack E. Norwood and wife, Gloria A. Norwood, and N.C.S.U Foundation, Inc. and Marty Flynn," dated April 14, 2005, and recorded in Plat Book 66, Pages 209-212, Johnston County Registry, containing 457.815 acres.
- Tract or parcel of land in Wilders Township according to plat and survey by C. B. Fulghum, C.E., made in July, 1945, as recorded in Plat Book 4, Page 185, Johnston County Registry, containing 354 acres, more or less.

EFFECTIVE DATE: This act would become effective June 30, 2006.

H2604e1-SMRE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1964*
PROPOSED COMMITTEE SUBSTITUTE S1964-CSLY-97 [v.3]

6/29/2006 11:38:39 AM

Short Title: Internet Data Center Facilities Tax Exemption. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN INTERNET DATA CENTER FACILITIES FROM SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in Internet service providers and Web search portals industry 51811, as defined by NAICS.

b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property, or both, at the facility within five years after the commencement of construction of the facility.

...

(23a) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002."

SECTION 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(54) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet data center, then the exemption provided for the eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet data center, then the exemption provided for the electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the exemption had not been allowed. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use.

The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 3. This act becomes effective July 1, 2006, and applies to sales made on or after that date.

SENATE BILL 1964*

Short Title:	Internet Data Center Facilities Tax Exemption.	(Public)
Sponsors:	Senators Dalton, Hoyle and Jacumin.	
Referred to:	Finance.	

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN INTERNET DATA CENTER FACILITIES FROM SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in Internet service providers and Web search portals industry 51811, as defined by the December 31, 2002, edition of the North American Industry Classification System published by the Office of Management and Budget.

b. The facility is located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property at the facility within five years after the commencement of construction of the facility."

SECTION 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(54) Sales of electricity and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of such property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property that are used for such purposes.

c. To support related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but the eligible business property is not located and used at an eligible Internet data center, then the exemption provided for such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but electricity is not used at an eligible Internet data center, then the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the exemption plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the exemption had not been allowed. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest shall be computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest shall be computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 3. This act becomes effective July 1, 2006, and applies to sales made on or after that date.

SENATE BILL 1964:
Internet Data Center Facilities Tax Exemption

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 29, 2006
Introduced by:	Sen. Dalton	**Summary by:**	Canaan Huie
Version:	PCS to First Edition S1964-CSLY-97		Committee Counsel

SUMMARY: This bill would provide for an exemption from the sales and use tax on sales of tangible personal property and electricity to an eligible Internet data center. The bill would be effective for sales made on or after July 1, 2006.

CURRENT LAW: Generally, sales of tangible personal property are taxed at a State rate of 4.5% and the applicable county rate (generally 2.5%, but 3.0% in Mecklenburg County). Sales of electricity are taxed at rates varying from 0.17% to 3.0% depending on the purchaser of the electricity. Sales of electricity to an Internet data center would be taxed at 3.0%.

BILL ANALYSIS: This bill would allow for an exemption from the sales and use tax for sales of electricity and eligible business property to an eligible Internet data center. For the purposes of this exemption, "eligible business property" is property that is capitalized for tax purposes under the Internal Revenue Code and is used for a) the provision of Internet service or Web search portal services, including equipment cooling systems for managing the performance of the property, b) the generation, transformation, transmission, distribution, or management of electricity, or c) to support related computer engineering or computer science research.

In order to qualify as an eligible Internet data center, a facility would be required to satisfy each of the following conditions:

- The facility is used primarily by a business engaged in Internet service providers and Web search portals industry 51811 as defined NAICS. NAICS is the North American Industrial Classification System and divides businesses into categories based on the primary activity that occurs at an establishment. Under NAICS, establishments in this industry provide clients access to the Internet or operate Web sites that use a search engine to provide Internet search services. These establishments generally provide related services such as Web hosting, Web page design, and additional Internet services such as email, connections to other Web sites, auctions, news, and other limited content.
- The facility is comprised of a structure or series of structures on a single parcel of land or on contiguous parcels of land owned by the operator of the facility.
- The facility is located in an enterprise tier one, two, or three area at the time of the application for the required determination by the Department of Commerce.
- The Department of Commerce has made a written determination that at least $250 million in private funds has been or will be invested in real property, eligible business property, or both at the facility within five years after the commencement of construction of the facility.

A taxpayer that fails to make the amount of the investment required forfeits the exemption and is required to repay all taxes, with interest, avoided as a result of the forfeited exemption. Similarly, a taxpayer that does satisfy the investment amount, but fails to use the property or electricity at the eligible

facility forfeits the exemption with respect to that particular property or electricity. The past taxes and interest are due 30 days after the date of the forfeiture.

EFFECTIVE DATE: This bill would become effective July 1, 2006, and would apply to sales made on or after that date.

S1964e1-SMLY-CSLY-97

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

HOUSE BILL 1048
Committee Substitute Favorable 6/8/05
Third Edition Engrossed 7/20/05
Senate Judiciary I Committee Substitute Adopted 6/27/06

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 1. G.S. 18B-101 is amended by adding a new subdivision to read:

"(7b) "Keg" means a portable container designed to hold and dispense in excess of eight gallons of malt beverage."

SECTION 2.1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-403.1. Purchase-transportation permit for keg or kegs of malt beverages.**

(a) Purchase-Transportation. – A person who is not a permittee may purchase and transport for off-premises consumption a keg or kegs as defined in G.S. 18B-101(7b) after obtaining a purchase-transportation permit. Failure to obtain a purchase-transportation permit according to this section is a violation of G.S. 18B-303(b).

(b) Issuance. – A person holding a permit pursuant to G.S. 18B-1001(2) may issue a purchase-transportation permit for a keg or kegs of malt beverage to a purchaser. A copy of the purchase-transportation permit shall be maintained by the permittee for 30 days.

(c) Form. – A purchase-transportation permit shall be issued on a printed form adopted and provided by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(d) Restrictions on Permit. – A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the purchaser and one by the

permittee from whom the purchase is made. The purchaser shall display his copy of the permit to any law enforcement officer upon request.

(e) Violation. – The first violation of this section shall result in a warning to the permittee."

SECTION 2.2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~ beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg or kegs of malt beverages for off-premises consumption, the permit required by G.S. 18B-403.1(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~ kegs for on-premise consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 3. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. ~~Impaired driving checks.~~ Checking stations and roadblocks.**

(a) A law-enforcement agency may ~~make impaired driving checks of drivers of vehicles on highways and public vehicular areas if~~ conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

~~(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

(2) ~~Designates~~Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests~~ to produce drivers license, registration, and insurance information. ~~The plan~~

(2a) Operate under a written policy that provides guidelines for the pattern. The policy may be either the agency's own policy, or the policy of another law enforcement agency, and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested ~~to submit to an alcohol screening test.~~ to produce drivers license, registration, and insurance information. If officers of a law enforcement agency are operating under another agency's policy, it must be stated in writing.

(3) ~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made~~ operated by having, at a minimum, one law enforcement

vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.~~"

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38.1. Applicability.**

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"**§ 20-38.2. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

"**§ 20-38.3. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.4. Initial appearance.**

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"§ 20-38.5. Facilities.

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county, the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section.

"§ 20-38.6. Motions and district court procedure.

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.7. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions and, if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 5. G.S. 8C-702 reads as rewritten:

"**Rule 702. Testimony by experts.**

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion.

(a1) In an impaired driving action under Chapter 20 of the General Statutes, a witness, qualified under subsection (a) of this section and with proper foundation, may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:

(1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.

(2) Whether a person was under the influence of one or more impairing substances, and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services, shall be qualified to give the testimony under this subdivision.

...

(i) A witness qualified as an expert in accident reconstruction who has performed a reconstruction of a crash, or has reviewed the report of investigation, with proper foundation may give an opinion as to the speed of a vehicle even if the witness did not observe the vehicle moving."

PART V. ALCOHOL SCREENING DEVICES

SECTION 6. G.S. 20-16.3 reads as rewritten:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.**

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

a. Committed a moving traffic violation; or

b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The ~~Commission for Health Services~~Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~ Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~ Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the ~~Commission for Health Services~~ Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The ~~results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court, or may also be used by an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

(1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~ G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~ results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding.~~"

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 7. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~ traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.

2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public.~~ whether the business or establishment is open or closed.

3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road ~~opened to~~ used by vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not

the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

...

(45) State. – A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, ~~or a province of Canada.~~ a province of Canada, or the Sovereign Nation of the Eastern Band of the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina.

..."

SECTION 8. G.S. 20-138.1 reads as rewritten:

"**§ 20-138.1. Impaired driving.**

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse~~, bicycle, or lawnmower.~~ or bicycle."

SECTION 9. G.S. 20-138.2 reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, the testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

..."

SECTION 10.1. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of

subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section is a ~~Class 2~~ Class 3 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

~~(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:~~

~~(1) Is 18, 19, or 20 years old on the date of the offense.~~

~~(2) Has not previously been convicted of a violation of this section.~~

~~The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction.~~"

SECTION 10.2. G.S. 20-13(a) reads as rewritten:

"(a) The Division ~~must~~ must, upon receipt of a record of the licensee's conviction, revoke the license of a person who was under 18 years of age at the time of the offense and who is convicted of violating the provisions of ~~G.S. 20-138.3~~ G.S. 20-138.3. ~~upon receipt of a record of the licensee's conviction.~~"

SECTION 11. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~ 10 years of the date of this offense."

SECTION 12. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 13. G.S. 20-141.4 reads as rewritten:

"§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle ~~if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle ~~if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if:

(1) The person unintentionally causes serious injury to another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if:

(1) The person unintentionally causes serious injury to another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury, and

(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if:

(1) The person unintentionally causes the death of another person,
(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,
(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death, and
(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under subsection (a1) or subsection (a5) of this section, and who has a previous conviction under subsection (a1) or subsection (a5), shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.
(2) Felony death by vehicle is a Class E felony.
(3) Aggravated felony serious injury by vehicle is a Class E felony.
(4) Felony serious injury by vehicle is a Class F felony.
(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED-CONSENT LAW

SECTION 14. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) ~~The person has a right to refuse to be tested.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

~~(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.~~

(3) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

(4) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days ~~if:~~ if you refuse any test or the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

~~a. The test reveals an alcohol concentration of 0.08 or more;~~

~~b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

(5) ~~The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~After you are released, you may seek your own test in addition to this test.

(6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures,~~ procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~when the person~~ you ~~is~~ are notified ~~of his or her~~ of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement ~~officer,~~ officer or chemical analyst ~~in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must~~ shall designate the type of test or tests to be given and may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst ~~must~~ shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~ officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The ~~charging~~ officer ~~must~~ shall immediately mail the affidavit(s) to the Division. If the ~~charging~~ officer is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging~~ officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~

shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~ shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~ shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~ shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~ shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections,

the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.~~on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~ shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;

(2) ~~That the person's license will be revoked for at least 30 days if:~~

~~a. The test reveals an alcohol concentration of 0.08 or more; or~~

~~b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~

~~c. The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license.~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 15. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~ The results of a chemical ~~analysis, to be valid, shall be~~ analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the ~~provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing~~ rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. ~~for that type of chemical analysis.~~

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results ~~Inadmissible if~~ Preventive ~~Maintenance Not Performed.~~ Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. – ~~By January 1, 1985, the regulations of the Commission for Health Services~~ The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. ~~Those regulations must provide:~~

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as~~

~~proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath-Testing Program. – In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath-testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath-testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the types of analyses that they can perform, the instruments that each person is authorized to operate, and the effective dates of the permits, and records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the ~~charging~~ law enforcement officer's request

for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it before blood is ~~withdrawn.~~ withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. – The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains

alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having

custody of the person shall make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d1) of this section by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – ~~The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:~~

~~(1) The alcohol concentration or concentrations revealed by the chemical analysis.~~

~~(2) The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.~~ A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to

administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied-consent offense under G.S. 20-16.2.~~ the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the

programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 16. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.20B. Access to medical information for law enforcement purposes.**

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 17. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse.~~abuse; disclosure of information in impaired driving accident cases.**

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related

to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 18. G.S. 20-138.4 reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.**

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case ~~involving impaired driving~~ subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included.offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum:

(1) The alcohol concentration or the fact that the driver refused.

(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.

(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records.

(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.

(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.

(6) The name and agency of the charging officer and whether the officer is available.

(7) Any other reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) of this section shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 19.1. G.S. 7A-109.2 reads as rewritten:

"**§ 7A-109.2. Records of dispositions in criminal ~~cases.~~cases; impaired driving integrated data system.**

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) of this section for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

(1) The reasons for any voluntary dismissal or reduction of charges as specified in G.S. 20-138.4;

(2) The reasons for any pretrial dismissal by the court;

(3) The reasons for any continuances granted in the case;

(4) The alcohol concentration reported by the charging officer or chemical analyst, if any;

(5) The reasons for any suppression of evidence;

(6) The reasons for dismissal of charges at trial;

(7) The punishment imposed, including community service, jail, substance abuse assessment and education or treatment, amount of any fine, costs, and fees imposed;

(8) The amount and reason for waiving or reduction of any fee or fine;

(9) The time or other conditions given to pay any fine, cost, or fees;

(10) After the initial disposition, the modification or reduction to any sentence, fee owed, fine, or restitution and the name and agency of the person requesting the modification;

(11) The date of compliance with court-ordered community service, jail sentence, substance abuse assessment, substance abuse education or treatment, and payment of fines, costs, and fees; and

(12) Subsequent court proceedings to enforce compliance with punishment, assessment, treatment, education, or payment of fines, costs, and fees."

SECTION 19.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-346.3. Impaired driving integrated data system report.**

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines,

costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction, amount collected, and the amount still owed, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR

SECTION 20. G.S. 20-48 reads as rewritten:

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notice. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00)."

SECTION 21.1. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional

period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

(1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied-consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one ~~year~~ year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a1) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) The person violates any condition of the restoration;

(2) The person is convicted of any moving offense in this or another state;

(3) The person is convicted for a violation of the alcoholic beverage or control substance laws of this or any other state.

The Division shall also cancel the registration on any vehicles registered in the driver's name and shall require the driver to surrender all current registration plates and cards.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

SECTION 21.2. G.S. 20-17(a)(2) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(2) Impaired driving under G.S. 20-138.1.~~Either of the following impaired driving offenses:~~

~~a. Impaired driving under G.S. 20-138.1.~~

~~b. Impaired driving under G.S. 20-138.2.~~"

SECTION 21.3. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. – ~~When~~ Except as provided in subdivision (1) of this subsection, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

SECTION 21.4. G.S. 20-17.8 is amended by adding a new subsection to read:

"(l) Medical Exception to Requirement. – A person subject to this section who has a medically diagnosed physical condition that makes the person incapable of personally activating an ignition interlock system may request an exception to the requirements of this section from the Division. The Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physicians or surgeons have completed and signed a certificate in the form prescribed by the Division. Such certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to such recommendations in acting upon the request for medical exception, the criterion being whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition interlock system. The burden of proof of such fact is upon the person seeking the exception.

Whenever an exception is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the person seeking the exception filed with the Division within 10 days after receipt of such denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4)."

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 22. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as

though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury selection. – A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court. –

(1) Defendant admits aggravating factor only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant pleads guilty to the charge only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~ judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has

been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if ~~the judge determines~~it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if ~~the judge determines~~it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:
   a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
   b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

   Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in superior court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned

under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~ shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~ shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, ~~he must~~ the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, ~~he must~~ the judge shall note in the judgment any factors found and ~~his~~the finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, ~~he must~~ the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

~~(3) Not operate a motor vehicle for a term of 60 days; or~~

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
~~(3) Not operate a motor vehicle for a term of 30 days; or~~
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~ shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or
(2) Within 60 days, if the amount of community service required is 48 hours; or
(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor ~~by the greater weight of the evidence,~~ beyond a reasonable doubt, and the defendant ~~must~~ shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any

other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must~~ shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment ~~or community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more, or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (2) of this subsection, the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail, if

a. The defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

b. The defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts.

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 23. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-109.4. Records of offenses involving impaired driving.**

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 24. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 25. G.S. 18B-302 reads as rewritten:

"**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. – It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption. – It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

...

(i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year Old. – A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8), or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 26. G.S. 15A-1374 reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

(2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 27. G.S. 18B-1003(c) reads as rewritten:

"(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;

(2) Convicted of a felony more than three years previously and has not had his citizenship restored;

(3) Convicted of an alcoholic beverage offense within two years; or

(4) Convicted of a misdemeanor controlled substances offense within two years.

(5) A permit holder under Chapter 18B of the General Statutes and whose permit has been revoked within three years.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 28. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-10.2. Judicial education requirements.**

All justices and judges of the General Court of Justice shall be required to attend continuing judicial education as prescribed by the Supreme Court. At a minimum, every justice and judge shall be required to obtain two hours every two years of continuing judicial education regarding driving while impaired offenses and related issues."

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 29.1. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;

2. Before the judge who presided at trial;

3. Before the end of the session if made in superior court; and

4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c)."

SECTION 29.2. G.S. 7A-304 is amended by adding a new subsection to read:

"(f) A person charged for any of the offenses set forth in this subsection may, in lieu of the payment of fines or the making of court appearances, elect to provide proof of compliance to the district attorney prior to or on the scheduled court appearance date, and the district attorney may in turn agree to voluntarily dismiss the case in exchange for the person's signed waiver of appearance and payment of court costs in the sum of fifty dollars ($50.00). Court costs assessed under this subsection are for the support of the General Court of Justice and shall be remitted to the State Treasurer.

Compliance dismissals authorized by this subsection may be obtained only for the following offenses:

(1) No operator's license, in violation of G.S. 20-7(a).

(2) Driving while license revoked, not alcohol-related, in violation of G.S. 20-28.
(3) Registration violations under G.S. 20-111(1) though (3).
(4) Failure to notify the Division of Motor Vehicles of change of address in violation of G.S. 20-7.1.
(5) Expired license, in violation of G.S. 20-7.
(6) Unsafe tires, in violation of G.S. 20-122.1.
(7) Inspection violations under G.S. 20-183.2.
(8) No registration card, in violation of G.S. 20-111.
(9) Failure to comply with license restrictions, in violation of G.S. 20-179.3.
(10) Failure to obtain commercial drivers license, in violation of G.S. 20-37.12.
(11) Allowing unlicensed person to drive, in violation of G.S. 20-32.
(12) Failure to notify the Division of Motor Vehicles of change of address registration, in violation of G.S. 20-67.
(13) Rearview mirror violations under G.S. 20-117.1(a).
(14) Safety equipment violations under G.S. 20-123.2, 20-124, 20-125, 20-125.1, 20-126, 20-127, 20-128, 20-128.1, 20-129, and 20-129.1.
(15) Child restraint violations under G.S. 20-137.1.
(16) Motorcycle and moped helmet violations under G.S. 20-140.4(2).
(17) Any violation arising from a vehicular accident or collision in which a citation is issued, but which in the interests of justice the State elects to accept a compliance dismissal rather than prosecute.

For purposes of this section, "compliance" means proof satisfactory to the district attorney that the person has corrected the violation and is therefore in compliance with the applicable statute, or that the underlying condition which gave rise to the violation is no longer present. However, a compliance dismissal shall not be valid in any case in which the person's compliance, if presented to the court, would qualify for a statutory defense to the charge, such as those defenses contained in G.S. 20-35(c), 20-122.1(b), 20-127(e), 20-133(b), and 20-137.1(c). Nothing in this subsection shall limit the discretion of the district attorney to otherwise dismiss a charge."

SECTION 29.3. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is ~~dismissed.~~dismissed, except as provided in subsection (f) of this section.

..."

SECTION 30. Chapter 162 of the General Statutes is amended by adding a new section to read:

"**§ 162-62. Legal status of prisoners.**

(a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail, local confinement facility, district confinement facility, or satellite jail/work release unit, the administrator or other person in charge of the facility shall make a reasonable effort to determine the nationality of the person so confined.

(b) If the prisoner is a foreign national, the administrator or other person in charge of the facility holding the prisoner shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if lawfully admitted, that the prisoner's lawful status has not expired. If verification of lawful status cannot be made from documents in the possession of the prisoner, verification shall be attempted within 48 hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the LESC or other office or agency determines that the prisoner has not been lawfully admitted to the United States, the administrator or other person in charge of the facility holding the prisoner shall notify the United States Department of Homeland Security.

(c) Nothing in this section shall be construed to deny bond to a person or to prevent a person from being released from confinement when that person is otherwise eligible for release.

(d) The Department of Crime Control and Public Safety, after consultation with the North Carolina Sheriffs' Association, shall prepare and issue guidelines and procedures to be used to comply with the provisions of this section."

PART XIX. EFFECTIVE DATE

SECTION 31. Sections 18, 19.1, and 19.2 of this act become effective upon the effective date of the next rewrite of the superior court clerks system by the Administrative Office of the Courts. Sections 29.2 and 29.3 are effective October 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

HOUSE BILL 1048:
Governor's DWI Task Force Recommendations

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 29, 2006
Introduced by:	Rep. Hackney	**Summary by:**	Trina Griffin
Version:	Fourth Edition		Committee Counsel

SUMMARY: ***This bill, based upon the findings of the Governor's Task Force on Driving While Impaired, provides measures relating to DWI arrest, enforcement, education, and training. The measures have varying effective dates.***

This bill was given a favorable report by the Senate Judiciary I Committee, and has been re-referred to Senate Finance because the bill authorizes a new fee (Section 29.2). Under this section, a district attorney would be authorized to allow persons charged with certain listed offenses, who have corrected the violation, to pay $50 in court costs and have the charge dismissed. The effective date for this provision is October 1, 2006.

BILL ANALYSIS:

PART I – REGULATING MALT BEVERAGE KEGS

Amends the law to require a purchase-transportation permit for the purchase and off-premises transportation of a keg of malt beverage. Defines a "keg" for the purposes of the statute. Retailers of keg malt beverages would be authorized to issue purchase-transportation permits, and would be required to maintain sales records for 30 days.

PART II – MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

Section 3: Amends the statute regulating impaired driving checkpoints. The provision

- Creates a single "checking station" or "roadblock" instead of "impaired driving" checkpoints and "driver's license" checkpoints. Impaired driving checkpoints are statutorily regulated; however, the requirements for driver's license checkpoints are derived from case law.
- Requires the law enforcement agency (LEA) to designate in advance the pattern for stopping vehicles and for the production of a driver's license, a registration card, or insurance information. Agencies must operate under a written policy—either their own or another agency's policy. An individual officer would not have the discretion to determine which drivers would be required to produce a driver's license, registration, or insurance information.
- Requires that at least one LEA vehicle have its blue lights in operation.
- If an officer determines that the driver has previously consumed alcohol, or has an open container, the officer may conduct an alcohol screening test.
- Provides that checkpoints should be random and not repeatedly located in the same location.

Part III – PROVIDING FOR IMPLIED CONSENT PRETRIAL AND COURT PROCEEDINGS

Section 4: This Part would create a new Article in Chapter 20 to provide pretrial, trial, and appellate procedures for implied consent offenses. An "implied consent offense" is defined by statute as an offense involving impaired driving or an alcohol-related offense subject to the procedures in N.C.G.S § 20-16.2, Implied Consent to Chemical Analysis.

PART IV -- ALLOWING OPINION TESTIMONY BY DRUG RECOGNITION AND ACCIDENT RECONSTRUCTION EXPERTS, AND ADMISSION OF HGN TESTS.

This Part allows, in impaired driving cases, expert opinion testimony on the results of a Horizontal Gaze Nystagmus (HGN) Test as to the issue of impairment only. A certified Drug Recognition Expert is qualified to give testimony on whether a person was under the influence of one or more impairing substances, and the category of impairing substances.

The part also allows an accident reconstruction expert, in any action, to give an opinion as to the speed of a vehicle--even if the expert did not see the vehicle moving--if the expert has

- performed a reconstruction of a crash, or
- has reviewed the report of investigation

The general rules on expert opinion testimony apply to these provisions.

PART V – ALCOHOL SCREENING DEVICES

Makes technical changes and changes the current law to allow screening tests as evidence in court and administrative proceedings.

PART VI – CLARIFICATION OF IMPAIRED DRIVING OFFENSES

- Makes technical corrections and clarifies that "public vehicular areas" include business property, whether the business is open or closed. Also defines "State" so as to include convictions from Cherokee Tribal Court under Chapter 20.
- Clarifies the *per se* impaired driving offense for non-commercial and commercial drivers. The stated alcohol concentration level is sufficient for a conviction without evidence of impairment.
- Adds the consumption of any amount of Schedule I controlled substances as the basis for a DWI violation for both commercial and non-commercial drivers.
- Provides the methods of proving the Gross Vehicle Weight for the commercial vehicles.
- Makes the penalty for a person 18 to 21 years of age who drives with any alcohol or controlled substance in his system consistent with the penalty for illegal consumption, i.e., a Class 3 misdemeanor. Allows a person convicted under the section to obtain a limited driving privilege.
- Amends the Habitual DWI statute to apply to any person who has 3 previous DWI convictions within a 10 year period. Currently, the law applies to anyone who has 3 previous DWIs within a 7 year period.
- Clarifies that required procedures and evidentiary provisions applicable to chemical analyses apply to the immediate license revocation statute.

PART VII – FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

Creates three new offenses: Felony Serious Injury by Vehicle, Aggravated Felony Death by Vehicle, and Aggravated Felony Serious Injury by Vehicle.

- Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired is guilty of a Class F felony.

- Aggravated Felony Serious Injury – A person who unintentionally causes serious injury while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class E felony.
- Aggravated Felony Death -- A person who unintentionally causes the death of another while driving impaired, and who has an impaired driving conviction within 7 years of the offense, is guilty of a Class D felony.

Under current law, unintentionally causing a death (not impaired) while violating a statute or ordinance is a Class 1 misdemeanor. The bill would increase the penalty for unintentionally causing death while impaired from a Class G felony to a Class E felony.

The bill also creates the offense of "Repeat Felony Death by Vehicle." A person who has a previous conviction for causing a death while impaired, and is convicted a second time for a felony death by vehicle, is subject to punishment under the second degree murder statute (Class B2 felony).

PART VIII – CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT

This part adds clarifying language to G.S. 20-16.2. The part

- Allows any law enforcement officer to perform the chemical analysis (not just the arresting officer).
- Changes the standard of review by the superior court when a license revocation for refusal to submit to chemical analysis is appealed. Currently, the review is a *de novo* review, meaning the superior court hears all the evidence again. This part would change the review to limit it to whether there is (i) sufficient evidence in the record to support the Commissioner's findings of fact, (ii) whether the conclusions of law are supported by the findings of fact and (iii) whether the Commissioner committed an error of law in revoking the license.

PART IX – ADMISSIBILITY OF CHEMICAL ANALYSES

This part:

- Provides the requirements for the admissibility of a chemical analysis of a person's breath.
- Amends the statute governing admissibility of chemical analyses to allow the court to take notice of the DHHS rules and persons authorized to administer the analyses
- Provides for procedures for establishing the chain of physical custody or control of blood and urine samples.
- Provides for a hearing on the admissibility of evidence if the defendant notifies the State at least five (5) days before trial in the superior court division or an adjudicatory hearing in juvenile court.

PART X – IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

- Allows law enforcement officers to gain access to medical information as part of a criminal investigation.
- Authorizes an investigator to obtain a certified copy of medical records if they obtain a search warrant or an order specifying the records.
- Provides that certified copies of relevant health information are admissible in any hearing or trial without further authorization.

PART XI – PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

- Amends the law requiring a prosecutor to document the reasons behind the reduction or dismissal of impaired driving or driving while license revoked for impaired driving charges.
- Requires the Administrative Office of the Courts to electronically record the information, and make it available upon request.
- Requires the clerk of court to keep specific file data on persons charged with impaired driving offenses.
- Requires the AOC to provide an annual report (by calendar year) to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control and Juvenile Justice Oversight Committee. The report is to include the amount of fines, costs, and fees ordered at disposition, and defendants' compliance with sanctions. The AOC is charged with insuring public access to the information by posting it on the agency's internet page, and making the report available to the public at no cost.

PART XII – NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED

This section provides that the Division of Motor Vehicles may prove notice of personal delivery, or by mail, by making a notation in its records. A certified copy of the Division's records would be admissible in any court or administrative agency proceeding as proof of notice.

The part also provides a criminal penalty and license revocation for persons who have been sent a notice of revocation of license for driving while impaired, and the person drives on a highway with a revoked license, or where the person fails to appear for two years from the charge date if charged with an implied consent offense.

The Division may also require the installation of ignition interlock on vehicles, and may cancel conditionally restored licenses if any conditions of restoration are violated. The Division may also cancel vehicle registrations and require the surrender of cards and plates.

The part provides an exemption from the interlock requirement upon a showing of medical incapacity.

PART XIII – MODIFYING CURRENT PUNISHMENTS

Provides procedures for a jury to find aggravating factors, instead of the judge. This provision is in response to a United State Supreme Court decision that required a jury to find any facts that would aggravate a sentence beyond the statutory maximum. The procedures allow for a defendant to admit to the aggravating factor only, or plead guilty only to the charge. A judge may find the existence of prior convictions without a jury determination. The State must provide notice of its intent to use one or more aggravating factors if the defendant appeals to Superior court.

The part provides that a defendant sentenced to a term of imprisonment that is 48 hours or more must serve the term hour for hour. Consequently, a defendant arriving at a confinement facility on a Friday evening would not be eligible for release on Sunday morning, although two "days" have passed.

A defendant reporting to jail that shows positive on an alcohol screening test would forfeit any option to serve confinement time on weekends. Requires the clerk of court to keep for a minimum of ten years all records relating to persons charged with impaired driving offenses. Prior to destroying the record, the clerk is required to record the data specified in the provision.

PART XIV – ILLEGAL CONSUMPTION UNDER 21 AND ADMISSIBILITY OF THE RESULTS OF AN ALCOHOL SCREENING DEVICE

Section 25

The section makes it illegal for a person less than 21 years of age to consume any alcoholic beverages. The exceptions are:

- during the course of treatment by a licensed physician, druggists, or dental surgeons for medicinal or pharmaceutical purposes, or by medical facilities established and maintained for the treatment of addicts;
- for sacramental purposes by any organized church or ordained minister; and
- under the direct supervision of an instructor during a culinary class that is part of a curriculum at an accredited college or university.

The bill authorizes a law enforcement officer to administer a screening test to a person less than 21 years of age if there is probable cause that the person has consumed alcohol. The test result would be admissible in any court or administrative proceeding.

PART XV – DWI DEFENDANTS ASSIGNMENT TO COMMUNITY SERVICE PAROLE OR HOUSE ARREST

Requires that any impaired driving offender that has completed recommended treatment or a training program, and is not being paroled to a residential treatment program, shall as a condition of parole, be placed on

- community service parole, or
- house arrest with electronic monitoring.

PART XVI – PREVENT NONCOMPLIANT PERMIT HOLDERS FROM SWITCHING PERMITS

Provides that a permittee may not employ someone who has been a permit holder and who has had their permit revoked within three years. This is designed to prevent a current permit holder who becomes ineligible from using a surrogate to be the designated permit holder, while remaining in charge of the business.

PART XVII – DWI TRAINING FOR JUDGES

Requires all justices and judges in the General Court of Justice to receive a minimum of two hours of continuing judicial education, every two years, on DWI issues.

PART XVIII – COURT PROCEDURES

The section provides that a motion for appropriate relief (MAR) may not be granted without the signature of the District Attorney. An MAR is a pleading by the defendant seeking relief from a judgment of the court. If the defendant gives notice by oral motion in court, or written notice to the District Attorney, then the court may grant the motion if the DA has not signed 10 days after receipt of notice.

Allows the District Attorney discretion to allow persons who are charged with the listed offenses, and who have corrected the violation, to pay a $50 court cost and have the charge dismissed. The provision also applies if the underlying condition that gave rise to the violation no longer exists.

Provides procedures for county or local confinement facility officials to attempt to verify whether a foreign national is lawfully in the country. It also provides for notification to the United States Department of Homeland Security if it is determined that the person is not lawfully in the country.

PART XIX – EFFECTIVE DATES

The requirement that the AOC electronically record certain data becomes effective after the next rewrite of the Superior Court Clerks System. The compliance and dismissal of charge provisions in Part 18 are effective October 1, 2006. The remainder of the act becomes effective on December 1, 2006, and applies to offenses committed on or after that date.

Hal Pell, counsel to Senate Judiciary 1, substantially contributed to this summary.

H1048e4-SMSV

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 29, 2006

TO: Senate Finance Committee

FROM: Douglas Holbrook
Fiscal Research Division

RE: HB 1048 Finance Provisions

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ()		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	$1,097,408	$1,463,210	$1,463,210	$1,463,210	$1,463,210
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts.

EFFECTIVE DATE: December 1, 2006 for most sections; October 1, 2006 for Section 29.

BILL SUMMARY:

House Bill 1048, Governor's DWI Task Force Recommendations, makes significant changes to the statutes related to Driving While Impaired. This memo focuses strictly on the section of this bill that affects revenues. Section 29.2 amends GS 7A-304 by adding a subsection (f) to require a payment of $50 in court costs in exchange for a voluntary dismissal from the District Attorney for a set of traffic violations. A defendant charged with a violation under Chapter 20, including driving while license revoked, expired license, child restraint, or helmet violation, may elect to provide the District Attorney with proof of compliance. The prosecutor may then dismiss the case. Proof of compliance means that the defendant can prove they have remedied the situation for

which they were charged; for instance, they can show that they have purchased and installed proper child restraints in their vehicle.

ASSUMPTIONS AND METHODOLOGY:
This proposal differs from current practice in that prosecutors now often dismiss cases when the defendant shows up for court and can demonstrate that they have rectified the problem for which they were cited. In these cases, no court costs or fines are assessed. This bill will add a court cost of $50 for these charges, thus increasing state revenues. Conversely, if prosecutors utilize this option extensively, and more defendants opt to pay the compliance cost where they would have plead guilty, overall collections of court costs might decrease, as would fines passed through to the local school systems.

There is little data to project how frequently District Attorneys would use this option. The Administrative Office of the Courts conducted a survey of District Attorneys in 2002 on this matter, and determined that 57% of voluntary dismissals, 46,401 cases, would have fallen under this law had it been in effect then. These cases would have generated the $50 fee, producing revenues of $2,320,050.

As previously mentioned, the survey also determined that DA's would have applied this law in 45% of convictions (21,421 convictions) rather than proceeding to trial. Since these cases would have brought in the $50 fee instead of the full court costs of $90, $856,840 in general fund revenues would be lost. Additionally, any fines associated with these convictions would be lost to the school systems.

Therefore, the expected net revenue increase from this section of HB 1048 would be $1,463,210. These assumptions are based on survey data, and are therefore volatile.

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1048-ASV-26 [v.1]

Date _____,2006

Comm. Sub. [NO]
Amends Title [YES]
Fourth Edition

~~Representative~~ SENATOR CLODFELTER:

moves to amend the bill on page 1, lines 2 and 3, by rewriting the lines to read:

"AN ACT TO PROVIDE:
(1) IMPROVED DETECTION OF IMPAIRED DRIVERS ON THE STATE'S ROADS AND HIGHWAY;
(2) IMPROVED METHODS OF DETERMINING HOW UNDERAGE DRIVERS OBTAIN ALCOHOL;
(3) PROCEDURES FOR INVESTIGATING, ARRESTING, CHARGING AND JUDICIAL PROCESSING OF IMPAIRED DRIVING OFFENSES;
(4) RULES FOR THE COURTROOM ADMISSION OF EVIDENCE THAT IS RELEVANT TO IMPAIRED DRIVING OFFENSES;
(5) CLARIFICATION ON WHEN A DRIVER IS GUILTY OF DRIVING WHILE IMPAIRED;
(6) AGGRAVATED PENALTIES FOR OFFENDERS WHO SERIOUSLY INJURE OR KILL WHEN DRIVING WHILE IMPAIRED;
(7) A SYSTEM OF REPORTING BY STATE PROSECUTORS AND THE COURTS ON THE DISPOSITION OF IMPAIRED DRIVING OFFENSES;
(8) ELECTRONIC MONITORING AFTER AN IMPAIRED DRIVER HAS BEEN RELEASED FROM CONFINEMENT;
(9) PROCEDURES TO DETERMINE IF IMPAIRED DRIVERS WHO ARE FOREIGN NATIONALS ARE LAWFULLY IN THE UNITED STATES;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1048-ASV-26 [v.1]

(10) OTHER MEASURES DESIGNED TO IMPROVE THE SAFETY OF THE MOTORING PUBLIC OF NORTH CAROLINA; AND TO PROVIDE THAT THE ACT SHALL BE KNOWN AS THE "MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006."

And further moves to amend the bill on page 1, between lines 4 and 5, by inserting the following:

"**SECTION 1.** This act shall be known as "THE MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006.", and

By renumbering succeeding sections through and including Section 30 accordingly, and

Further moves to amend the bill on page 48, lines 24 through 26, by rewriting the lines to read:

"**Section 32.** Sections 19, 20.1, and 20.2 of this act become effective upon the effective date of the next rewrite of the superior court clerks system by the Administrative Office of the Courts. Sections 30.2 and 30.3 are effective October 1, 2006, and applies to offenses committed on or after that date. The remainder of this act is effective December 1, 2006, and applies to offenses committed on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1048-ARK-64 [v.5]

Date _____,2006

Comm. Sub. [NO]
Amends Title [NO]
Fourth Edition

Senator Nesbitt

moves to amend the bill on page 11, lines 28-32, by rewriting those lines to read:

"**SECTION 10.2.** G.S. 20-13.2 reads as rewritten:

'**§ 20-13.2. Grounds for revoking provisional license.**

(a) The Division ~~must~~ must, upon receipt of a record of the licensee's conviction, revoke the license of a person who is convicted of violating the provisions of G.S. 20-138.3 and who was under 18 years of age at the time of the offense. ~~upon receipt of a record of the licensee's conviction.~~

(b) If a person is convicted of an offense involving impaired driving and was less than 18 years of age at the time of the offense, then ~~offense occurs while he is less than 21 years old,~~ his license must be revoked under this section in addition to any other revocation required or authorized by law.

(c) If a person less than 18 years of age willfully refuses to submit to a chemical analysis pursuant to ~~G.S. 20-16.2 while he is less than 21 years old,~~ G.S. 20-16.2, then his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal.

. . . .'"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1048

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1048-ARK-64 [v.5]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 143
PROPOSED SENATE COMMITTEE SUBSTITUTE H143-CSRB-69 [v.3]

6/29/2006 10:51:40 AM

Short Title: Exempt Agri-Tourism From Privilege Tax. (Public)

Sponsors:

Referred to:

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO EXEMPT AGRI-TOURISM ACTIVITIES FROM THE PRIVILEGE TAX ON AMUSEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-40 is amended by adding a new subdivision to read:

"(12) All farm-related exhibitions, shows, attractions, or amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340."

SECTION 2. This act becomes effective July 1, 2007, and applies to activities occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 143

Short Title:	Exempt Agri-Tourism From Privilege Tax.	(Public)
Sponsors:	Representatives Coates; Alexander, B. Allen, Allred, Bell, Brubaker, Church, Cleveland, Cole, Coleman, Cunningham, Daughtridge, Faison, Farmer-Butterfield, Fisher, Frye, Glazier, Hill, Holliman, Holmes, Howard, Johnson, Justice, Justus, Kiser, Lewis, Lucas, Moore, Parmon, Preston, Rapp, Steen, Tucker, Underhill, Walker, Warren, Wilkins, Williams, and Wray.	
Referred to:	Agriculture, if favorable, Finance.	

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO EXEMPT AGRI-TOURISM ACTIVITIES FROM THE PRIVILEGE TAX ON AMUSEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-40 is amended by adding a new subdivision to read:

"(12) All farm-related exhibitions, shows, attractions, or amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340, including hayrides, animal exhibitions, and farm pond fishing."

SECTION 2. This act becomes effective January 1, 2001, and applies to activities occurring on or after that date.

HOUSE BILL 143:
Exempt Agri-Tourism From Privilege Tax

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Rep. Coates	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to First Edition H143-CSRB		

SUMMARY: ***House Bill 143 would exempt the following activities from the 3% gross receipts privilege tax on amusements: all farm-related exhibitions, shows, attractions, or amusements offered on land used for farm purposes, including hayrides, animal exhibitions, and farm pond fishing. The proposed Senate committee substitute changes the effective date from January 1, 2001, to July 1, 2007.***

CURRENT LAW: Article 2 of Chapter 105 imposes a 3% gross receipts tax on anyone engaged in the business of giving, offering, or managing any form of amusements, athletic events, dances, and entertainment for which an admission is charged. A privilege tax of 1% is imposed on the gross receipts from operating motion picture shows. G.S. 105-40 sets out a number of exemptions to the privilege tax on amusements.

BILL ANALYSIS: House Bill 143 would add the following to the list of exemptions from the privilege tax on amusements: "all farm-related exhibitions, shows, attractions, or amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340, including hayrides, animal exhibitions, and farm pond fishing. The exemption would also apply to attractions such as corn mazes. The term "bona fide farm purposes", as defined in G.S. 153A-340, includes the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

Under current law, all exhibitions, shows, attractions, and amusements operated by a society or association organized under Chapter 106 (Agriculture) of the General Statutes are exempt from the payment of State, county, and city license taxes if the society or association has obtained a permit from the Secretary of Revenue to operate without the payment of the taxes. Specifically, G.S. 106-507 requires the society or organization to file an application with the Secretary of Revenue for a permit to operate without the payment of any State, county or city license tax not later than 60 days prior to the opening date of its fair. The Secretary of Revenue must refer the application to the Commissioner of Agriculture for approval or rejection. If the application is approved by the Commissioner, then the Secretary of Revenue must issue a permit to the society or association authorizing it to exhibit within its fairgrounds and during the period of its fair, all exhibits, shows, attractions, and amusements as approved without payment of taxes.

Martha Walston, counsel to the House Finance Committee, substantially contributed to this summary.

H0143e1-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 29, 2006

TO: Representative Coates

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 143 (Unknown Edition)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	* See Assumption and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: July 1, 2007

BILL SUMMARY:
This bill would exempt the following activities from the 3% gross receipts privilege tax: all farm-related exhibitions, shows, attractions, or amusements offered on land used for farm purposes, including hayrides and animal exhibitions.

ASSUMPTIONS AND METHODOLOGY:
The Department of Revenue is aware of only two instances in which current taxpayers would be affected by the proposed bill. The annual privilege tax liability from the affected businesses is estimated to be $60,000. Because it is unclear whether additional businesses may be affected by the bill, the total impact is unknown.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 1487*
Health Care Committee Substitute Adopted 6/14/06

Short Title: Dental Hygiene Law Changes. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS TO ACCEPT, IN ADDITION TO EXAMINATIONS CONDUCTED BY THE BOARD, THE RESULTS OF OTHER BOARD-APPROVED REGIONAL OR NATIONAL INDEPENDENT THIRD-PARTY CLINICAL EXAMINATIONS OF APPLICANTS SEEKING A LICENSE TO PRACTICE AS A DENTAL HYGIENIST, AND AUTHORIZING THE BOARD TO CHARGE THE ACTUAL COST OF THE THIRD-PARTY TESTING SERVICE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-223(a) reads as rewritten:

"(a) The Board is authorized and empowered to:

(1) Conduct examinations for licensure,

(2) Issue licenses and provisional licenses,

(3) Issue annual renewal certificates, ~~and~~

(4) Renew expired ~~licenses.~~ licenses, and

(5) Contract with a regional or national testing agency to conduct clinical examinations. Prior to entering a contract with a regional or national testing agency, the Board shall evaluate the agency based on the following criteria:

a. The number of states that recognize the results of the testing agency's examination.

b. The cost to the applicant of the examination.

c. How long the testing agency has been conducting examinations.

d. Whether the examination includes procedures performed on human subjects as part of the assessment of clinical competencies."

SECTION 2. G.S. 90-224 reads as rewritten:

"§ 90-224. Examination.

(a) The applicant for licensure must be of good moral character, have graduated from an accredited high school or hold a high school equivalency certificate duly issued by a governmental agency or unit authorized to issue the same, and be a graduate of a program of dental hygiene in a school or college approved by the Board.

(b) The Board shall have the authority to establish in its rules and regulations:

(1) The form of application;

(2) The time and place of examination;

(3) The type of examination;

(4) The qualifications for passing the examination.

(b1) The Board also may grant a license to an applicant who is found to have passed an examination given by a Board-approved regional or national dental hygiene testing agency, provided that the Board deems the regional or national examination to be substantially equivalent to or an improvement upon the examination given by the Board, and the applicant meets the other qualifications set forth in this Article.

(c) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 3. G.S. 90-232 reads as rewritten:

"§ 90-232. Fees.

(a) In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules not exceeding the following:

(1) Each applicant for examination $350.00

(2) Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dental hygienist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dental hygienist 250.00

(3) Each restoration of license 150.00

(4) Each provisional license 150.00
(5) Each certificate of license to a resident dental hygienist desiring to change to another state or territory 50.00
(6) Annual fee to be paid upon license renewal to assist in funding programs for impaired dental hygienists 80.00
(7) Each license by credentials ..... 1,500.

(b) In all instances where the Board uses the services of a regional or national testing agency for preparation, administration, or grading of examinations, the Board may require applicants to pay the actual cost of the testing agency in lieu of the fee authorized in subdivision (a)(1) of this section.

(c) In no event may the annual fee imposed on dental hygienists to fund the impaired dental hygienists program exceed the annual fee imposed on dentists to fund the impaired dentist program. All fees shall be payable in advance to the Board and shall be disposed of by the Board in the discharge of its duties under this Article."

SECTION 4. The North Carolina State Board of Dental Examiners shall continue to conduct clinical examinations for applicants seeking a license to practice dental hygiene until at least September 30, 2007. No applicant for a dental hygiene license shall be required to take a Board-approved regional or national independent third-party clinical examination prior to September 30, 2007.

SECTION 5. Notwithstanding any provision to the contrary, the North Carolina State Board of Dental Examiners may accept any application for the dental hygiene clinical examination to be conducted on June 8, 2006, if the application was received on or before March 31, 2006.

SECTION 6. This act becomes effective July 1, 2006.

SENATE BILL 1487:
Dental Hygiene Law Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 29, 2006
Introduced by:	Sen. Nesbitt	**Summary by:**	Karen Cochrane-Brown Committee Counsel
Version:	Second Edition		

SUMMARY: Senate Bill 1487 would authorize the State Board of Dental Examiners to accept the results of Board-approved regional or national independent third party clinical examinations for applicants seeking a dental hygiene license. The bill also authorizes the Board to charge applicants the actual cost of the third-party testing service. This bill is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee.

CURRENT LAW: The North Carolina Dental Hygiene Act governs the licensure of dental hygienist. The Act authorizes the Board to conduct examinations for licensure and to establish rules for:

- The form of application;
- The time and place of examination;
- The type of examination; and
- The qualifications for passing the examination.

The Board does not have specific authorization to contract with third parties to provide examinations. Session Law 2005-366 amended the Dental Practice Act to authorize the Board to use outside testing agencies for the examination of dentists. How ever, no such statutory amendment was made to the Dental Hygiene Act.

BILL ANALYSIS: The bill would authorize the Board to contract with third-party testing agencies to conduct clinical exams for dental hygiene applicants. Its sets a number of criteria to be considered by the Board before entering such a contract, including:

- The number of states that recognize the test
- The cost of the examination
- How long the testing agency had been conducting exams
- Whether the exam includes procedures performed on human subjects

The Board may require applicants to pay the actual cost of the third party exam.

The bill also directs the Board to continue to conduct its own exams until at least September 30, 2007. The Board may accept applications for this year's exam if they were received on or before March 31, 2006.

EFFECTIVE DATE: This act becomes effective July 1, 2006.

S1487e2-SMRB

S

SENATE BILL 1187

Short Title:	Tryon Palace Fund/Interest-Bearing.	(Public)
Sponsors:	Senator Bland.	
Referred to:	Finance.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO SPECIFY THE TRYON PALACE HISTORIC SITES AND GARDENS FUND AS A SPECIAL, INTEREST-BEARING TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 121-21.1 reads as rewritten:

"**§ 121-21.1. Tryon Palace Historic Sites and Gardens Fund.**

(a) Fund. – The Tryon Palace Historic Sites and Gardens Fund is hereby created as a ~~special~~ special, interest-bearing, and nonreverting fund in the Division of Tryon Palace Historic Sites and Gardens. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used for repair, renovation, expansion, and maintenance at Tryon Palace Historic Sites and Gardens.

(b) Disposition of Fees. – All entrance fee receipts shall be credited to the Tryon Palace Historic Sites and Gardens Fund.

(c) The Tryon Palace Commission shall submit to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division by September 30 of each year a report on the Tryon Palace Historic Sites and Gardens Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year."

SECTION 2. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1963*

Committee Substitute Favorable 6/5/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1963-CSSVx-80 [v.10]

6/29/2006 1:19:09 AM

Short Title: Revenue Laws Tech. & Motor Fuel Tax Changes. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX, AND TO AUTHORIZE A COUNTY THAT IMPOSES A SALES TAX FOR PUBLIC TRANSPORTATION TO LEVY A VEHICLE RENTAL TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.82(a) reads as rewritten:

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of ~~Agriculture and Consumer Services~~ Commerce under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on

the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount ~~so determined~~ shall ~~in no case~~ not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each ~~such~~ corporation ~~plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified~~ nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege ~~tax, which is hereby levied~~ tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein provided.~~ provided in this section. The tax imposed in this section shall ~~in no case~~ not be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each ~~such~~ corporation in this State. Appraised value of tangible property including real estate ~~shall be~~ is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. ~~Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term "total actual investment in tangible property" as used in this section ~~shall be construed to mean~~ means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming ~~such~~ this deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that ~~such~~ the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to ~~such~~ the devices,

plants or equipment, that ~~such~~ the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose ~~thereof~~ is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas ~~shall be~~ is treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to ~~such~~ pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

SECTION 3.(a) G.S. 105-130.2 reads as rewritten:

"...

(4a) Gross income. – Defined in section 61 of the Code.

~~(4a)~~(4b) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.

..."

SECTION 3.(b) G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in G.S. ~~105-130.2(5).~~105-130.2(4b)."

SECTION 4.(a) G.S. 105-130.47(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual.~~ wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(b) G.S. 105-151.29(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the

fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(c) G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(27) To ~~publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.~~provide a report required under this Chapter.

...

(30) **(Effective for business activities occurring on or after May 1, 2005)** To ~~publish the information required under G.S. 105-129.54 and to~~ prove that a business does not meet the definition of "small business" under Article 3F of this Chapter because the annual receipts of the business, combined with the annual receipts of all related persons, exceeds the applicable amount.

...

~~(32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly.~~

...

(34) **(Effective for taxable years on or after January 1, 2005)** To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of the Department of Commerce and with the regional film ~~commissions and to publish the reports required under those sections.~~commissions.

...

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer.

..."

SECTION 5.(a) G.S. 105-164.3(49) reads as rewritten:

"(49) Use. ~~Means and includes the~~ The exercise of any ~~right or power~~ right, power, or dominion whatsoever over tangible personal property or a service by ~~a~~ the purchaser ~~thereof and includes, but is not limited to, any~~ of the property or service. The term includes withdrawal from

storage, distribution, installation, affixation to real or personal property, ~~or~~ and exhaustion or consumption of the tangible personal property or service by the owner or ~~purchaser thereof, but~~ purchaser. The term does not include the sale of tangible personal property or a service in the regular course of business."

SECTION 5.(b) G.S. 105-164.16(a) reads as rewritten:

"(a) General. – Sales and use taxes are payable quarterly, monthly, or semimonthly as specified in this section. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property or services that ~~was~~ were purchased or received during the reporting period and ~~is~~ are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed."

SECTION 6. G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 7. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Sales tax part of purchase price.**

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this

Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer."

SECTION 8.(a) G.S. 105-164.13(1a) reads as rewritten:

"(1a) Sales of the following to a farmer, as defined in subdivision (1) of this section:

a. A container ~~sold to a farmer, as defined in subdivision (1) of this section,~~ used for a purpose set out in ~~that~~ subdivision (1) of this section or in packaging and transporting the farmer's product for sale.

b. A grain, feed, or soybean storage facility, and parts and accessories attached to the facility."

SECTION 8.(b) G.S. 105-164.13(4e) is repealed.

SECTION 9. G.S. 105-164.14(k) reads as rewritten:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a refund allowed in subsections (a1), (g), (h), (i), ~~and (j)~~(j), and (l) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 10. G.S. 105-164.15A reads as rewritten:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 11. G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina."

SECTION 12.(a) G.S. 105-233 and G.S. 105-234 are repealed.

SECTION 12.(b) G.S. 105-236 reads as rewritten:

"**§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.**

(a) Penalties. – ~~Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:~~The following civil penalties and criminal offenses apply:

(1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution ~~in this State~~ to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

...

~~(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.~~

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1."

SECTION 12.(c) G.S. 105-449.48 and G.S. 105-449.127 are repealed.

SECTION 12.(d) G.S. 105-449.49 reads as rewritten:

"**§ 105-449.49. Temporary permits.**

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State for three days without registering the vehicle in

accordance with G.S. ~~105-449.47 for not more than three days.~~ 105-449.47. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 13.(a) G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender ~~is not required to obtain a separate license~~ and who transports fuel is considered to be licensed as a motor fuel ~~transporter if the distributor or blender does not transport motor fuel for others for hire~~ transporter."

SECTION 13.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of ~~imported or exported~~ motor fuel.**

(a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this State or exports motor fuel from this State~~ must file a monthly informational return with the Secretary that shows motor fuel ~~received or delivered for import or export~~ transported in this State by the transporter during the month. ~~This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

(b) Content. – The return required by this section is due by the 25th day of the month following the month covered by the return. The return must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of

motor fuel received, the date the motor fuel was received, and the destination state of the fuel."

SECTION 14.(a) G.S. 105-449.60 is amended by adding a new subdivision to read:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

...

(10a) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel."

SECTION 14.(b) G.S. 105-449.88A reads as rewritten:

"**§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.**

~~(a) Exempt Cards at Rack. – When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.~~

(b) Exempt ~~Cards at Retail.~~ Card or Code. – ~~An "exempt card or code" is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.~~ An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or ~~exempt access card~~ code is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

SECTION 14.(c) G.S. 105-449.90 reads as rewritten:

"**§ 105-449.90. When tax return and payment are due.**

(a) Filing Periods. – The excise tax imposed by this Article is payable when a return is due. A return is due ~~annually, quarterly,~~annually or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

~~A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.~~

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 3rd of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. – A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

~~(c) Quarterly Filers. – A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.~~

(d) Monthly Filers on 22nd. – The following persons must file a monthly return by the 22nd of each month:

(1) A refiner.
(2) A supplier.
(3) A bonded importer.
(4) A blender.
(5) A tank wagon importer.
(6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
(7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 3rd. – An occasional importer must file a monthly return by the third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 23; 1997-60, s. 11.)"

SECTION 14.(d) G.S. 105-449.93 reads as rewritten:

"**§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for licensed distributors and some licensed importers.**

~~(a) Deduction. – A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder's intent to resell the fuel in an exempt sale:~~

~~(1) A licensed distributor.~~
~~(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.~~

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a

discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State."

SECTION 14.(e) G.S. 105-449.94 is repealed.

SECTION 14.(f) G.S. 105-449.97(d) reads as rewritten:

"(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or ~~an exempt access~~ code to a person that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

SECTION 14.(g) G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
   a. Heating.
   b. Drying crops.
   c. A manufacturing process.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It has a dispensing device that is not suitable for use in fueling a highway vehicle."

SECTION 15.(a) G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month."

SECTION 15.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.**

(a) Requirement. – A motor fuel transporter that imports motor fuel into this State or exports motor fuel from this State must file a monthly informational return with the Secretary that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. – The return required by this section ~~is due by the 25th day of the month following the month covered by the return. The return~~ must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(c) Due Date. – The return required by this section is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 15.(c) G.S. 105-449.102(a) reads as rewritten:

"(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel."

SECTION 15.(d) G.S. 105-449.137(b) reads as rewritten:

"(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due ~~monthly within 25 days after the end of each month.~~ on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary."

SECTION 15.(e) G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of each month~~ on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of ~~G.S. 105-449.100~~ G.S. 105-449.90.

(1) Motor fuel.

(2) Alternative fuel used to operate a highway vehicle.

(3) Kerosene."

SECTION 16.(a) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 16.(b) G.S. 105-449.107 reads as rewritten:

"**§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.**

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due

on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.
(2) A solid waste compacting vehicle.
(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.
(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.
(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. Article 5F of this Chapter determines the amount of privilege tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

SECTION 17. G.S. 105-449.120(a)(3a) is repealed.

SECTION 18. The catch line of G.S. 105-249.2 reads as rewritten:

"**§ 105-249.2. Due date extended and penalties waived for certain military personnel or ~~individuals~~ persons affected by a presidentially declared disaster.**"

SECTION 19. The catch line of G.S. 143B-437.71 reads as rewritten:

"§ 143B-437.71. One North Carolina Fund established as a ~~nonreverting account.~~special revenue fund."

SECTION 20.(a) G.S. 153A-155(d) reads as rewritten:

"(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 20.(b) G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 21. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 22. The introductory language for Section 59.2 of S.L. 2005-435 reads as rewritten:

"**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:".

SECTION 23. The introductory language of Section 4 of S.L. 2005-413 reads as rewritten:

"**SECTION 4.** ~~G.S. 105-129.15(7) reads~~ Subdivisions (6) and (7) of G.S. 105-129.15 read as rewritten:".

SECTION 24. Section 1(a) of S.L. 2005-261 reads as rewritten:

"**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. ~~105-164(a)(1).~~105-164.4(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 25. G.S. 160A-537(d) reads as rewritten:

"(d) Effective Date. – The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city ~~council.~~council, except that if the governing body in the resolution states that general obligation bonds are anticipated to be authorized for the project, it may make the resolution effective immediately upon its adoption, but no ad valorem tax may be levied for a partial fiscal year."

SECTION 26. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section ~~for estates of decedents dying on or after January 1, 2002, is the maximum credit for state death taxes allowed under section 2011 of the Code without regard to the phase-out and termination of that credit under subdivision (b)(2) and subsection (f) of that section and without regard to~~ is the amount of the state death tax credit that, as of December 31, 2001, would have been allowed under section 2011 of the Code against the federal taxable estate. The tax may not exceed the amount of federal estate tax due under the Code. The federal taxable estate and the amount of the federal estate tax due are determined without taking into account the deduction for state death taxes allowed under Section 2058 of the ~~Code.~~ Code and the credits allowed under sections 2011 through 2015 of the Code.

If any property in the estate is located in a state other than North Carolina, the amount of tax payable depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by the lesser of the amount of the death tax paid the other state or an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of

which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 27. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity and telecommunications service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year. ~~The Secretary shall make an annual report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly by March 1 of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of this subsection over the preceding year.~~

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b), (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.

(3) A metropolitan sewerage district or a metropolitan water district in this State.

(4) A water and sewer authority created under Chapter 162A of the General Statutes.

(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.

(6) A sanitary district.

(7) A regional solid waste management authority created pursuant to G.S. 153A-421.

(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.

(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
(18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.
(21) The University of North Carolina Health Care System.
(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

SECTION 28. G.S. 105-278(a) reads as rewritten:

"(a) Real property designated as a historic ~~structure or site~~ property by a local ordinance adopted pursuant to G.S. ~~160A-400.7~~ 160A-399.4 or designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160A-400.5 is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287."

SECTION 29. G.S. 106-452 is repealed.

SECTION 30. Part 3 of S.L. 1997-417 is amended by adding a new section to read:

"**SECTION 3.1.** A county authorized to impose a tax under Article 43 of Chapter 105 of the General Statutes, as enacted by Part 1 of this act, is considered an authority under Article 50 of Chapter 105 of the General Statutes, as enacted by Section 3 of this act, and the board of commissioners of that county is considered the board of trustees of

the authority under Article 50. G.S. 105-544 of Article 50 does not apply to the proceeds of a tax imposed by a county considered an authority under this section. The proceeds of a tax imposed by a county considered an authority under this section must be transferred to the largest city in that county operating a public transportation system and used only for financing, constructing, operating, and maintaining a public transportation system. The proceeds may supplant existing funds allocated for a public transportation system. The term 'public transportation system' has the same meaning as defined in G.S. 105-506 of Article 43."

SECTION 31. Section 4 of this act is effective for taxable years beginning on or after January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. Section 26 of this act is effective when it becomes law, and applies to the estates of decedents dying on or after January 1, 2005. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1963*
Committee Substitute Favorable 6/5/06

Short Title: Revenue Laws Tech. & Motor Fuel Tax Changes. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.82(a) reads as rewritten:

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of ~~Agriculture and Consumer Services~~ Commerce under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount ~~so determined~~ shall ~~in no case~~ not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each ~~such~~ corporation ~~plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified~~ nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege ~~tax, which is hereby levied~~ tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein provided.~~ provided in this section. The tax imposed in this section shall ~~in no case~~ not be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each ~~such~~ corporation in this State. Appraised value of tangible property including real estate ~~shall be~~ is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. ~~Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term "total actual investment in tangible property" as used in this section ~~shall be construed to mean~~ means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming ~~such~~ this deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that ~~such~~ the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to ~~such~~ the devices, plants or equipment, that ~~such~~ the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management

Commission or local air pollution control program and that the primary purpose ~~thereof~~ is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas ~~shall be~~ is treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to ~~such~~ pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

SECTION 3.(a) G.S. 105-130.2 reads as rewritten:

"...

(4a) Gross income. – Defined in section 61 of the Code.

~~(4a)~~(4b) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.

..."

SECTION 3.(b) G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in G.S. ~~105-130.2(5).~~105-130.2(4b)."

SECTION 4.(a) G.S. 105-130.47(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased ~~or purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~ wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(b) G.S. 105-151.29(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual.~~wages on which ~~the production company remitted~~

withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(c) G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

~~(32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly.~~

...

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer."

SECTION 5.(a) G.S. 105-164.3(49) reads as rewritten:

"(49) Use. – Means and includes the exercise of any right or power or dominion whatsoever over tangible personal property or over any service subject to tax under this Article by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, distribution, installation, affixation to real or personal property, or exhaustion or consumption of tangible personal property or any service subject to tax under this Article by the owner or purchaser thereof, but does not include the sale of tangible personal property or of any service subject to tax under this Article in the regular course of business."

SECTION 5.(b) G.S. 105-164.16(a) reads as rewritten:

"(a) General. – Sales and use taxes are payable quarterly, monthly, or semimonthly as specified in this section. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property or services sourced to this State that ~~was~~ were purchased or received during the reporting period and ~~is~~ are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed."

SECTION 6. G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 7. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Sales tax part of purchase price.**

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer."

SECTION 8.(a) G.S. 105-164.13(1a) reads as rewritten:

"(1a) Sales of the following to a farmer, as defined in subdivision (1) of this section:

a. A container ~~sold to a farmer, as defined in subdivision (1) of this section,~~ used for a purpose set out in ~~that~~ subdivision (1) of this section or in packaging and transporting the farmer's product for sale.

b. A grain, feed, or soybean storage facility, and parts and accessories attached to the facility."

SECTION 8.(b) G.S. 105-164.13(4e) is repealed.

SECTION 9. G.S. 105-164.14(k) reads as rewritten:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a refund allowed in subsections (a1), (g), (h), (i), ~~and (j)~~(j), and (l) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 10. G.S. 105-164.15A reads as rewritten:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 11. G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina."

SECTION 12.(a) G.S. 105-233 and G.S. 105-234 are repealed.

SECTION 12.(b) G.S. 105-236 reads as rewritten:

"**§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.**

(a) Penalties. – ~~Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:~~The following civil penalties and criminal offenses apply:

(1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution ~~in this State~~ to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

...

~~(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.~~

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1."

SECTION 12.(c) G.S. 105-449.48 and G.S. 105-449.127 are repealed.

SECTION 12.(d) G.S. 105-449.49 reads as rewritten:

"**§ 105-449.49. Temporary permits.**

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State for three days without registering the vehicle in accordance with G.S. ~~105-449.47 for not more than three days.~~ 105-449.47. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 13.(a) G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender ~~is not required to obtain a separate license~~ and who

transports fuel is considered to be licensed as a motor fuel ~~transporter if the distributor or blender does not transport motor fuel for others for hire.~~transporter."

SECTION 13.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of ~~imported or exported~~ motor fuel.**

(a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this State or exports motor fuel from this State~~ must file a monthly informational return with the Secretary that shows motor fuel ~~received or delivered for import or export~~ transported in this State by the transporter during the month. ~~This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

(b) Content. – The return required by this section is due by the 25th day of the month following the month covered by the return. The return must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel."

SECTION 14.(a) G.S. 105-449.60 is amended by adding a new subdivision to read:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

...

(10a) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel."

SECTION 14.(b) G.S. 105-449.88A reads as rewritten:

"**§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.**

~~(a) Exempt Cards at Rack. – When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.~~

(b) Exempt ~~Cards at Retail.~~ Card or Code. – ~~An "exempt card or code" is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.~~ An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or ~~exempt access card~~ code is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

SECTION 14.(c) G.S. 105-449.90 reads as rewritten:

"**§ 105-449.90. When tax return and payment are due.**

(a) Filing Periods. – The excise tax imposed by this Article is payable when a return is due. A return is due ~~annually, quarterly,~~annually or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

~~A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.~~

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 3rd of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. – A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

~~(c) Quarterly Filers. – A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.~~

(d) Monthly Filers on 22nd. – The following persons must file a monthly return by the 22nd of each month:

(1) A refiner.
(2) A supplier.
(3) A bonded importer.
(4) A blender.
(5) A tank wagon importer.

(6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.

(7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 3rd. – An occasional importer must file a monthly return by the third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 23; 1997-60, s. 11.)"

SECTION 14.(d) G.S. 105-449.93 reads as rewritten:

"**§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for licensed distributors and some licensed importers.**

~~(a) Deduction. – A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder's intent to resell the fuel in an exempt sale:~~

~~(1) A licensed distributor.~~

~~(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.~~

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State."

SECTION 14.(e) G.S. 105-449.94 is repealed.

SECTION 14.(f) G.S. 105-449.97(d) reads as rewritten:

"(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or ~~an exempt access~~ code to a person that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

SECTION 14.(g) G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
   a. Heating.
   b. Drying crops.
   c. A manufacturing process.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It has a dispensing device that is not suitable for use in fueling a highway vehicle."

SECTION 15.(a) G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.
(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.
(3) The number of gallons of motor fuel gained or lost at the terminal during the month."

SECTION 15.(b) G.S. 105-449.101 reads as rewritten:

"§ 105-449.101. **Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.**

(a) Requirement. – A motor fuel transporter that imports motor fuel into this State or exports motor fuel from this State must file a monthly informational return with the Secretary that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. – The return required by this section ~~is due by the 25th day of the month following the month covered by the return. The return~~ must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(c) Due Date. – The return required by this section is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 15.(c) G.S. 105-449.102(a) reads as rewritten:

"(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel."

SECTION 15.(d) G.S. 105-449.137(b) reads as rewritten:

"(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due ~~monthly within 25 days after the end of each month.~~ on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary."

SECTION 15.(e) G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the

General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of each month~~ on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of ~~G.S. 105-449.100.~~G.S. 105-449.90.

(1) Motor fuel.

(2) Alternative fuel used to operate a highway vehicle.

(3) Kerosene."

SECTION 16.(a) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 16.(b) G.S. 105-449.107 reads as rewritten:

"**§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.**

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.

(2) A solid waste compacting vehicle.

(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.

(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.

(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.

(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.

(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. Article 5F of this Chapter determines the amount of privilege tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

SECTION 17. G.S. 105-449.120(a)(3a) is repealed.

SECTION 18. The catch line of G.S. 105-249.2 reads as rewritten:

"**§ 105-249.2. Due date extended and penalties waived for certain military personnel or ~~individuals~~ persons affected by a presidentially declared disaster.**"

SECTION 19. The catch line of G.S. 143B-437.71 reads as rewritten:

"**§ 143B-437.71. One North Carolina Fund established as a ~~nonreverting account.~~special revenue fund.**"

SECTION 20.(a) G.S. 153A-155(d) reads as rewritten:

"(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 20.(b) G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or

before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 21. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 22. The introductory language for Section 59.2 of S.L. 2005-435 reads as rewritten:

"**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:".

SECTION 23. The introductory language of Section 4 of S.L. 2005-413 reads as rewritten:

"**SECTION 4.** ~~G.S. 105-129.15(7) reads~~ Subdivisions (6) and (7) of G.S. 105-129.15 read as rewritten:".

SECTION 24. Section 1(a) of S.L. 2005-261 reads as rewritten:

"**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. ~~105-164(a)(1).~~ 105-164.4(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 25. Section 4 is effective for taxable years beginning on or after January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. The remainder of this act is effective when it becomes law.

HOUSE BILL 1963:
Revenue Laws Tech. & Motor Fuel Tax Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 29, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Trina Griffin and Cindy Avrette Committee Counsel
Version:	H1963-CSSVx-80		

SUMMARY: ***House Bill 1963 makes several technical, clarifying, and administrative changes to the revenue laws and related statutes and to the motor fuel tax laws to improve collection and administration. Sections 1, 2, 7, 19, 21, 22, 23, 24, 27, and 28 are technical changes. Sections 3, 5, 6, 8, 12, 18, and 26 are clarifying changes. Sections 4, 9, 10, 11, 20, 25, and 29 make administrative changes. Sections 13 through 17 are changes to the motor fuel tax laws designed to improve collection and administration efforts. Section 30 authorizes a county that imposes a sales tax for public transportation to levy a vehicle rental tax.***

The original bill was a recommendation of the Revenue Laws Study Committee. Senate Bill 1453, introduced by Senate Hartsell, is a companion bill.

The proposed committee substitute makes changes to Sections 4 and adds Sections 25 through 30.

BILL ANALYSIS: This bill makes the following changes:

Section	Explanation
1	Corrects a departmental reference since S.L. 2005-380 transferred the NC Grape Growers Council from the Department of Agriculture and Consumer Services to the Department of Commerce.
2	Removes obsolete language and makes other stylistic changes. This statutory subsection makes two obsolete references to including the appraised value of intangible property in the appraised value base. This language became obsolete with the repeal of the intangibles tax effective for tax years beginning on or after January 1, 1995. The Department of Revenue does not require intangible property to be included in the appraised value base.
3(a) & (b)	Defines the term "gross income" in the corporate income tax law by reference to section 61 of the Code, which is the same definition that is currently found in the individual income tax law. Section 20(b) is a conforming change.
4	Section 4 relates to the new film incentives tax credit enacted last year. Subsections (a) and (b) make clarifying changes to the film incentives in both the corporate and individual provisions. First, the term "highly compensated individual" is limited to individuals who are compensated for services and does not include individuals who may sell goods in excess of the one-million-dollar limitation. The term is also amended Second, the exclusion of amounts paid to highly compensated individuals is clarified so that it is clear that the exclusion applies whether the individual is paid directly by the production or by an unrelated third-party. It is not uncommon for a production company to contract with a separate entity for the services of actors or other professionals involved in a production. Third, the statutes are amended so that withholdings must be remitted in order for compensation to qualify as a qualifying

	expense, but that withholding does not necessarily have to be performed by the production company. Subsection (c) makes changes to the confidentiality statute, one of which is related to the film incentives tax credit. It adds a new subdivision (36), which allows the Department of Revenue to provide to a production company claiming a film production credit information used by the Department to adjust the amount of the credit claimed by the production company. It also repeals subdivision (32), which allows the Department of Revenue to provide to Department of Public Instruction and the Fiscal Research Division reports regarding sales and use tax refunds received by school administrative units. This provision was enacted last year. However, Section 32(b) of S.L. 2005-435 amended the definition of tax information to exclude governmental agency refunds. Therefore, an exception is not needed in the confidentiality statute since the information is no longer confidential tax information. **It also rewrites (27) to create a generic exception for reports required by law rather than listing out specific statutes and makes conforming changes.**
5(a) & (b)	In 2005, the General Assembly made the use tax applicable to services sourced to this State. Section 21(a) is a conforming change which amends the definition of "use" to include services. Section 21(b) is a conforming change to the statute regarding use tax returns.
6	Corrects an inadvertent omission. In last year's budget bill, there was a rewrite of this statutory section on use tax. A credit should be allowed for both sales and use tax paid to another state, but the revised statute only provides a credit for sales tax paid. There was no intent to change the application of the tax and so, this section adds the phrase "or use" back into the statute.
7	Makes a grammatical change to the statute.
8(a) & (b)	Clarifies that the exemption from sales tax for sales of grain, feed, or soybean storage facilities and accessories only applies to sales made to farmers. This was one of the items previously subject to the 1%, $80 maximum rate of tax. The 1% rate was imposed on sales to farmers of grain, feed, or soybean storage facilities and accessories. Last year, to conform to the Streamlined Agreement, the General Assembly exempted these items from sales tax. However, the new exemption language did not limit the exemption to farmers.
9	Last year, a sales and use tax refund was authorized for the purchase of fuel by interstate passenger air carriers and by motorsports racing team or sanctioning body. Under current law, the Department of Revenue is required annually to publish the number of taxpayers claiming certain sales and use tax refunds. This section would add these categories of refunds to the reporting requirement.
10	Clarifies the effective date for a rate increase with regard to prepayments of service. In 2005, the General Assembly enacted G.S. 105-164.15A, which addresses the effective date for rate increases and decreases to taxable services, but the statute does not specifically address prepayments of service.

11	Provides a credit against the privilege tax for sales and use tax, or a similar type of tax, paid to another state. Currently, there is no specific provision for credits in the newly enacted Article 5F.
12	Section 12 makes changes to various penalty statutes. Section 12(a) repeals two misdemeanor statutes relating to the willful failure to comply with the tax laws and aiding and abetting in the violation of the tax laws. These violations are covered by G.S. 105-236(9) and therefore are unnecessary. Section 12(b) reorganizes the penalties statute and makes some technical and clarifying changes. It divides the former statutory section into three subsections: subsection (a) lists the various penalties available to the Department of Revenue for violations of the tax laws; subsection (b) is a recodification of the principle previously set out in subdivision (11), which states that a violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh; and subsection (c) restates language previously found at the beginning of the statute directing the disposition of the penalty proceeds to the Civil Penalty and Forfeiture Fund. This subsection also deletes an obsolete requirement to avoid the penalty for a bad check, which states that a person had sufficient funds in a bank account "in this State." Since the Department does not follow this requirement, it is being deleted. Section 12(c) repeals G.S. 105-449.127, which provides that civil penalties assessed for violation of the motor fuels tax laws be credited to the Highway Fund. G.S. 105-449.48 provides that fees collected for the issuance of temporary permits for motor carriers and all civil penalties collected for violations of the motor carrier laws be credited to the Highway Fund. Section 12(d) repeals this statute and moves the fee disposition language to G.S. 105-449.49. The repeal of these two statutes redirects from the Highway Fund to the Civil Penalty and Forfeiture Fund civil penalty proceeds collected under these two articles as required by *North Carolina School Boards Assn. v. Moore*. In July of 2005, the North Carolina Supreme Court held in *North Carolina School Boards Assn. v. Moore* that the penalties assessed under Chapter 105 are imposed as a monetary payment for a taxpayer's noncompliance with a mandate of the Revenue Act, that they are punitive in nature, and, as such, they are subject to Article IX, Section 7 of the NC Constitution requiring those funds be remitted to the Civil Penalty and Forfeiture Fund for use by the schools.
13(a) & (b)	Section 13 would give the Department the ability to cross match all motor fuel to ensure compliance with the motor fuel tax laws. Under current law, the Department may cross-match information regarding fuel entering the State and fuel leaving the State, but it cannot cross-match information regarding the intrastate movement of motor fuel. The Department has a new fuel tracking system that will better enable it to monitor the movement of fuel. The Department expects the system to be operational by the last quarter of this fiscal year. Section 13 makes the statutory changes necessary to enable the Department to review intrastate movements of fuel by providing that anyone who transports fuel must be licensed as a transporter and that all transporters must file informational returns on all movements of motor fuel. Section 13(a) provides that all people who transport motor fuel will be licensed as a

	motor fuel transporter. Under current law, a person licensed as a distributor or blender is considered to be licensed as a motor fuel transporter if the person transports the fuel for others for hire. This section would remove the exception for persons who transport their own fuel so that any distributor or blender who transports fuel – whether for hire or for their own use – would also be considered licensed as a transporter. Section 13(b) provides that a transporter must file an informational return showing deliveries of motor fuel. Under current law, only interstate movements of fuel must be reported on a monthly informational return. The change in this section of the bill would require such a return for all deliveries of fuel. This change would become effective July 1, 2007.
14	Section 14 would provide that all motor fuel leaving the terminal rack would be subject to the motor fuel excise tax. The Department requested this change to reduce the areas of evasion and inadvertent duplicate refunds. Under current law, a licensed distributor or importer may remove fuel from a terminal without paying the tax if the person has an exempt card issued by the supplier. This section would remove the ability of distributors and importers to use exempt cards at the terminal rack. Instead, they would be able to obtain a monthly refund on any sales of fuel to exempt entities.[1] This change would conform North Carolina's law to the laws of the surrounding states who do not allow untaxed gasoline or undyed fuel to leave their terminals without the imposition of the tax. Section 14(a) puts the definition of 'exempt card or code' in the definitional statute for the motor fuel article. Section 14(b) repeals the portion of the statute that allows fuel to be removed from the terminal without paying the tax. Section 14(c) repeals the requirement of a quarterly return and makes conforming changes. Section 14(d) removes the deduction a licensed distributor or importer may make for tax exempt fuel taken from the terminal rack because the ability to obtain the fuel without paying the tax is repealed in section 14(b). Section 14(e) repeals the statute requiring a licensed distributor or importer who obtains fuel at the terminal rack with an exempt card to file a quarterly reconciling return. Section 14(f) makes conforming changes. Section 14(g) provides a monthly refund procedure for a distributor who sells diesel fuel to an airport. A refund procedure already exists for sales of motor fuel to the other listed exempt entities.
15	Section 15 would establish a common due date for all motor fuel tax due and informational returns. Under current law, most of the monthly tax returns are due on the 22nd day of the month following the month covered by the return. Informational returns are due on the 25th day of the month following the month covered by the return. These sections provide that all monthly returns are due on the 22nd day of the month following the month covered by the return.
16	Adds a reference to the privilege tax imposed under Article 5F, which was enacted last year, with regard to refunds of motor fuels tax allowed for nonhighway use of a vehicle. A refund of motor fuels tax allowed for the nonhighway use of a vehicle is to be reduced by the amount of sales and use tax owed based on the method set out in G.S.

[1] G.S. 105-449.88 exempts the following entities from the motor fuel excise tax if it is sold to them for their use: the federal government, the State, local boards of education, charter schools, community colleges, counties, municipalities, and airports.

	105-449.107. Prior to January 1, 2006, the amount of sales tax due was based on either the general State and local rates of tax or the 1% rate imposed on sales of fuel to farmers and manufacturers. Effective January 1, 2006, sales of fuel to farmers and manufacturers are subject to the new 1% privilege tax. Currently, these two statutes refer only to the sales and use taxes levied in Article 5.
17	Section 17 would remove the misdemeanor for taxpayers failing to pay the destination state taxes collected to that state. This provision was put into the law when North Carolina first moved to tax-at-the-rack. Today, all of the surrounding states have destination state tax laws. North Carolina does not collect and remit the taxes to those states, therefore this misdemeanor is no longer needed.
18	Amends the caption of G.S. 105-249.2 by replacing the word "individuals" with the word "persons." This statute provides, in part, that no penalties may be assessed for any period in which the time for filing a federal return or for paying a federal tax is extended because of a presidentially declared disaster. The relief provided by this statute is applied by the Department of Revenue equally to all tax entities, including businesses, and not just individuals.
19	Amends the caption of the statute to reflect what the statute actually provides. G.S. 143B-437.71(a) states, "The One North Carolina Fund is established as a special revenue fund in the Department of Commerce."
20	Section 20(a) and (b) conform the date an occupancy tax return is due to the date that the occupancy taxes are due.
21	Corrects an incorrect statutory reference.
22	Corrects an incorrect statutory reference.
23	Corrects introductory language from a 2005 session law.
24	Corrects an incorrect statutory reference within a local session law.
25	**Allows a municipality to create a municipal service district effective upon the adoption of the resolution creating it, rather than waiting for the first day of the next fiscal year, if general obligation bonds are anticipated to be authorized for the project. However, it provides that no ad valorem tax may be levied for a partial fiscal year.**
26	**Amends the state estate tax statute by clarifying that state estate tax liability may not exceed federal estate tax liability determined without regard to the deduction for state death taxes or certain federal credits. The Department of Revenue currently interprets the statute as limiting the state estate tax in this way, but the Estate Planning Section of the NC Bar Association has requested that clarifying language be put in the statute. This change will not change the way in which estate tax is calculated.**
27	**Repeals a reporting requirement related to sales and use tax refunds allowed to local school administrative units. This reporting requirement is unnecessary since the General Assembly changed the law in 2005 to redirect State sales and use tax revenues refundable to LEAs to the State Public School Fund.**

28	**Corrects an incorrect statutory reference.**
29	**Repeals G.S. 106-452, which sets the maximum charges for handling and selling tobacco on the floor of tobacco warehouses.**
30	**Authorizes a county that imposes a sales tax for public transportation to levy a vehicle rental tax. This provision was the same provision, substantively, that Senate Finance considered and gave a favorable report to in a stand-alone bill (SB 1458) on June 28, 2006.** **This provision would authorize a county that may impose an additional ½ cent sales and use tax for public transit to also levy a vehicle rental tax. The county must allocate the proceeds of any vehicle rental tax it imposes to the largest city in the county that operates a public transportation system. The city must use the money to finance, construct, operate, and maintain local public transportation systems. Unlike the additional sales tax revenue, the revenue from this tax may be used to supplant and replace existing general fund revenues allocated to public transportation.**

EFFECTIVE DATE: Section 4 is effective for taxable years beginning on or after January 1, 2006. Sections 13 of the act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. The remainder of this act is effective when it becomes law.

H1963e1-SMSV-CSSVx-80

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1963 (First Edition)

SHORT TITLE: Revenue Laws Tech. & Motor Fuel Tax Changes.

SPONSOR(S): Representative Luebke

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available (X)**

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	**Small potential gain due to improved compliance**				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: Section 4 is effective for taxable years beginning on or after January 1, 2006. Sections 13, 14, 15, and 17 become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales or motor fuel at the terminal rack (Section 14) after January 1, 2007.

BILL SUMMARY: The legislation makes numerous technical and clarifying changes to the State's tax laws. It is a recommendation of the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY: The bill makes several changes to the State's tax laws, most of which are technical in nature. There are also several changes to the North Carolina motor fuels tax laws which are designed to improve collection and administration of that tax.

Sections 1, 2, 7, 19, 21, 22, 23, and 24 make purely technical changes and have no revenue impact.

Sections 3, 5, 6, 8, 12, and 18 are designed to clarify existing tax laws. Section 3 defines "gross income" in the corporate income tax law by referencing section 61 of the Internal Revenue Code, which is the same definition for individual income tax law. No revenue impact is expected as a

result of this change. Section 5 conforms the base references for "use tax" to those used for "sales tax". This reflects current practice and is not expected to impact state revenues. Section 6 makes a similar change to clarify that the credit allowed for sales taxes paid in other states also applies to use taxes paid in other states. The change reflects current Department practice. No revenue impact is expected. Section 8 clarifies that the sales tax exemption granted for grain, feed, or soybean storage facilities and accessories only applies to farmers. Because this treatment was assumed in previous fiscal notes, no fiscal impact is expected as a result of this change. Section 12 makes several changes to the penalty statutes as they relate to the North Carolina Department of Revenue. Section 12(a) repeals two misdemeanor statutes that are covered in other areas of the law and are therefore unnecessary. Section 12(b) reorganizes the Revenue penalty statutes and deletes obsolete language. Sections 12(c) and 12(d) make changes to conform existing statutes to the requirement of North Carolina School Boards Association v. Moore, otherwise known as the fines and forfeiture case. Section 18 replaces the term "individuals" with the term "persons" in G.S. 105-249.2, which effectively extends the penalty relief given to individuals in times of a presidentially declared disaster to businesses.

Sections 4, 9, 10, 11, 13, 14, 15, 16, 17, and 20 make more substantive changes to the State's tax laws.

Section 4 addresses the newly enacted film incentive tax credit and the State's confidentiality laws. First, it clarifies that only payments for services, not goods, be considered when determining who is a highly compensated individual for purposes of the credit. It also clarifies that the amount of compensation to be included in the determination of "highly compensated individual" includes compensation paid through an unrelated third party. This section also allows the Department of Revenue to provide a production company that is claiming the credit tax information from a third party, but only if that information was used to adjust the amount of credit claimed by the production company. Finally, it allows the Department of Revenue to provide information to the Department of Public Instruction and the Fiscal Research Division of the General Assembly concerning sales and use tax refunds received by School Administrative Units. This provision was actually approved during the 2005 session, but was inadvertently repealed by a reference in subsequent legislation. No fiscal impact is expected as a result of any of these changes.

Section 9 modifies the Department of Revenue's reporting requirements as they relate to sales and use tax refunds. In the 2005 session new refunds were authorized for interstate passenger air carriers and Motorsports racing teams. This provision would include these two categories of taxpayers in the list of those whose total refund information is to be made public. This only requires that the total number of taxpayers and the amount of total refunds claimed be made public and does not require or allow individual taxpayer information to be released. As this change relates only to reporting, no fiscal impact is expected.

Section 10 clarifies the effective date of a sales and use tax rate increase as it relates to the prepayment of taxes. This change follows Department practice. Thus no revenue impact is expected.

Section 11 deals with the newly enacted 5F privilege tax on manufacturing equipment. Previously these items were taxed under the sales and use tax statutes, which allowed a credit for taxes paid in other states. This section extends that treatment to the new 5F privilege tax. Because this tax treatment was assumed in the estimate for enacting the new privilege tax, no fiscal impact is expected as a result of this change.

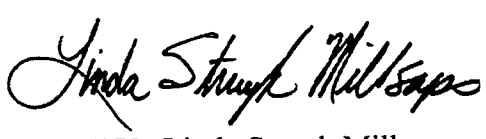
Sections 13, 14, 15, 16 and 17 make changes to North Carolina motor fuels laws. Section 13 authorizes the Department of Revenue to cross match all motor fuel data to ensure compliance with motor fuels tax laws. Currently the Department can only use information on the movement of fuel in and out of the state, but not within the state. Section 12(a) requires that all individuals that transport motor fuel be licensed as a motor fuel transporter. The change effectively removes an exemption for those that transport their own fuel, so that any distributor or blender would also be considered a licensed transporter. Section 13(b) requires that a transporter file an informational return showing all deliveries of motor fuel. Current law only requires reporting of interstate fuel transportation. Section 14 dictates that all motor fuel leaving the terminal rack is subject to the tax. Currently a licensed distributor can remove fuel without paying the tax if they have an exemption card issued by the supplier. The legislation would replace this exemption with a State issued monthly refund. This conforms North Carolina's laws in this area to those of the surrounding states. Section 15 provides for a common due date for all motor fuels tax returns, whether or not tax is due. Section 16 conforms special treatment of Article 5F purchases under the motor fuels tax statutes to that used in the sales and use tax statutes, with regards to the refund of motor fuels taxes. Section 17 removes an obsolete reference in the motor fuels laws. These changes, in total, are expected to improve compliance with North Carolina's motor fuels laws. However, no fiscal estimate is possible on this portion of the bill.

Section 20 clarifies that the due date for an occupancy tax return is the same as the due date for the associated taxes. Because the state does not levy an occupancy tax, no State fiscal impact is anticipated. The change could improve compliance with local occupancy tax laws.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910



PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 30, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2047*

Committee Substitute Favorable 6/13/06

Third Edition Engrossed 6/26/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H2047-PCS30615-RBx-68

Short Title: Video Service Competition Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:

a. Is in effect on January 1, 2007.

b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.

(5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.
(7) Secretary. – The Secretary of State.
(8) Video programming. – Defined in G.S. 105-164.3.

"**§ 66-351. State franchising authority.**

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Award of franchise and commencement of service.**

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 57C-1-22 for filing articles of organization.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.
(2) A description and map of the area to be served.
(3) A list of each county and city in which the described service area is located, in whole or in part.
(4) A schedule indicating when service is expected to be offered in the service area.

(b) Commencement of Service. – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report. The report must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this section.
(7) A report indicating the extent to which the holder has met the customer service requirements under G.S. 66-356(b).
(8) A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted under this section, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

(a) General. – A document filed with the Secretary under this Article must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Secretary under this Article, the person must send a copy of the document to any county or city included in the service area described in the document and to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area described in the document.

The provisions of Article 2 of Chapter 55D of the General Statutes apply to the submission of a document under this Article. A document filed under this Article is a public record as defined in G.S. 132-1. The Secretary must post a document filed under this Article on its Internet Web site or indicate on its Internet Web site that the document has been filed and is available for inspection.

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service in the area of noncompliance. Forfeiture does not apply to revenue received from cable service provided over a cable system in an area that is adjacent to a service area described in a notice of franchise and notice of service filed by that cable service provider under G.S. 66-352 if the provider obtains a State-issued franchise and files a notice of service that includes this area within 20 days after a civil action for forfeiture is filed. A forfeiture does not affect the liability of the cable service provider for sales tax due under G.S. 105-164.4 on cable service.

A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

"**§ 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 that is in effect on January 1, 2007, may terminate the agreement in accordance with subsection (b) of this section in any of the following circumstances:

a. A notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

b. As of January 1, 2007, a county or city has an existing agreement with more than one cable service provider for substantially the same franchise area and at least twenty-five percent (25%) of the households in the franchise areas of the existing agreements are passed by more than one cable service provider.

c. A person provides wireline competition in the franchise area of the existing agreement by offering video programming over

wireline facilities to single family households by a method that does not require a franchise under this Article. A notice of termination filed on the basis of wireline competition must include evidence of the competition in providing video programming service, such as an advertisement announcing the availability of the service, the acceptance of an order for the service, and information on the provider's Web site about the availability of the service. A county or city is allowed 60 days to review the evidence. The effective date of the termination is tolled during this review period. At the end of this period, the termination proceeds unless the county or city has obtained an order enjoining the termination based on the cable service provider's failure to establish the existence of wireline competition in its franchise area.

(3) A cable service provider under an existing agreement that expired before January 1, 2007, may obtain a State-issued franchise. The provider does not have to terminate the agreement in accordance with subsection (b) of this section because the agreement has expired.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary. A termination of an existing agreement becomes effective at the end of the month in which the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance that specifically authorizes the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement or local ordinance before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(5) Competitive pressure to respond to service offered by another cable service provider or other provider of video programming.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. Part 76 and emergency alert requirements established by the Federal Communications Commission.

(c) Complaints. – The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to customer complaints concerning cable services. Persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers are unfair or deceptive acts or practices under G.S. 75-1.1.

To facilitate the resolution of customer complaints, the cable service provider must include the following statement on the customer's bill: "If you have a complaint about your cable service, you should first contact customer service at the following telephone number: (insert the cable service provider's customer service telephone number). If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina (insert information on how to contact the Consumer Protection Division of the Attorney General's Office).

(d) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within the later of the following:

(1) 120 days after the cable service provider receives the written request.

(2) 30 days after any interconnection requested under G.S. 66-358(a)(1) is accomplished.

(c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier, and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least a 60-day notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is

considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

(g) Compliance. – A county or city that has not received PEG channel capacity as required by this section may bring an action to compel a cable service provider to comply with this section.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – A cable service provider operating under a State-issued franchise must transmit a PEG channel by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system within 120 days after it receives a written request for interconnection and may not refuse to interconnect on these terms. The terms include compensation for costs incurred in interconnecting. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All PEG channel programming provided to a cable service provider for transmission must meet the federal National Television System Committee standards or the Advanced Television Systems Committee Standards. If a PEG channel programmer complies with these standards and the cable service provider cannot transmit the programming without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city the equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must, to

the extent possible, select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty-five thousand dollars ($25,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

"**§ 66-360. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a residential retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide inside wiring and is not required to provide service that conflicts with restrictions that apply in a program licensing agreement or another contract. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catch line "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ ~~—~~When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catch line to G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract.**"

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter,~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars ($2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars ($2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July

1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by March 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city that used part of its franchise tax revenue in fiscal year 2005-2006 for the operation and support of PEG channels or a publicly owned and operated television station must use the funds distributed to it under subsections (c) and (d) of this section to continue the same level of support for the PEG channels and public stations. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the

county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

(j) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.

G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition. – A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-296(a) reads as rewritten:

"(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited ~~to:~~to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper ~~repair;~~repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary ~~obstructions;~~obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and

bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent ~~domain;~~domain.

(4) The power to close any street or alley either permanently or ~~temporarily;~~temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and ~~bridges;~~bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the ~~surface;~~surface. To the extent a municipality is authorized under applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the ~~city; and~~city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273."

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(b), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by March 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the

staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Consumer Protection Division of the Attorney General's Office must report to the Revenue Laws Study Committee on or before April 1 of each year, beginning April 1, 2008, on the following information concerning cable service complaints the Division has received from cable customers under G.S. 66-356:

(1) The number of customer complaints.
(2) The types of customer complaints.
(3) The different means of resolving customer complaints.

SECTION 19. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law. A person who provides video programming may obtain a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, and thereby become subject to that Article, regardless of whether the video programming the person provides is considered cable service provided under a cable system under that Article or under federal law.

SECTION 20. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 21. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by this act, has on the issues listed in this section to determine if any changes to the law are needed:

(1) Competition in video programming services.
(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.
(3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly.

SECTION 22. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

HOUSE BILL 2047*

Committee Substitute Favorable 6/13/06

Third Edition Engrossed 6/26/06

Short Title: Video Service Competition Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:

a. Is in effect on January 1, 2007.

b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.

(5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

(7) Secretary. – The Secretary of State.

(8) Video programming. – Defined in G.S. 105-164.3.

"**§ 66-351. State franchising authority.**

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Award of franchise and commencement of service.**

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 57C-1-22 for filing articles of organization.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in the service area.

(b) Commencement of Service. – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

(1) The effective date of a notice of franchise for that area.

(2) A description and map of the service area.

(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of franchise on file with the Secretary must file a notice of franchise under

subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report. The report must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this section.
(7) A report indicating the extent to which the holder has met the customer service requirements under G.S. 66-356(b).
(8) A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted under this section, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

(a) General. – A document filed with the Secretary under this Article must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Secretary under this Article, the person must send a copy of the document to any county or city included in the service area described in the document and to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area described in the document.

The provisions of Article 2 of Chapter 55D of the General Statutes apply to the submission of a document under this Article. A document filed under this Article is a public record as defined in G.S. 132-1. The Secretary must post a document filed under this Article on its Internet Web site or indicate on its Internet Web site that the document has been filed and is available for inspection.

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must

file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service in the area of noncompliance. Forfeiture does not apply to revenue received from cable service provided over a cable system in an area that is adjacent to a service area described in a notice of franchise and notice of service filed by that cable service provider under G.S. 66-352 if the provider obtains a State-issued franchise and files a notice of service that includes this area within 20 days after a civil action for forfeiture is filed. A forfeiture does not affect the liability of the cable service provider for sales tax due under G.S. 105-164.4 on cable service.

A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

"**§ 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 in any of the following circumstances:

a. A notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

b. As of January 1, 2007, a county or city has an existing agreement with more than one cable service provider and at least twenty-five percent (25%) of the households in the franchise areas of the existing agreements are passed by more than one cable service provider.

c. A person provides wireline competition in the franchise area of the existing agreement by offering video programming over wireline facilities to single family households by a method that does not require a franchise under this Article. A notice of termination filed on the basis of wireline competition must

include evidence of the competition in providing video programming service, such as an advertisement announcing the availability of the service, the acceptance of an order for the service, and information on the provider's Web site about the availability of the service. A county or city is allowed 60 days to review the evidence. The effective date of the termination is tolled during this review period. At the end of this period, the termination proceeds unless the county or city has obtained an order enjoining the termination based on the cable service provider's failure to establish the existence of wireline competition in its franchise area.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary. A termination of an existing agreement becomes effective at the end of the month in which the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance that specifically authorizes the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement or local ordinance before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is considered an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(5) Competitive pressure to respond to service offered by another cable service provider or other provider of video programming.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. Part 76 and emergency alert requirements established by the Federal Communications Commission.

(c) Complaints. – The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to customer complaints

concerning cable services. Persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers are considered unfair or deceptive acts or practices under G.S. 75-1.1.

To facilitate the resolution of customer complaints, the cable service provider must include the following statement on the customer's bill: "If you have a complaint about your cable service, you should first contact customer service at the following telephone number: (insert the cable service provider's customer service telephone number). If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001, at www.ncdoj.com, or at 1-877-5-NO-SCAM.

(d) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within 120 days after it receives the written request.

(c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier, and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60 days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

(g) Compliance. – A county or city that has not received PEG channel capacity as required by this section may bring an action to compel a cable service provider to comply with this section.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of PEG channels by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system within 180 days after it receives a written request for interconnection and may not refuse to interconnect on these terms. The terms include compensation for costs incurred in interconnecting. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All PEG channel programming provided to a cable service provider for transmission must meet the federal National Television System Committee standards or the Advanced Television Systems Committee Standards. If a PEG channel programmer complies with these standards and the cable service provider cannot transmit the programming without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city the equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to the extent possible select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty-five thousand dollars ($25,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

"**§ 66-360. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a residential retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide inside wiring and is not required to provide service that conflicts with restrictions that apply in a program licensing agreement or another contract. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catch line "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all

the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catch line to G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract.**"

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter,~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars ($2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).
(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.
(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund, established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars ($2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by January 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or

city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city that used part of its franchise tax revenue in fiscal year 2005-2006 for the operation and support of PEG channels or a publicly owned and operated television station must use the funds distributed to it under subsections (c) and (d) of this section to continue the same level of support for the PEG channels and public stations. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

(j) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.

G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition.– A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-296(a) reads as rewritten:

"(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited ~~to:~~to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper ~~repair;~~repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary ~~obstructions;~~obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent ~~domain;~~domain.

(4) The power to close any street or alley either permanently or ~~temporarily;~~temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and ~~bridges;~~bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles,

wires, fixtures, or appliances of any kind either on, above, or below the ~~surface:~~surface. A fee or charge associated with the exercise of this power must apply uniformly to all comparable activities by similarly situated users of the public right-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the ~~city; and~~city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273."

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(c), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Consumer Protection Division of the Attorney General's Office must report to the Revenue Laws Study Committee on or before April 1 of each

year, beginning April 1, 2008, on the following information concerning cable service complaints the Division has received from cable customers under G.S. 66-356:

(1) The number of customer complaints.

(2) The types of customer complaints.

(3) The different means of resolving customer complaints.

SECTION 19. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law. A person who provides video programming may obtain a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, and thereby become subject to that Article, regardless of whether the video programming the person provides is considered cable service provided under a cable system under that Article or under federal law.

SECTION 20. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 21. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by this act, has on the issues listed in this section to determine if any changes to the law are needed:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly

SECTION 22. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

HB 2047(SENATE PCS): VIDEO SERVICE COMPETITION ACT

June 27, 2006

Executive Summary

- **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
  - Requires local governments that appropriated funds for PEG channel operation and support in fiscal year 2005-06 to continue appropriating that amount
  - 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 there is wireline competition in the provider's service area
- **Prohibits discrimination**
  - Bill specifically prohibits discrimination of service based on income or race
  - Violation of the law declared an unfair or deceptive trade practice
- **Preserves service standards**
  - Franchisee must comply with customer service standards and emergency alert requirements of FCC
  - Consumer Protection Division of the Attorney General's Office will receive and respond to complaints

HOUSE BILL 2047:
Video Service Competition Act

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 28, 2006
Introduced by:	Reps. Carney, Luebke, McComas, Wainwright	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to Third Edition H2047-CSRB		

SUMMARY: The proposed Senate Finance committee substitute for House Bill 2047 is the same as Senate Bill 1559 that the Finance Committee considered last week. The bill 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 bill would become effective January 1, 2007.

CURRENT LAW: North Carolina began taxing communication services when the technologies enabling the services were separate and distinct technologies and the providers of the services were separate and distinct taxpayers. Over the past several years, the technology used to provide these services has converged so that the line between the services is no longer separate and distinct. The Current Operations and Capital Improvements Appropriations Act of 2005 directed the Revenue Laws Study Committee to study the equity of taxation of providers of cable service, direct-to-home satellite service, satellite digital audio radio service, video programming service, and data service.

The Revenue Laws Study Committee spent a considerable amount of time on this issue.[1] The Committee found that the State taxes these services based upon who provides the service rather than the service itself. Despite the General Assembly's repeated attempts to provide tax equity among these providers, it is debatable whether that has been accomplished:

- The State imposes a 7% State sales tax on telecommunication services and it earmarks a percentage of the revenues to cities. The amount each city receives is based upon a per capita statutory formula. State law prohibits counties and cities from imposing local taxes on this service.
- The State imposes a 7% State sales tax on direct-to-home satellite service. Federal law prohibits a local tax on this service and it prohibits local regulation of this service. The tax revenue is not shared with local governments.
- The State imposes a 4.5% State sales tax and a 2.5% local sales tax on digital audio radio service.
- The State imposes a 7% State sales tax on cable services, with a credit equal to the amount of local franchise tax paid on the service. Counties and cities may impose a local franchise tax on this service; the tax may not exceed 5% of gross receipts. Cable service has been subject to local regulation since 1973. The local regulation of cable services varies from county to county and from city to city, depending on the terms of the locally negotiated agreements. The definition of

[1] The Revenue Laws Study Committee staff met separately with representatives of the cable industry, the telephone industry, the cable administrators, and the counties and cities. It also held a series of four meetings with the all the affected parties and solicited comments from the parties on numerous occasions. The staff prepared a survey given to all the local governments in the State to determine their franchise fee collections and other nonmonetary contributions received in accordance with their cable franchise agreements.

'gross receipts' may also vary from agreement to agreement. The cable boxes rented to customers is subject to the State and local sales tax. The gross receipts from the rental of these boxes may also be included in the company's gross receipts for local franchise tax purposes, depending upon how the term is defined in the local agreement.

The Revenue Laws Study Committee acknowledged that the method of taxation should not provide one provider of a service with a competitive advantage over another. The Committee expressed a goal to establish a method of taxation that applies equally to the same service, regardless of who provides it. The Committee established the following principles:

- Equal taxation of the same service.
- A tax system that is easy to administer.
- A tax and regulatory system that does not impede competition.
- Equal compensation to cities for the use of their public rights-of-way.
- PEG channels service a public purpose and should be supported.

Based upon those principles, it desired a bill that met the following goals:

- Applies the principles stated above.
- Contains no tax or fee increase.
- Preserves local government revenue stream.
- Promotes competition in the marketplace.
- Promotes deployment of broadband as a basic communication tool.

North Carolina is not alone in grappling with the issue of how to tax and regulate telecommunications and video programming services. Congress as well as other states is considering legislation on this issue. At this time, at least four states have enacted legislation changing the regulation and taxation of telecommunications and video programming services and at least eight other states have legislation pending on the issue.

BILL ANALYSIS: House Bill 2047, *Video Service Competition Act,* establishes uniform taxes for video programming services and seeks to promote consumer choice. It establishes equal taxation of the same service by applying the State 7% sales tax to all video programming services, repealing the local authority to impose a local franchise tax, and repealing the sales tax credit allowed to cable companies for local franchise tax paid. It preserves the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 plus any subscriber fees imposed during that same period.

The bill promotes competition by providing a State franchise process, in lieu of the current locally negotiated franchise agreements. It seeks to ensure competitive neutrality by allowing cable providers to opt-out of existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise. The bill specifically prohibits discrimination in the provision of video programming services and declares a violation of this law to be an unfair or deceptive trade practice. The holder of a State-issued franchise must comply with customer service and emergency alert requirements established by the Federal Communications Commission. The

bill designates the Consumer Protection Division of the Attorney General's Office as the State agency to receive customer complaints regarding video programming services.

The bill preserves local regulation of public rights-of-way and provides for PEG channel support and growth. The bill requires local governments that imposed subscriber fees to use a portion of the amount of revenue distributed to it for PEG channel operation and support and it requires local governments that appropriated money for PEG channels in FY05-06 to continue appropriating that amount of money for PEG channel 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.

[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.

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.
- 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.

[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.
[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.

- 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 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 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. In addition to any other authority the Attorney General has to respond to consumer complaints, the bill provides that persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers is 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.
- 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

[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.

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 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. A county or city that appropriated funds for PEG channel operation and support during fiscal year 05-06 must continue appropriating that amount of funding for PEG channels. 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.

---

[7] This percentage distribution from satellite TV services mirrors the 2.5% local sales tax on satellite radio services.
[8] A 'qualifying PEG channel' is a channel that meets the programming requirements under G.S. 66-357(d).

Section 14 would clarify that a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all non-municipal users of the public right-of-way.

Section 15 would repeal the city's authority to franchise cable television services.

Section 16 would require a county or city desiring to receive a distribution for supplemental PEG channel support under G.S. 105-164.44I(b) to certify to the Secretary of Revenue by March 15, 2007, the number of qualifying PEG channels it operates.

Section 17 recognizes that the staffing needs of the Consumer Protection Division of the Attorney General's Office may change if this bill is enacted. However, the section also finds that the impact of this bill on the staffing needs of the Division is not clear. This section requests the Office of the Attorney General to monitor the number and type of cable service complaints it receives from customers and to determine whether the Division needs additional staff to fulfill the duty imposed by this bill on it. The Office of the Attorney General must make a report concerning its staffing needs to the Fiscal Research Division by April 1, 2007.

Section 18 would direct the Consumer Protection Division of the Attorney General's Office to report to the Revenue Laws Study Committee on or before April 1 of each year, beginning April 1, 2008, on the number of customer complaints it has received regarding cable service, the types of complaints, and the different means it has used to resolve those complaints.

Section 19 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 20 would provide that the provisions of this act are severable.

Section 21 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 North Carolina General Assembly.

EFFECTIVE DATE: The bill becomes effective January 1, 2007.

H2047e3-SMRB-CSRB

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H2047-ARB-117 [v.2]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H2047-PCS30615

Senator Nesbitt

moves to amend the bill on page 13, lines 11 and 12, by inserting a new section between those lines to read and by renumbering the remaining sections accordingly:

"**SECTION 9.** Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ G.S. 105-164.44J. Distribution of part of the sales tax on video programming service.**

(a) Fund. – The PEG Channel and Broadband Connectivity Fund is created as an interest-bearing special revenue fund to provide grants for broadband connectivity, PEG channels, and media centers. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Distribution. – Each fiscal year, the Secretary must transfer to the Fund part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The amount the Secretary must transfer is the amount in excess of the base amount, not to exceed ten million dollars ($10,000,000). The base amount is the amount of tax collected in fiscal year 2006-2007, less the amounts distributed under G.S. 105-164.44F and G.S. 105-164.44I.

(c) Use of Funds. – The e-NC Authority must use one-half of the revenue in the Fund for broadband connectivity incentive grants. It is the intent of the General Assembly that these funds be used to allow at least seventy percent (70%) of the households in each county to have the ability to access broadband services by 2008. Funds for connectivity incentives should be committed to service providers by July 1, 2008. These incentive grants must be competitive and require at least a fifty percent (50%) cash match from the participating service providers. Companies must ensure the number of additional households to be served as a result of this funding.

The e-NC Authority must use the remaining revenue in the Fund for PEG channel and media center grants. In awarding grants for this purpose, it is the intent of the General Assembly that the e-NC Authority select applicants from all parts of the State based upon need. A grant awarded to an applicant must be used by it for the establishment, operation, and support of PEG channels and media centers.

(d) Administration. – The e-NC Authority must establish criteria for awarding the grants under this section. The e-NC Authority may use up to sixty-five thousand dollars ($65,000) of the revenues transferred to the Fund to cover its expenses in grant letting and monitoring.

(e) Report. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

(f) Definition. – The term 'PEG channel' has the same meaning as defined in G.S. 66-350.";

And on page 8, line 38 through page 9, line 10, by deleting those lines;

And on page 11, lines 25 and 26, by deleting "PEG Channel Fund established in G.S. 66-359" and substituting "PEG Channel and Broadband Connectivity Fund established in G.S. 105-164.44J";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H2047-ARB-117 [v.2]

And on page 16, line 41, by rewriting the line to read:

"**SECTION 23.** Section 9 of this act becomes effective July 1, 2007. The remainder of this act becomes effective January 1, 2007. Sections 7 and 8".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H2047-ARB-120 [v.2]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H2047-PCS30615

Senator Cowell

moves to amend the bill And on page 6, lines 5 and 6, by inserting a new subsection between those lines to read:

"(b1) Additional Service Standards. – The following customer service protections are in effect where not exceeded by local government or Federal Communication Commission Customer Service Obligations for cable service providers.

(1) Minimum Compensation to Customer for Noncompliance

a. Responsiveness – Cable service provider will guarantee seven day residential installation and service. A provider must provide cable service to its customers within seven business days following order placement. If service is not installed within 7 business days, the cable operator will provide that customer free installation, or, if the installation fee has been waived for promotional reasons, then a one month service credit shall be awarded to the customer by the provider.

b. Underground Utility Drops – Underground cable drops shall be buried no less than six inches deep and work shall be completed in no more than two calendar weeks from the installation date provided to the customer. For failure to bury a cable drop, $100.00 shall be awarded to the customer by the Cable Service Provider.

(2) Cable Television Reception Difficulties and Service Problems

a. Distortion Free Cable Service. – Cable service provider must provide clear television reception. The value of one day's service for any portion of the day where picture quality fails to meet FCC standards or in the absence of FCC standards is

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H2047-ARB-120 [v.2]

considered unacceptable by the Attorney General or local government, the provider must award a $25.00 credit to each customer in the effected area.

b. Prompt Repair. – If a customer experiences poor cable or audio reception due to a failure of the cable service provider's equipment, the provider must repair the problem no later than the next day, unless otherwise agreed to with the customer. Regardless, the value of one day's service for each day the problem remains uncorrected, shall be automatically awarded to each customer in the affected area by the provider.

and on page 6, lines 6-8, by rewriting the lines to read:

"(c) Complaints. – The local government must designate a person to receive and respond to customer complaints concerning cable services. Persistent or repeated violations of the federal customer";

And on page 6, lines 16-18, by rewriting the lines to read:

"local government representative (insert information on how to contact the local government representative).

SIGNED Janet Conlee
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED √ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H2047-ALY-110 [v.1]

Date _____,2006

Comm. Sub. [NO]
Amends Title [NO]
PCS to Third Edition

Senator Cowell

moves to amend the bill on page 16, lines 41 through 43, by rewriting those lines to read:

"**SECTION 22.** There is appropriated from the General Fund to the Department of Justice the sum of sixty-six thousand six hundred twelve dollars ($66,612) for the 2006-2007 fiscal year to hire additional staff to carry out the provisions of this act.

SECTION 23. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007. Section 22 of this act becomes effective July 1, 2006."

SIGNED Janet Cowell
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE FINANCE COMMITTEE
Friday, June 30, 2006, noon
Senate Chamber, Legislative Building

MINUTES

The Senate Finance Committee met at noon on June 30, 2006, in Senate Chamber. Thirty-four members of the committee were present. Senator David Hoyle presided.

SB 1964 – Internet Data Center Facilities Tax Exemption.

The bill was improperly reported out of committee, so it needed to be heard again in order to be properly reported out of committee. Senator Dalton was recognized to explain the bill. Senator Hoyle motioned to adopt the proposed committee substitute and the motion carried. Senator Dalton motioned for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute, and the summary are attached.

HB 2259 – Various Occupancy Taxes.

Senator Clodfelter motioned to adopt the proposed committee substitute and the motion carried. Trina Griffin, a staff attorney with the Research Division, was recognized to explain the bill. Senator East was consulted and gave the bill his approval. Senator Dalton motioned for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute, and the summary are attached.

The meeting adjourned at 12:05 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Friday, June 30, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1964** Internet Data Center Facilities Tax Exemption.

Draft Number:	85485
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1964*
PROPOSED COMMITTEE SUBSTITUTE S1964-CSLY-97 [v.3]

6/29/2006 11:38:39 AM

Short Title: Internet Data Center Facilities Tax Exemption. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN INTERNET DATA CENTER FACILITIES FROM SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in Internet service providers and Web search portals industry 51811, as defined by NAICS.

b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property, or both, at the facility within five years after the commencement of construction of the facility.

...

(23a) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002."

SECTION 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(54) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet data center, then the exemption provided for the eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet data center, then the exemption provided for the electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the exemption had not been allowed. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use.

The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 3. This act becomes effective July 1, 2006, and applies to sales made on or after that date.

SENATE BILL 1964*

Short Title:	Internet Data Center Facilities Tax Exemption.	(Public)
Sponsors:	Senators Dalton, Hoyle and Jacumin.	
Referred to:	Finance.	

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN INTERNET DATA CENTER FACILITIES FROM SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in Internet service providers and Web search portals industry 51811, as defined by the December 31, 2002, edition of the North American Industry Classification System published by the Office of Management and Budget.

b. The facility is located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property at the facility within five years after the commencement of construction of the facility."

SECTION 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(54) Sales of electricity and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of such property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property that are used for such purposes.

c. To support related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but the eligible business property is not located and used at an eligible Internet data center, then the exemption provided for such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but electricity is not used at an eligible Internet data center, then the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the exemption plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the exemption had not been allowed. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest shall be computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest shall be computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 3. This act becomes effective July 1, 2006, and applies to sales made on or after that date.

SENATE BILL 1964:
Internet Data Center Facilities Tax Exemption

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 29, 2006
Introduced by:	Sen. Dalton	**Summary by:**	Canaan Huie
Version:	PCS to First Edition S1964-CSLY-97		Committee Counsel

SUMMARY: This bill would provide for an exemption from the sales and use tax on sales of tangible personal property and electricity to an eligible Internet data center. The bill would be effective for sales made on or after July 1, 2006.

CURRENT LAW: Generally, sales of tangible personal property are taxed at a State rate of 4.5% and the applicable county rate (generally 2.5%, but 3.0% in Mecklenburg County). Sales of electricity are taxed at rates varying from 0.17% to 3.0% depending on the purchaser of the electricity. Sales of electricity to an Internet data center would be taxed at 3.0%.

BILL ANALYSIS: This bill would allow for an exemption from the sales and use tax for sales of electricity and eligible business property to an eligible Internet data center. For the purposes of this exemption, "eligible business property" is property that is capitalized for tax purposes under the Internal Revenue Code and is used for a) the provision of Internet service or Web search portal services, including equipment cooling systems for managing the performance of the property, b) the generation, transformation, transmission, distribution, or management of electricity, or c) to support related computer engineering or computer science research.

In order to qualify as an eligible Internet data center, a facility would be required to satisfy each of the following conditions:

- The facility is used primarily by a business engaged in Internet service providers and Web search portals industry 51811 as defined NAICS. NAICS is the North American Industrial Classification System and divides businesses into categories based on the primary activity that occurs at an establishment. Under NAICS, establishments in this industry provide clients access to the Internet or operate Web sites that use a search engine to provide Internet search services. These establishments generally provide related services such as Web hosting, Web page design, and additional Internet services such as email, connections to other Web sites, auctions, news, and other limited content.
- The facility is comprised of a structure or series of structures on a single parcel of land or on contiguous parcels of land owned by the operator of the facility.
- The facility is located in an enterprise tier one, two, or three area at the time of the application for the required determination by the Department of Commerce.
- The Department of Commerce has made a written determination that at least $250 million in private funds has been or will be invested in real property, eligible business property, or both at the facility within five years after the commencement of construction of the facility.

A taxpayer that fails to make the amount of the investment required forfeits the exemption and is required to repay all taxes, with interest, avoided as a result of the forfeited exemption. Similarly, a taxpayer that does satisfy the investment amount, but fails to use the property or electricity at the eligible

facility forfeits the exemption with respect to that particular property or electricity. The past taxes and interest are due 30 days after the date of the forfeiture.

EFFECTIVE DATE: This bill would become effective July 1, 2006, and would apply to sales made on or after that date.

S1964e1-SMLY-CSLY-97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2259

Committee Substitute Favorable 6/22/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H2259-CSSVx-88 [v.1]

6/30/2006 10:57:16 AM

Short Title: Various Occupancy Taxes. (Local)

Sponsors:

Referred to:

May 22, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWNS OF ELKIN, PILOT MOUNTAIN, DOBSON, AND AHOSKIE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO CREATE A TAXING DISTRICT IN OCRACOKE TOWNSHIP FOR THE PURPOSE OF AUTHORIZING THE LEVY OF A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, AND TO AMEND THE ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES FOR THE COUNTIES OF CHOWAN AND MARTIN.

The General Assembly of North Carolina enacts:

PART I. ELKIN OCCUPANCY TAX

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Elkin Town Council may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Elkin shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Elkin Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Elkin and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 1.2. Elkin Tourism Development Authority. – (a) Appointment and Membership. – When the Elkin Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Elkin shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Elkin Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART II. PILOT MOUNTAIN OCCUPANCY TAX

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Pilot Mountain Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to

accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Pilot Mountain shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Pilot Mountain Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Pilot Mountain and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.2. Pilot Mountain Tourism Development Authority. – (a) Appointment and Membership. – When the Pilot Mountain Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Pilot Mountain shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall

promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Pilot Mountain Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART III. DOBSON OCCUPANCY TAX

SECTION 3.1. Occupancy Tax. – (a) Authorization and Scope. – The Dobson Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1.(b) Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.1.(c) Distribution and Use of Tax Revenue. – The Town of Dobson shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Dobson Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Dobson and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 3.2. Dobson Tourism Development Authority. – (a) Appointment and Membership. – When the Dobson Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall

provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Dobson shall be the ex officio finance officer of the Authority.

SECTION 3.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 3.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Dobson Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART IV. TOWN OF AHOSKIE OCCUPANCY TAX.

SECTION 4.1. Occupancy Tax. – (a) Authorization and Scope. – The Ahoskie Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 4.1.(b) Administration. – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 4.1.(c) Distribution and Use of Tax Revenue. – The Town of Ahoskie shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Town of Ahoskie Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 4.2. Town of Ahoskie Tourism Development Authority. – (a) Appointment and Membership. – When the Ahoskie Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Ahoskie shall be the ex officio finance officer of the Authority.

SECTION 4.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 4.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Ahoskie Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART V. OCRACOKE OCCUPANCY TAX.

SECTION 5.1. Occupancy Tax. – The Ocracoke Township Taxing District is created. It is coterminous with Ocracoke Township in Hyde County. The Ocracoke Township Taxing District is a body politic and corporate and has the power to carry out the provisions of this Part. The Hyde County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 5.2.(a) Authorization and Scope. – The governing body of Ocracoke Township Taxing District may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does

not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

SECTION 5.2.(b) Administration. – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155, as if it were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 5.2.(c) Distribution and Use of Tax Revenue. – Ocracoke Township Taxing District shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Ocracoke Township Tourism Development Authority created pursuant to Section 3.3 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Ocracoke Township. None of the proceeds may be used to promote travel or tourism in areas within Hyde County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a district or to attract tourists or business travelers to the district. The term includes tourism-related capital expenditures.

SECTION 5.3.(a) Ocracoke Township Tourism Development Authority. – Appointment and Membership. – The Board of Commissioners of Hyde County shall adopt a resolution creating the Ocracoke Township Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Tourism Development Authority shall have five members in addition to the Finance Officer. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the district. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Hyde County shall be the ex officio finance officer of the Authority.

SECTION 5.3.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in Section 3.2 of this Part. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 5.3.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hyde County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

PART VI. CHOWAN OCCUPANCY TAX.

SECTION 6. S.L. 1989-174 reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Chowan County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Chowan County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Chowan County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly~~

~~installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied in this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and ~~use of tax revenue.~~Use of Tax Revenue. – Chowan County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Chowan Tourism Development Authority. ~~The Authority may spend funds remitted to it under this subsection only to promote travel and tourism in Chowan County, to sponsor tourist-oriented events and activities in Chowan County, and to finance tourist-related capital projects in Chowan County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Chowan County and the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance ~~officer.~~officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Chowan County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. ~~The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority.~~At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half must be individuals currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The county shall serve as the fiscal agent of the Authority. The Finance Officer for Chowan County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"Sec. 3. This act is effective upon ratification."

PART VII. MARTIN OCCUPANCY TAX.

SECTION 7. S.L. 1991-80 reads as rewritten:

"Section 1. Occupancy Tax. – (a) Authorization and ~~scope.~~Scope. – The Martin County Board of Commissioners may ~~by resolution, after not less than 10 days' public~~

~~notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, when furnished in furtherance of their nonprofit purpose, by summer camps, or by businesses that offer to rent no more than five units.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Martin County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Martin County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners~~

~~may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Martin County shall, on a ~~monthly~~quarterly basis, remit the net proceeds of the occupancy tax to the Martin County Travel and Tourism Authority. ~~The Authority may spend funds remitted to it under this subsection only to further the development of travel and tourism and cultural, recreational, and historic activities in Martin County through advertising and promotion, to sponsor tourist-oriented events and activities in Martin County, and to finance tourist-related capital activities and projects in Martin County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Martin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the ~~tax, which may~~tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross ~~proceeds.~~proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Martin County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was~~

~~attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Martin County ~~Travel and~~ Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Martin County ~~Travel and~~ Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following 12 members:

(1) A Martin County Commissioner appointed by the Martin County Board of Commissioners.

(2) Two owners or operators of restaurants, motels, hotels, or other taxable accommodations in Martin County that have at least five units, nominated by representatives of this industry, both to be appointed by the Martin County Board of Commissioners.

(3) One member selected by the Martin County Chamber of Commerce to be appointed by the Martin County Board of Commissioners.

(4) One member appointed by the Martin County Board of Commissioners selected from the Martin County Economic Development Commission.

(5) Five members, one appointed by each member of the Martin County Board of Commissioners.

(6) One member appointed by the Martin County Board of Commissioners selected from the Martin County Historical Society.

(7) One member appointed by the Martin County Board of Commissioners selected from the Robersonville Downtown Merchants Association.

The appointees shall be made from throughout the County by the Martin County Board of Commissioners. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the county. All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a Chair. No member may serve as Chair more than two one-year terms in succession. The Authority shall meet at the call of the Chair or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Martin County shall be the ex officio finance officer of the Authority.

(b) Terms of office. – Members of the Authority shall serve three-year terms except that the Martin County Commissioner appointed pursuant to subdivision (a)(1) shall be appointed yearly by the chairman of the board of commissioners and initial appointees shall serve the following terms:

(1) The Martin County Commissioner appointed pursuant to subdivision (a)(1): one year.

(2) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): one year.
(3) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): three years.
(4) The representative of the Martin County Chamber of Commerce appointed pursuant to subdivision (a)(3): three years.
(5) The representative of the Martin County Economic Development Commission appointed pursuant to subdivision (a)(4): two years.
(6) Three members appointed by Martin County Commissioners pursuant to subdivision (a)(5): one year.
(7) Two representatives appointed by Martin County Commissioners pursuant to subdivision (a)(5): three years.
(8) The representative of the Martin County Historical Society appointed pursuant to subdivision (a)(6): two years.
(9) The representative of the Robersonville Downtown Merchants Association appointed pursuant to subdivision (a)(7): three years.

(c) Limitation on terms. – No member of the Authority shall serve more than two consecutive three-year terms.

(d) ~~Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended.~~Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. The board of county commissioners may from time to time determine an appropriate percentage not to exceed five percent (5%) of net proceeds that may be expended for administrative services.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~(f) Notwithstanding the provisions of this act, the board of commissioners may abolish the Martin County Travel and Tourism Authority and itself function and carry out the duties of the Authority provided in this act.~~

"Sec. 3. This act is effective upon ratification."

PART VIII. ADMINISTRATIVE PROVISIONS

SECTION 8.1. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Dobson, Elkin, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

SECTION 8.2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Chowan, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Martin, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett ~~County.~~County and the Ocracoke Township Taxing District."

PART IX. EFFECTIVE DATE

SECTION 9. This act is effective when it becomes law. Chowan and Martin counties must ensure that the membership of the Tourism Development Authorities are in compliance with the requirements of this act on or before January 1, 2007.

SENATE FINANCE COMMITTEE
Thursday, July 6, 2006 1:00 pm
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 pm on July 6, 2006, in room 544 of the Legislative Office Building. Twenty-nine members of the committee were present. Senator John Kerr presided. Annsley Stroupe, Caroline Fraley, Brandon Rouse, Ross Wilson, Meghan Burris and Mary Christopher from Gaston County and Thomas Rhodes and Jairus Barnes from Wayne County served as pages.

HB 1820 – Various Satellite Annexations.

Representative Crawford was recognized to explain the bill. Senator Albertson motioned to adopt the proposed committee substitute and the motion carried. Senator Swindell motioned for a favorable report and the motion carried. A copy of the bill and the proposed committee substitute are attached.

HB 882 – Ocracoke Township Occupancy Tax.

Representative Spear was recognized to explain the bill. Senator Albertson motioned to adopt the proposed committee substitute and the motion carried. Senator Dannelly motioned for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute, and the fiscal memo are attached.

HB 1269 – Chowan Occupancy Tax Changes.

Representative Spear was recognized to explain the bill. Senator Albertson motioned to adopt the proposed committee substitute and the motion carried. Senator Dannelly motioned for a favorable report and the motion carried. A copy of the bill and the proposed committee substitute are attached.

HB 2259 – Elkin/Pilot Mtn./Dobson Occupancy Tax.

Representative Harrell was recognized to explain the bill. Senator Albertson motioned to adopt the proposed committee substitute and the motion carried. Senator Dannelly motioned for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute, and the fiscal memo are attached.

HB 350 – Martin County Occupancy Tax Changes.

Representative Warren was recognized to explain the bill. Senator Dannelly motioned to adopt the proposed committee substitute and the motion carried. Senator Jenkins motioned for a favorable report and the motion carried. A copy of the bill and the proposed committee substitute are attached.

HB 2477 – Durham County Occupancy Tax Modification.

Senator Atwater was recognized to explain the bill and moved for a favorable report. The motion carried. A copy of the bill and the fiscal note are attached.

HB 2445 – Halifax/Ahoskie Occupancy Tax.

Senator Dannelly motioned to adopt the proposed committee substitute and the motion carried. Trina Griffin, staff attorney with the Research Division, was recognized to explain the bill. Senator Jenkins motioned for a favorable report and the motion carried. A copy of the bill, the proposed committee substitute, and the fiscal note are attached.

The meeting adjourned at 1:22 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk _____
Reading Clerk _____

Corrected: H2477 - Durham County Occupancy Tax Modifications has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 6, 2006	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 350	Holden Beach Canal Dredging Fee.	Representative Stiller
HB 882	Robeson-Tax Certifications Before Filings.	Representative Sutton
HB 1269	The Studies Act of 2005.	Representative Culpepper, III
HB 1820	Stem Satellite Annexations.	Representative Crawford, Jr.
HB 2259	Elkin Occupancy Tax.	Representative Harrell, III
HB 2445	Halifax Occupancy Tax.	Representative Jones Representative Allen
HB 2477	Durham County Occupancy Tax Modification.	Representative Miller

Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

Senate Finance Committee
Thursday, July 6, 2006, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 350	Holden Beach Canal Dredging Fee.	Rep. Stiller
HB 882	Robeson-Tax Certifications Before Filings.	Rep. Sutton
HB 1269	The Studies Act of 2005.	Rep. Culpepper
HB 1820	Stem Satellite Annexations.	Rep. Crawford
HB 2259	Elkin Occupancy Tax.	Rep. Harrell
HB 2445	Halifax Occupancy Tax.	Rep. Jones
		Rep. Allen
HB 2477	Durham County Occupancy Tax Modification	Rep. Miller

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John H. Kerr III, Co-Chair
Senator David W. Hoyle, Co-Chair

CORRECTED REPORT

Thursday, July 06, 2006

Senator KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **2477** Durham County Occupancy Tax Modification.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **882** Robeson-Tax Certifications Before Filings.
Draft Number: 50761
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

H.B. **1820** Stem Satellite Annexations.
Draft Number: 50758
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

H.B. **2445** Halifax Occupancy Tax.
Draft Number: 70683
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) **1269** The Studies Act of 2005.
Draft Number: 50760
Sequential Referral: None

Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **2259** Elkin Occupancy Tax.
Draft Number: 10638
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 6

Committee Clerk Comments:

Additional bills to report out.

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gary Harris	NC Petroleum Mktrs.
George Hicapie	Discovery Channel
Chris Dillon	Pro Tem
John McMillan	NFOS
Lee Weisbecker	Triangle Bus. Journal
Rev. Mark Creech	CAL
Roy Rogers	North R Ranch
Angie Harris	Kaufman Taylor
Stacy Flannery	NCHCFA
Barbara Carlson	BSCC
Amy Schulder	HANC/LANC
Mac Mumbworth	NCACC Person & Franklin

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wall	DENR
FRANK W. FOLGER	HELMS MULLISS WICKER
John McKee	[illegible]
Jami Fitzgerald	NC Family Policy Council
Lauren Rogers	NC Family Policy council
Jim Blackburn	NC Association of County Commissioners
SUSANNE STREB	NCRA
Joyce Peters	JP Assoc
Bruce Bean	Bean Assoc
Rita Harris	SPA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1820

Second Edition Engrossed 6/22/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1820-PCS50758-RBx-74

Short Title: Various Satellite Annexations. (Local)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR VARIOUS MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Bladenboro, Calabash, Catawba, Columbia, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Grimesland, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Shallotte, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, and Zebulon."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1820
Second Edition Engrossed 6/22/06

Short Title:	Stem Satellite Annexations.	(Local)
Sponsors:	Representative Crawford.	
Referred to:	Local Government I.	

May 10, 2006

A BILL TO BE ENTITLED

ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR VARIOUS MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, City of Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Bladenboro, Calabash, Catawba, Columbia, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Grimesland, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Shallotte, Spencer, Stem, Surf City, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Weldon, Wendell, Windsor, and Zebulon."

SECTION 2. This act is effective when it becomes law, except as to the City of Roanoke Rapids and the Town of Weldon it becomes effective October 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 882
PROPOSED SENATE COMMITTEE SUBSTITUTE H882-CSSVx-94 [v.1]

7/5/2006 9:17:59 PM

Short Title: Ocracoke Township Occupancy Tax. (Local)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT CREATING A TAXING DISTRICT IN OCRACOKE TOWNSHIP FOR THE PURPOSE OF AUTHORIZING THE LEVY OF A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy Tax. – The Ocracoke Township Taxing District is created. It is coterminous with Ocracoke Township in Hyde County. The Ocracoke Township Taxing District is a body politic and corporate and has the power to carry out the provisions of this act. The Hyde County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Authorization and Scope. – The governing body of Ocracoke Township Taxing District may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

SECTION 3. Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155, as if it were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 4. Distribution and Use of Tax Revenue. – Ocracoke Township Taxing District shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Ocracoke Township Tourism Development Authority created pursuant to Section 5 of this act. The Authority shall use at least two-thirds of the proceeds

distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Ocracoke Township. None of the proceeds may be used to promote travel or tourism in areas within Hyde County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a district or to attract tourists or business travelers to the district. The term includes tourism-related capital expenditures.

SECTION 5.(a) Ocracoke Township Tourism Development Authority. – Appointment and Membership. – The Board of Commissioners of Hyde County shall adopt a resolution creating the Ocracoke Township Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Tourism Development Authority shall have five members in addition to the Finance Officer. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the district. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Hyde County shall be the ex officio finance officer of the Authority.

SECTION 5.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4 of this act. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 5.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hyde County Board of Commissioners on its receipts and

expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 6. G.S. 153A-215(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett ~~County.~~County and the Ocracoke Township Taxing District."

SECTION 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 882

Short Title:	Robeson-Tax Certifications Before Filings.	(Local)
Sponsors:	Representative Sutton.	
Referred to:	Judiciary III.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO INCLUDE ROBESON COUNTY IN THE LIST OF COUNTIES THAT MAY REQUIRE THE REGISTER OF DEEDS TO REQUIRE A TAX CERTIFICATION BEFORE ACCEPTING ANY DEED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Alleghany, Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Lee, Lenoir, Macon, Madison, Martin, Montgomery, Nash, Northampton, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 6, 2006

TO: Senator Holloman

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS H882

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Ocracoke Special District	$200,000	$206,200	$210,943	$215,794	$220,758

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Ocracoke Special District

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: The PCS for H882 creates a special taxing district in Ocracoke Township for the purposes of levying an occupancy tax of 2%.

ASSUMPTIONS AND METHODOLOGY:

Ocracoke Township
The bill would create a special taxing district in the existing Ocracoke Township and authorize a 2% occupancy tax. There is currently a 3% occupancy tax levied in Hyde County, which generated $316,080 in 2004. Of this amount, the county manager estimates that approximately $300,000 was

generated within the boundaries of the proposed Ocracoke special district. Based on this estimate and the General Consumer Price Index rate of increase, the following revenue stream is projected for the proposed 2% occupancy tax:

Fiscal Year	Proposed 2% Tax	Each 1%
2006-07	$200,000	$100,000
2007-08	$206,200	$103,100
2008-09	$210,943	$105,471
2009-10	$215,794	$107,897
2010-11	$220,758	$110,379

SOURCES OF DATA: NC Dept. of State Treasurer

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1269

Committee Substitute Favorable 8/30/05

Third Edition Engrossed 8/30/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1269-CSSVx-95 [v.2]

7/6/2006 8:58:42 AM

Short Title: Chowan Occupancy Tax Changes. (Local)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CHOWAN COUNTY TO LEVY AN ADDITIONAL TWO PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 174 of the 1989 Session Laws reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Chowan County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Chowan County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Chowan County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This~~

~~tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied in this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and ~~use of tax revenue.~~Use of Tax Revenue. – Chowan County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Chowan Tourism Development Authority. ~~The Authority may spend funds remitted to it under this subsection only to promote travel and tourism in Chowan County, to sponsor tourist-oriented events and activities in Chowan County, and to finance tourist-related capital projects in Chowan County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Chowan County and the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance ~~officer.~~officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Chowan County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Tourism Development Authority. = (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. ~~The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority.~~At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half must be individuals currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The county shall serve as the fiscal agent of the Authority. The Finance Officer for Chowan County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"Sec. 3. This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Chowan, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett County."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

HOUSE BILL 1269
Committee Substitute Favorable 8/30/05
Third Edition Engrossed 8/30/05

Short Title: The Studies Act of 2005. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, STATUTORY OVERSIGHT COMMITTEES, AND OTHER COMMISSIONS.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known as "The Studies Act of 2005".

PART II. LEGISLATIVE RESEARCH COMMISSION

SECTION 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor are listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 2005 Regular Session of the 2005 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

(1) Government Regulatory Issues:
   a. Banking laws (S.B. 786 – Hoyle)

(2) Transportation Issues:
   a. Ban cell phone use while driving (H.B. 1104 – McAllister)
   b. Fuel efficiency of engines of State's motor fleet (S.B. 1033 – East)
   c. Exemptions from safety and emissions inspections (S.B. 530 – Dalton)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2259

Committee Substitute Favorable 6/22/06

Senate Finance Committee Substitute Adopted 7/5/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H2259-CSSVx-92 [v.1]

7/5/2006 8:52:52 PM

Short Title: Elkin/Pilot Mtn./Dobson Occupancy Tax. (Local)

Sponsors:

Referred to:

May 22, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWNS OF ELKIN, PILOT MOUNTAIN, AND DOBSON TO LEVY A SIX PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

PART I. ELKIN OCCUPANCY TAX

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Elkin Town Council may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this part.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Elkin shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Elkin Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this part to promote travel and tourism in Elkin and shall use the remainder for tourism-related expenditures.

The following definitions apply in this part:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred

thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 1.2. Elkin Tourism Development Authority. – (a) Appointment and Membership. – When the Elkin Town Council adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Elkin shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Elkin Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART II. PILOT MOUNTAIN OCCUPANCY TAX

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Pilot Mountain Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this part.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Pilot Mountain shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Pilot Mountain Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this part to promote travel and tourism in Pilot Mountain and shall use the remainder for tourism-related expenditures.

The following definitions apply in this part:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.2. Pilot Mountain Tourism Development Authority. – (a) Appointment and Membership. – When the Pilot Mountain Board of Commissioners adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Pilot Mountain shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Pilot Mountain Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART III. DOBSON OCCUPANCY TAX

SECTION 3.1. Occupancy Tax. – (a) Authorization and Scope. – The Dobson Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1.(b) Administration. – A tax levied under this part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this part.

SECTION 3.1.(c) Distribution and Use of Tax Revenue. – The Town of Dobson shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Dobson Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this part to promote travel and tourism in Dobson and shall use the remainder for tourism-related expenditures.

The following definitions apply in this part:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 3.2. Dobson Tourism Development Authority. – (a) Appointment and Membership. – When the Dobson Board of Commissioners adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must

be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Dobson shall be the ex officio finance officer of the Authority.

SECTION 3.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 3.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Dobson Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART IV. ADMINISTRATIVE PROVISIONS

SECTION 4. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Dobson, Elkin, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART V. EFFECTIVE DATE

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 2259

Committee Substitute Favorable 6/22/06

Senate Finance Committee Substitute Adopted 7/5/06

Short Title: Various Occupancy Taxes. (Local)

Sponsors:

Referred to:

May 22, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWNS OF ELKIN, PILOT MOUNTAIN, DOBSON, AND AHOSKIE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO CREATE A TAXING DISTRICT IN OCRACOKE TOWNSHIP FOR THE PURPOSE OF AUTHORIZING THE LEVY OF A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, AND TO AMEND THE ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES FOR THE COUNTIES OF CHOWAN AND MARTIN.

The General Assembly of North Carolina enacts:

PART I. ELKIN OCCUPANCY TAX

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Elkin Town Council may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Elkin shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Elkin Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Elkin and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 20, 2006

TO: Rep. Harrell

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS HB 2259

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Town of Elkin	$19,710	$20,321	$20,788	$21,267	$21,756
Town of Pilot Mountain	$50,000	$51,550	$52,736	$53,949	$55,189

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Towns of Elkin and Pilot Mountain

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
HB 2259 authorizes the Town of Elkin to levy a 6% room occupancy tax. The PCS also authorizes the Town of Pilot Mountain to levy a 6% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures.

ASSUMPTIONS AND METHODOLOGY:

Town of Elkin
SB 339 would authorize the Town of Elkin to levy a 6% occupancy tax. According to the Town of Elkin, there is currently 1 bed and breakfast with 3 rooms, and 1 motel with 25-30 rooms in the town limits of Elkin. Assuming an average room rate of $50 per night and a room occupancy rate

of 60%, the 6% tax would generate approximately $19,710. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Fiscal Year	Proposed 6% Tax	Each 1%
2006-07	$19,710	$3,285
2007-08	$20,321	$3,387
2008-09	$20,788	$3,465
2009-10	$21,267	$3,544
2010-11	$21,756	$3,626

Town of Pilot Mountain
The Town of Pilot Mountain estimates that the proposed 6% occupancy tax would generate approximately $50,000 annually. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts.

SOURCES OF DATA: Towns of Elkin and Pilot Mountain

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 350*

Committee Substitute Favorable 3/16/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H350-CSSVx-96 [v.1]

7/5/2006 9:30:59 PM

Short Title: Martin County Occupancy Tax Changes. (Local)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE MARTIN COUNTY TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 1991-80 reads as rewritten:

"Section 1. Occupancy Tax. – (a) Authorization and ~~scope.~~Scope. – The Martin County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, when furnished in furtherance of their nonprofit purpose, by summer camps, or by businesses that offer to rent no more than five units.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Martin County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Martin County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The~~

~~tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Martin County shall, on a ~~monthly~~quarterly basis, remit the net proceeds of the occupancy tax to the Martin County Travel and Tourism Authority. ~~The Authority may spend funds remitted to it under this subsection only to further the development of travel and tourism and cultural, recreational, and historic activities in Martin County through advertising and promotion, to sponsor tourist-oriented events and activities in Martin County, and to finance tourist-related capital activities and projects in Martin County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Martin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the ~~tax, which may~~tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross ~~proceeds.~~proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Martin County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Martin County ~~Travel and~~ Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Martin County ~~Travel and~~ Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following 12 members:

(1) A Martin County Commissioner appointed by the Martin County Board of Commissioners.

(2) Two owners or operators of restaurants, motels, hotels, or other taxable accommodations in Martin County that have at least five units, nominated by representatives of this industry, both to be appointed by the Martin County Board of Commissioners.

(3) One member selected by the Martin County Chamber of Commerce to be appointed by the Martin County Board of Commissioners.

(4) One member appointed by the Martin County Board of Commissioners selected from the Martin County Economic Development Commission.

(5) Five members, one appointed by each member of the Martin County Board of Commissioners.

(6) One member appointed by the Martin County Board of Commissioners selected from the Martin County Historical Society.

(7) One member appointed by the Martin County Board of Commissioners selected from the Robersonville Downtown Merchants Association.

The appointees shall be made from throughout the County by the Martin County Board of Commissioners. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the county. All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a Chair. No member may serve as Chair more than two one-year terms in succession. The Authority shall meet at the call of the Chair or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Martin County shall be the ex officio finance officer of the Authority.

(b) Terms of office. – Members of the Authority shall serve three-year terms except that the Martin County Commissioner appointed pursuant to subdivision (a)(1) shall be appointed yearly by the chairman of the board of commissioners and initial appointees shall serve the following terms:

(1) The Martin County Commissioner appointed pursuant to subdivision (a)(1): one year.

(2) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): one year.

(3) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): three years.

(4) The representative of the Martin County Chamber of Commerce appointed pursuant to subdivision (a)(3): three years.

(5) The representative of the Martin County Economic Development Commission appointed pursuant to subdivision (a)(4): two years.

(6) Three members appointed by Martin County Commissioners pursuant to subdivision (a)(5): one year.

(7) Two representatives appointed by Martin County Commissioners pursuant to subdivision (a)(5): three years.

(8) The representative of the Martin County Historical Society appointed pursuant to subdivision (a)(6): two years.

(9) The representative of the Robersonville Downtown Merchants Association appointed pursuant to subdivision (a)(7): three years.

(c) Limitation on terms. – No member of the Authority shall serve more than two consecutive three-year terms.

(d) ~~Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended.~~Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. The board of county commissioners may from time to time determine an appropriate percentage not to exceed five percent (5%) of net proceeds that may be expended for administrative services.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~(f) Notwithstanding the provisions of this act, the board of commissioners may abolish the Martin County Travel and Tourism Authority and itself function and carry out the duties of the Authority provided in this act.~~

"Sec. 3. This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Martin, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett County."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 2

HOUSE BILL 350*
Committee Substitute Favorable 3/16/05

Short Title: Holden Beach Canal Dredging Fee. (Local)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF HOLDEN BEACH TO IMPOSE A CANAL DREDGING FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-104 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the ~~Town~~ Towns of Holden Beach and Ocean Isle Beach."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2477*

Short Title:	Durham County Occupancy Tax Modification.	(Local)
Sponsors:	Representative Miller.	
Referred to:	Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT AMENDING THE DURHAM COUNTY ROOM OCCUPANCY TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36 and Section 4.1 of S.L. 2005-233, reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~54~~ 64 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~54-month~~64-month period.

If construction on the Performing Arts Theater has not begun within ~~54~~ 64 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~54-month~~64-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~54~~ 64 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~54~~ 64 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 20, 2006

TO: Rep. Miller

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 2477 (First Edition)

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Durham County	**No Change in Fiscal Impact**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Durham and Durham County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
House Bill 2477 amends the Durham County occupancy tax to extend the period of time allowed for the City of Durham to plan, approve and begin construction on a performing arts theater using proceeds from the final 1% occupancy tax.

ASSUMPTIONS AND METHODOLOGY:

Because the bill does not change the tax rate for the Durham County occupancy tax and only makes changes related to the time allowed for planning and construction of a performing arts center and the use of the proceeds, this bill does not change the fiscal impact for the Durham occupancy tax.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2445
PROPOSED SENATE COMMITTEE SUBSTITUTE H2445-CSSVx-93 [v.1]

7/5/2006 9:03:30 PM

Short Title: Halifax/Ahoskie Occupancy Tax. (Local)

Sponsors:

Referred to:

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF AHOSKIE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AMEND THE OCCUPANCY TAX IN HALIFAX COUNTY.

The General Assembly of North Carolina enacts:

PART I. HALIFAX OCCUPANCY TAX

SECTION 1. Chapter 377 of the 1987 Session Laws, as amended by S.L. 2005-46, reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Halifax County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of ~~additional tax.~~Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection ~~must~~shall be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section ~~must~~shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Halifax County ~~must,~~shall. on a quarterly basis, remit the net proceeds of the occupancy tax to the

Halifax County Tourism Development Authority. The Authority ~~must~~shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and ~~must~~shall use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

"**Sec. 2.** Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the Halifax County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~must~~shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~must~~shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. ~~The Authority must designate one member as chair and one member as treasurer.~~The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority ~~must~~shall meet at the call of the chair and ~~must~~shall adopt rules of procedure to govern its meetings. The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~must~~shall report quarterly and at the close of the fiscal year to the Halifax County Board of ~~County~~ Commissioners on its receipts and

expenditures for the preceding quarter and for the year in such detail as the Board may require.

"**Sec. 3.** This act is effective upon ratification."

PART II. TOWN OF AHOSKIE OCCUPANCY TAX.

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Ahoskie Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this part.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Ahoskie shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Town of Ahoskie Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this part to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this part:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.2. Town of Ahoskie Tourism Development Authority. – (a) Appointment and Membership. – When the Ahoskie Town Council adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the

members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Ahoskie shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Ahoskie Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. UNIFORM PROVISIONS

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART IV. EFFECTIVE DATE

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2445

Short Title:	Halifax Occupancy Tax.	(Local)
Sponsors:	Representatives L. Allen and Ed Jones (Primary Sponsors).	
Referred to:	Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OCCUPANCY TAX IN HALIFAX COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 377 of the 1987 Session Laws, as amended by S.L. 2005-46, reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Halifax County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of ~~additional tax.~~Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection ~~must~~shall be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section ~~must~~shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Halifax County ~~must,~~shall. on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Authority ~~must~~shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and ~~must~~shall use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

"**Sec. 2.** Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the Halifax County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~must~~shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~must~~shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. ~~The Authority must designate one member as chair and one member as treasurer.~~The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority ~~must~~shall meet at the call of the chair and ~~must~~shall adopt rules of procedure to govern its meetings. The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~must~~shall report quarterly and at the close of the fiscal year to the Halifax County Board of ~~County~~ Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

"**Sec. 3.** This act is effective upon ratification."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 6, 2006

TO: Representatives L. Allen and Ed Jones

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS H 2445

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Halifax Co.			**No Fiscal Impact**		
Town of Ahoskie	**$16,626**	**$19,054**	**$19,474**	**$19,863**	**$20,260**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Halifax County, Town of Ahoskie

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
HB 2445 amends the Halifax County occupancy tax authorizing legislation to provide that half of the members of the Tourism Development Authority must be active in promotion of travel and tourism in the county, that the county board of commissioners are to designate the chair of the Authority and set the compensation (if any) to be paid to authority members, and that the county finance officer is to serve as the finance officer for the Authority. Requires quarterly reports from Authority to board of county commissioners. The PCS adds a 3% occupancy tax for the Town of Ahoskie.

ASSUMPTIONS AND METHODOLOGY:

Halifax County
The bill amends administrative provisions of the existing Halifax County occupancy tax legislation, but does not change the rate of tax and has no fiscal impact.

Town of Ahoskie
According to the Ahoskie Chamber of Commerce, there are 3 motels in Ahoskie and 1 bed and breakfast. Assuming an average of 20 rooms each for the motels and 3 rooms for the bed and breakfast, an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $18,626 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Fiscal Year	Proposed 3% Tax	Each 1%
2006	$18,626	$6,208
2007	$19,054	$6,351
2008	$19,474	$6,491
2009	$19,863	$6,621
2010	$20,260	$6,753

SOURCES OF DATA: Town of Ahoskie

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 21, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE FINANCE COMMITTEE
Thursday, July 6, 2006 1:00 pm
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 2:38 pm on July 6, 2006, on the Senate floor. Thirty-four members of the committee were present. Senator John Kerr presided.

HB 770 – Clay County Occupancy Tax Changes.

Senator Snow was recognized to explain the bill. Senator Purcell motioned to adopt the proposed committee substitute and the motion carried. Senator Soles motioned for a favorable report and the motion carried. A copy of the proposed committee substitute is attached.

The meeting adjourned at 2:40 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Thursday, July 06, 2006

Senator KERR,
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) **770** Parental Savings Trust Fund Tax Deduction.-AB

Draft Number:	70795
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 770

Committee Substitute Favorable 6/6/06
Third Edition Engrossed 6/12/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H770-CSSVx-97 [v.1]

7/6/2006 1:43:24 PM

Short Title: Clay County Occupancy Tax Changes. (Local)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CLAY COUNTY ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 969 of the 1985 Session Laws, as amended by Chapter 195 of the 1987 Session Laws, reads as rewritten:

"**Section 1.** Occupancy Tax. (a) Authorization and Scope. – The board of commissioners of a county may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly~~

~~installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~ A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

(e) Distribution and Use of Tax Revenue. – Except as provided in Section 2 of this act for Durham ~~County, a taxing county shall place the net proceeds of a tax levied under this act in a special Travel and Tourism Fund. Revenue in this Fund may be used only to promote travel and tourism in the county. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.~~County, the distributing authority shall distribute and use the net proceeds of the occupancy tax levied under this section in accordance with this subsection. The distributing authority shall be the taxing county, unless a Tourism Development Authority is required to be established under Section 1.1 of this act. If a Tourism Development Authority is established, then the Tourism Development Authority shall be the distributing authority. The distributing authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the county and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the distributing authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the board of commissioners of the county. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"**Sec. 1.1.** County Tourism Development Authority. – (a) Appointment and Membership. – When the annual net proceeds of the occupancy tax levied under Section 1 of this act exceed one hundred fifty thousand dollars ($150,000), the county Board of Commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the county shall be the ex officio finance officer of the Authority.

(b) Duties. – If the board of commissioners establishes a Tourism Development Authority as provided in subsection (a) of this section, then the Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – If the board of commissioners establishes a Tourism Development Authority as provided in subsection (a) of this section, then the Authority shall report quarterly and at the close of the fiscal year to the county board of commissioners on its

receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"**Sec. 2.** Use and Distribution of Tax Revenue in Durham County. Durham County shall retain fifty-seven and one-half percent (57-1/2%) of the revenue collected from a tax levied under this act and shall distribute the remaining forty-two and one-half percent (42-1/2%) of the revenue to the City of Durham. Funds retained by the county or distributed to the City of Durham may be used for any purpose authorized by law, except that at least twenty-five percent (25%) of the funds so retained or distributed must be used for promotion of travel and tourism.

Sec. 3. This act applies only to the following counties: Graham, Clay, Jackson, Durham, Macon, Polk, and Transylvania.

Sec. 4. This act is effective upon ratification."

SECTION 2. Section 3 of Chapter 118 of the 1987 Session Laws reads as rewritten:

"**Sec. 3.** This act applies only to the following counties: ~~Clay,~~ Graham, Jackson, and Macon."

SECTION 3. This act applies only to Clay County.

SECTION 4. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett County."

SECTION 5. This act is effective when it becomes law.

SENATE FINANCE COMMITTEE
Tuesday, July 11, 2006 at 1:00 pm
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 pm on July 11, 2006, in the room 544 of the Legislative Office Building. Thirty-two members of the committee were present. Senator David Hoyle presided. Courtney Cooper, Hannah Challenger, Luke Pickard and Laney Schenk of Gaston County served as pages.

HB 2744 – Economic Development Program Modifications.

Representative Owens was recognized to explain the bill. Commerce Secretary Fain was recognized to answer questions and speak in favor of the bill. Senator Kerr moved for a favorable report and the motion carried. A copy of the bill, the summary, detailed talking points, and fiscal note are attached.

HB 2339 – Lincoln County Tax Certification.

Senator Rand moved for a favorable report and the motion carried. A copy of the bill and the summary are attached.

SB 1242 – Striped Bass Permit.

Senator Albertson was recognized to explain the bill. Senator Rand moved to approve the bill and the motion carried. A copy of the bill, the summary, and the fiscal note are attached.

HB 1327 – Crim. Record Checks/Psychology Practice Act.

Representative Wiley was recognized to explain the proposed committee substitute. Senator Kerr motioned to adopt the PCS for discussion and the motion carried. Senator Tillman moved to approve the proposed committee substitute and the motion carried. A copy of the proposed committee substitute is attached.

HB 1025 – Winemaking on Premises Permit.

Senator Rand was recognized and moved to adopt the proposed committee substitute for discussion. The motion carried. Senator Hagan offered an amendment. The Reverend Mark Creech, Christian Action League, was recognized to speak in opposition of the amendment and the bill. Cindy Avrette, staff attorney with the Research Division, was recognized to answer questions. Andy Ellen, general counsel for the Retail Merchants Association, was recognized to speak in favor of the amendment. Senator Hagan made a motion for a favorable report for the amendment and the motion carried. Senator Hartsell was recognized to offer an amendment and motioned for a favorable report, the motion carried. Senator Hunt was recognized to offer an amendment and motioned for a favorable report, the motion failed. Senator Rand motioned to adopt the proposed committee substitute as amended and the motion carried. A copy of the bill, the proposed committee substitute, the summary, and the amendments are attached.

HB 1050 – Local Sales Tax for Public Schools.

Senator Kerr was recognized to explain the proposed committee substitute and moved that it be adopted for discussion. Canaan Huie, staff attorney with the Bill Drafting Division, was recognized to explain the PCS and answer questions. Scott Elliott, Pitt County Manager, was recognized to speak in favor of the bill. Susanne Sartelle, President of the Pitt County Chamber of Commerce, was recognized to speak in favor of the bill. Dr. Dennis Massey, President of Pitt Community College, was recognized to speak in favor of the bill. Amy Stevens, Lee County Commissioner, was recognized to speak in favor of the bill. A copy of the bill and a bulleted summary is attached.

The meeting adjourned at 1:55 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

CORRECTED REPORT

Tuesday, July 11, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1242** Striped Bass Permit.
Sequential Referral: None
Recommended Referral: None

H.B. **2339** Lincoln County Tax Certification.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **2744** Economic Development Program Modifications.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1025** Winemaking on Premises Permit.
Draft Number: 10646
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1327** Crim. Record Checks/Psychology Practice Act.
Draft Number: 60858
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comments: Senate Finance report II

Senate Finance Committee
Tuesday, July 11, 2006, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

H1025	Winemaking on Premises Permit.	Rep. Luebke
H1327	Crim. Record Checks/Psychology Practice Act.	Rep. Martin Rep. Wiley Rep. Harrison
H2339	Lincoln County Tax Certification.	Rep. Kiser
H2744	Economic Development Program Modifications.	Rep. Daughtridge Rep. Owens
S1242	Striped Bass Permit.	Senator Albertson

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jon Carr	Jordan Price Law Firm
Roz Savitt	NCCCC
Sonia Schmidt	NC Justice Center
Lauren Rogers	NCFPC
Jami Fitzgerald	NC Family Policy Council
Andrew Meehan	NCAEC
Kevin Leonard	NCSR
Stacy Flannery	NCHCFA
Anita Watkins	NCLM
Barry Eveland	NCCBI
Charlene Carey	NC Right to Life
	NCPC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

July 11, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ed [illegible]	BP
Andy Ellen	Retired
[illegible]	[illegible]
Randy Fraser	TWC
[illegible]	NC FB
David Anders	PEF-PWC
Durwood Laughinghouse	NS
THOMAS A. SUTER	WYETH
Elizabeth Dalton	NCRMA
Dean Plunkett	NCBWWA
Marvin M. Jr.	Reading Railroad

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sir John Kerr	NCFPC
Connie Wilson	SSI
Ken Melton	D.O.R.
PATRICK BUFFKIN	ATTEY ASSOC, INC.
JOHN GOODMAN	NCCBI

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Scott Elliott	Pitt County
Susanne Sartelle	Greenville - Pitt County Chamber of Commerce
Beverly Reep	Pitt County School District
Dennis Massey	Pitt Community College - President
Amy Simms	NCDENR
Rev. Mark A. Creech	CAL
Dana Simpson	Smith Anderson
Lu Hodges	ICCH
Doug Heizer	NC Bar Association
David Cartner	NC Bar Association
Doug Diering	NC Independent wine retailers
Roger Bone	Bone & Assoc.

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

July 11, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Holly Bryan	NCATL
Chris Medlin	NCATL
[illegible]	[illegible]
[illegible]	NCATL
Mark Trawick	Dr Beaver Intern
Lennie Collins	DOR
Amy Schilder	Hobbs & Co
David Crawford	AIA NC
Emily Kuroy	NC Conservation Network
Frank W. Foger	Helms Mullis Wicker
Doug Byrd	Commerce

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 2744*

Committee Substitute Favorable 6/27/06
Committee Substitute #2 Favorable 7/6/06
Fourth Edition Engrossed 7/6/06

Short Title: Economic Development Program Modifications. (Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM, TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT FOR CERTAIN TAXPAYERS, AND TO EXTEND CERTAIN SALES AND USE TAX REFUNDS.

The General Assembly of North Carolina enacts:

PART I. JDIG CHANGES

SECTION 1.1. G.S. 143B-437.51 reads as rewritten:

"**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – A community economic development agreement under G.S. 143B-437.57.

(2) Base ~~years.~~period. – The ~~first 24 months following the date set by the Committee for performance to begin under the agreement.~~period of time set by the Committee during which new employees are to be hired for the positions on which the grant is based.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base ~~years or in subsequent years of a grant.~~period.

(5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.

(6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide. ~~The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.~~

(8) Overdue tax debt. – Defined in G.S. 105-243.1.

(9) Related member. – Defined in G.S. 105-130.7A.

(10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes."

SECTION 1.2. G.S. 143B-437.52 reads as rewritten:

"**§ 143B-437.52. Job Development Investment Grant Program.**

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of agreements the Committee may enter into each calendar year is 25.

(c) Ceiling. – ~~The~~ Except as provided in this section, the maximum amount of total annual liability for grants for agreements entered into in any single calendar ~~year~~ year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars ($15,000,000). The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars ($30,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The ~~designation~~ agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 1.3. G.S. 143B-437.53(b) reads as rewritten:

"(b) Ineligible Businesses. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or ~~club~~ club, other than a professional motorsports racing team, is not eligible for a grant under this Part."

SECTION 1.4. G.S. 143B-437.55 reads as rewritten:

"**§ 143B-437.55. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
(4) The number of eligible positions proposed to be created ~~during the base years and thereafter~~for the project and the salaries for these positions.
(5) An estimate of the total withholdings.
(6) Certification that the business will provide health insurance to ~~all~~ full-time employees of the ~~project.~~project as required by G.S. 143B-437.53(c).
(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
(9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be

apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

(1) A listing of each community economic development agreement negotiated and entered into during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year.

(2) An update on the status of projects under agreements entered into before the preceding calendar year.

(3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.

(3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.

(4) The wage levels of all eligible positions created by projects with respect to which grants are awarded, aggregated and listed in increments of five thousand dollars ($5,000).

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.

(6) The criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and any changes in those criteria from the previous calendar year.

(7) The effectiveness of the program in recruiting new and expanding businesses.

(8) The environmental impact of businesses that have received grants under the program.

(9) The geographic distribution of grants, by number and amount, awarded under the program.

(10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.

(11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.

~~(12) The division and use of fees collected by the Committee under this section and under G.S. 143B-437.58.~~

(13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each community economic development agreement negotiated and entered into during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

(e) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year."

SECTION 1.5. G.S. 143B-437.56 reads as rewritten:

"**§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.**

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

(1) The number of eligible positions to be created.

(2) The expected duration of those positions.

(3) The type of contribution the business can make to the long-term growth of the State's economy.

(4) The amount of other financial assistance the project will receive from the State or local governments.

(5) The total dollar investment the business is making in the project.

(6) Whether the project utilizes existing infrastructure and resources in the community.

(7) Whether the project is located in a development zone.

(8) The number of eligible positions that would be filled by residents of a development zone.

(9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant payment is made. The first grant payment must be made within six years after the date on which the grant was awarded. The number of years in the base period for which grant payments may be made shall not exceed five years.

(c) The grant may be based only on eligible positions created during the base ~~years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.~~period.

(d) ~~The percentage established in the agreement shall be reduced by one fourth for~~For any eligible position that is located in an enterprise tier four or five ~~area.~~area. seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the enterprise tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible ~~position~~ position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year."

SECTION 1.6. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired ~~in~~ during the base ~~years and later years.~~period.

(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.

(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.

(4) The amount of the grant based on a percentage of withholdings.

(5) A method for determining the number of new employees hired during a grant year.

(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.

(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.

(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.

(9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base ~~years.~~period.

(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.

(13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.

(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.59.

(15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.

(16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.

(17) A provision encouraging the business to hire North Carolina residents.

(18) A provision encouraging the business to use the North Carolina State Ports.

(19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.

(20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).

(21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.

(23) A provision stating that the amount of a grant associated with any specific eligible ~~position~~position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year.

(24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.

(25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services."

SECTION 1.7. G.S. 143B-437.58 reads as rewritten:

"**§ 143B-437.58. Grant recipient to submit records.**

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that ~~are~~ have been created during the ~~base years and the new eligible positions created during each subsequent~~preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax ~~information~~information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

(d) The reporting procedures of this section are in lieu of any other general reporting requirements relating to private entities that receive State funds."

SECTION 1.8. G.S. 143B-437.59 reads as rewritten:

"**§ 143B-437.59. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the ~~Committee amends~~business fails to comply with the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive ~~years, the Committee shall terminate the agreement.~~years:

(1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.

(2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 1.9. G.S. 143B-437.60 reads as rewritten:

"**§ 143B-437.60. Disbursement of grant.**

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified ~~to the State Controller~~ that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant

under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require the business to provide any necessary evidence of compliance to verify ~~this information and certify to the State Controller~~ that the terms of the agreement have been met. The Committee shall ~~further~~ certify ~~to the State Controller~~ the grant amount ~~of a grant~~ for which the business is eligible under the agreement and the grant amount ~~of a grant~~ for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d). The ~~State Controller~~Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee."

SECTION 1.10. G.S. 143B-437.61 reads as rewritten:

"**§ 143B-437.61. Transfer to Industrial Development Fund.**

At the time the ~~State Controller~~Department of Commerce remits a check to a business under G.S. 143B-437.60, the ~~State Controller~~Department of Commerce shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d)."

SECTION 1.11. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Expiration.**

The authority of the Committee to enter into new agreements expires January 1, ~~2008.~~2010."

SECTION 1.13. The Department of Commerce shall conduct a comprehensive, systematic study of the Job Development Investment Grant Program. The study shall be completed and submitted to the Chairs of the House of Representatives and Senate Finance Committees and the House of Representatives and Senate Appropriations Committees no later than February 1, 2007. The study shall include an examination of the following:

(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

(2) The costs of the program in relation to other State economic development incentive programs.

(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

SECTION 1.14. This part is effective when it becomes law.

PART II. BILL LEE ACT CHANGES

SECTION 2.1. G.S. 105-129.2A(a2) reads as rewritten:

"(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, ~~2006.~~2008, this Article is repealed effective for business activities that occur on or after January 1, 2010."

SECTION 2.2. This part is effective when it becomes law.

PART III. SALES TAX REFUND CHANGES

SECTION 3.1. G.S. 105-164.14(j) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

(1) Refund. – The owner of an eligible facility is allowed an annual refund of sales and use taxes paid by it under this Article on qualified building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. Building materials, building supplies, fixtures, and equipment are qualified if they are installed in the construction of the facility. Purchases for subsequent repair, renovation, or equipment replacement are not qualified.

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A facility is eligible under this subsection if it meets ~~both~~ all of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in an enterprise tier one, two, or three area as defined in G.S. 105-129.3, the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. ~~In the case of a computer manufacturing facility,~~ For the purpose of this subsection, the term 'facility' has the same meaning as under G.S. 105-129.61.

c. If the facility is primarily engaged in financial services, securities operations, and related systems development, it satisfies all of the following conditions:

1. It is owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A.

2. No part of it is leased to a third-party tenant that is not a related entity of the business.

(3) Industries. – This subsection applies to the following industries:

a. Air courier services. Air courier services has the same meaning as in G.S. 105-129.2.

b. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.

c. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.

d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.

e. Reserved for future codification purposes.

f. Financial services, securities operations, and related systems development. Financial services, securities operations, and related systems development means one or both of the following functions:

1. Performing analysis, operations, trading, or sales functions for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.

2. Developing information technology systems and applications, managing and enhancing operating applications and databases, or providing, operating, and maintaining telecommunications networks and distributed and mainframe computing resources for

investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.

g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:
   1. Manufacturing complete automobiles and light-duty motor vehicles.
   2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
   3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

h. Reserved for future codification purposes.

i. Reserved for future codification purposes.

j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
   1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
   2. Processing botanical drugs and herbs by grading, grinding, and milling.
   3. Isolating active medicinal principals from botanical drugs and herbs.
   4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

k. Reserved for future codification purposes.

l. Reserved for future codification purposes.

m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components.

(4) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this subsection with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this

subsection. Upon forfeiture, the owner is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(5) Sunset. This subsection is repealed for sales made on or after January 1, ~~2010.~~2013."

SECTION 3.2. The changes made to G.S. 105-164.14(j)(2)b. by Section 3.1 of this act become effective January 1, 2005, and apply to sales made on or after that date. The remainder of this part becomes effective July 1, 2006, and applies to purchases made on or after that date.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 2744:
Economic Development Program Modifications

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 11, 2006
Introduced by:	Reps. Owens, Daughtridge	**Summary by:**	Canaan Huie
Version:	Fourth Edition		Committee Counsel

SUMMARY: This bill would make numerous changes to the JDIG Program, the Bill Lee Act, and certain sales and use tax refunds. Most provisions of the bill would be effective when they became law.

CURRENT LAW: The Job Development Investment Grant (JDIG) Program was created in 2002 as a new economic development tool for new and expanding businesses in North Carolina. JDIG is used to attract businesses to the State by allowing a five-member committee to award grants to businesses. The amounts of the grants are based on income tax withholdings from new jobs created by the businesses.

The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, and for worker training. In 2000, the General Assembly extended the sunset on the Act until January 1, 2006. During the 2005 Regular Session, the General Assembly further extended the Act until January 1, 2008. There are several exceptions to the 2006 sunset date, one of which involves eligible major industries. Eligible major industries that qualify as such before January 1, 2006, are allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least $100 million in acquiring, constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing.

The definition of eligible major industries for the purposes of the Bill Lee Act largely conforms to the list of taxpayers who are eligible for a refund on the sales and use taxes paid by the taxpayer on building materials for construction of a new facility in this State. Taxpayers that are eligible for the refund of sales and use taxes are not required to qualify as such by a specific date, but the refund provision does expire for purchases made on or after January 1, 2010.

BILL ANALYSIS:

Part I. JDIG Changes. This bill makes numerous changes to the JDIG program. Some of these changes significantly expand or extend the program, whereas others of these changes make changes intended to streamline the administration of the program, clarify certain aspects of the program, or reduce penalties for failure to comply with agreements under the program.

There are two changes in the bill that could significantly add to the costs of the program over the next 12-13 years. First, in section 1.2, this bill increases the maximum amount of total annual liability for agreements entered into during the 2006 calendar year from $15 million to $30 million. This change is effective for agreements entered into during 2006 only; for agreements entered into in later years, the maximum amount of the total annual liability would return to $15 million. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding 12 years. Therefore, an increase in the maximum amount of the total annual liability of $15 million for one year could have a fiscal impact of up to $180 million over a 12-year period. Second, in Section 1.11, the

bill extends the sunset on the JDIG program by an additional two years, through the end of the 2009 calendar year. As with the increase discussed above, this two-year extension of the program could have a significant fiscal impact stretching out for a dozen years or more.

In addition, this bill would make significant changes to the clawback provisions under the JDIG program. Under the JDIG program, the Economic Investment Committee (EIC), the entity that administers the JDIG program, is required to amend or terminate the agreement and to recapture all or part of a grant made in previous years under certain circumstances. If the business fails to comply with any term of the agreement or with criteria developed by the EIC, the EIC must amend the agreement and may terminate the agreement. This amendment may take the form of a lower percentage being used to determine the amount of the grant or of a shorter term for the agreement. The reduction must be proportional to the failure to comply with the agreement. If the business fails to comply with any term of the agreement or with criteria developed by the EIC for two consecutive years, the EIC must terminate the agreement. In addition, in each agreement the EIC must include a provision describing the conditions that will lead to recapture of a grant made in an earlier year.

Under this bill, the provisions relating to failure to comply with the agreement for two consecutive years would be amended so that termination of the agreement would not be required in all cases. Under this bill, if the business were still in the base period established by the EIC, the EIC would withhold the grant for any consecutive year remaining in the base period in which the business fails to comply with the agreement. The EIC would also have the option of extending the base period by up to 24 months over the amount specified in the original agreement in these cases. If the business did not come into compliance by the end of the base period, the agreement would be terminated. If the business were no longer in the base period established by the EIC, the EIC would be required to terminate the agreement. The effect of these changes would be to allow a company more leeway in meeting the terms of an agreement in the early years of the agreement.

This bill would also expand the types of entities that are eligible to enter into agreements under the program. When the JDIG program was originally created, all but two specific industries were eligible for grants under the program. Those two industries were retail operations and professional and semiprofessional sports teams and clubs. The exclusion of professional sports was put into place, in part, due to concerns that the intent behind the program was to attract one or more major league sports teams to the State. This bill would provide an exception to that exclusion in that professional motorsports racing teams would become eligible for grants under the program.

The bill also makes the following changes:

- Changes references to "base years" to "base period" and allows the EIC to set the base period. Under current law, the base years are the first two years, unless the EIC decides on a different period. This clarifies that the EIC has authority to set that base period. The base period could not contain more than 5 years in which grant payments were to be made.
- Changes the definition of "new employee." Under current law, a "new employee" may include an employee that was originally hired in the base period, was subsequently laid off, and then was subsequently rehired by the company during the term of the agreement. This change would exclude these rehires from the definition of new employee.
- Clarifies that the $6,500 cap per new employee and the 75% cap on the amount of a grant apply to the total amounts and not just the amount that flows to the business. This is important because the amount of a grant is reduced by 25% for a position located in enterprise tier four or five with that portion instead being directed to the Utility Account of

the Industrial Development Fund. This clarifies that the two caps apply to both the amount that flows to the business and the amount that flows to the Utility Account.

- Clarifies that social security numbers related to the positions on which a grant is based must be included with annual reports to the EIC. The change further clarifies that the social security numbers and State and federal tax returns are tax information, which is protected from disclosure under general laws related to public records.
- Removes the State Controller from the disbursement process. In 2004, a JDIG Reserve was created within the Department of Commerce. Due to the manner in which that Reserve was established, the State Controller is not directly involved with disbursements to businesses from the JDIG Reserve. This bill would relieve the State Controller of certain duties related to certification of grant amounts and remittance of payments to grantees and would transfer those duties to the Department of Commerce.
- Clarifies that the tier designation that determines whether a grant payment is subject to reduction is the designation that is in effect in the year in which the application is filed. Under current law, the amount of a grant is reduced by 25% if the position with respect to which the grant is awarded is located in an enterprise tier four or five area. Under the current law it is not clear when that determination is made – at the time the business applies for a grant, at the time a grant agreement is entered into, or at the time the grant payment is made.

Part II. Bill Lee Act Changes. Part II of this bill would extend the time period in which eligible major industries could qualify as such in order to qualify for the extension of the Bill Lee Act by two years. This provision would allow for an extension of the Bill Lee Act to the taxpayers that qualified as eligible major industries by January 1, 2008, rather than 2006.

Part III. Sales Tax Refund Changes. Part III of this bill would add financial services, securities operations, and related systems development as an industry that is eligible for the sales and use tax refund related to certain building materials. In addition, this part would extend the sunset on the sales and use tax refund for all eligible industries by three years, until January 1, 2013. The effect of this change would also be to make these types of taxpayers eligible for the extension of the Bill Lee Act discussed above.

H2744e4-SMLY

House Bill 2744 (Senate Bill 2006)

Economic Development Program Modifications

House Sponsors: *Rep. Bill Owens, Rep. Bill Daughtridge;* ***Senate Sponsor:*** *Sen. David Hoyle*

Supported by: N.C. Department of Commerce
N.C. Economic Developers Association
North Carolina Citizens for Business & Industry
N.C. Metropolitan Coalition

JDIG Program

- Temporarily Increases Program Cap by $15 Million for 2006.
  - Would enable NC to compete for unusually large number of competitive projects in 2006.
  - Increase would be for 2006 grant year only.
  - Between 2003 and 2005, the JDIG Committee did not need to use $18 million of its available cap. This year it would have the ability to use up to $15 million more – but only if needed.
- Extends JDIG Program Through 2009.
- Allows Projects to Lock-in Distressed Tier Eligibility.
  - Enables projects that apply while a county is in a low tier (Tier 1-3) to receive larger, low-tier grants, even if county's tier changes to Tier 4 or 5 before the grant is awarded.
- Makes Motorsports Manufacturing Facilities Eligible for JDIG Grants.
- Allows Flexibility For Companies With Start-up Delays.
  - JDIG program requires companies that experience start-up delays to be kicked out. But when that happens, the business loses an incentive to complete their project.
  - The bill would limit the length of the job creation period, but give JDIG Committee flexibility to halt grant payments to companies experiencing delays and allow them 2 additional years to create their jobs.

Lee Act Program

- Extends Secretary's authority though 2007 to designate "eligible major industries" for sunset extension.
  - When Lee Act was extended in 2005, this provision was inadvertently overlooked.

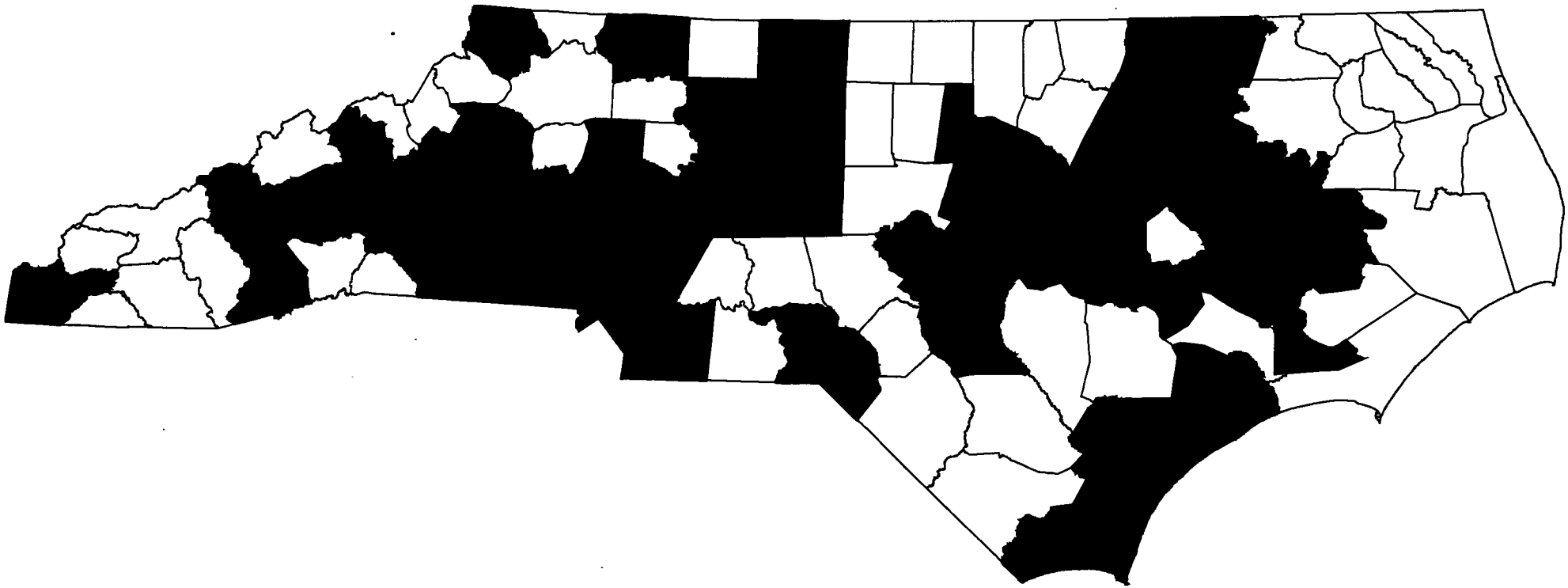
Sales Tax Refund on Construction Materials

- Make Investment Firm Support & IT Facilities Eligible for Refund
  - Helps make NC competitive for major Wall Street support facilities looking to locate outside of New York – a trend in the aftermath of 9/11.
- Extends Sunset Through 2012.
  - DOC has eligible projects with construction schedules beyond the current sunset date of January 1, 2010.

Ver. 7.7.06

NC Department of Commerce
Commerce Finance Center

Job Development Investment Grant Funds
Counties Where JDIG Grants Offered in Negotiations



JDIG Negotiated

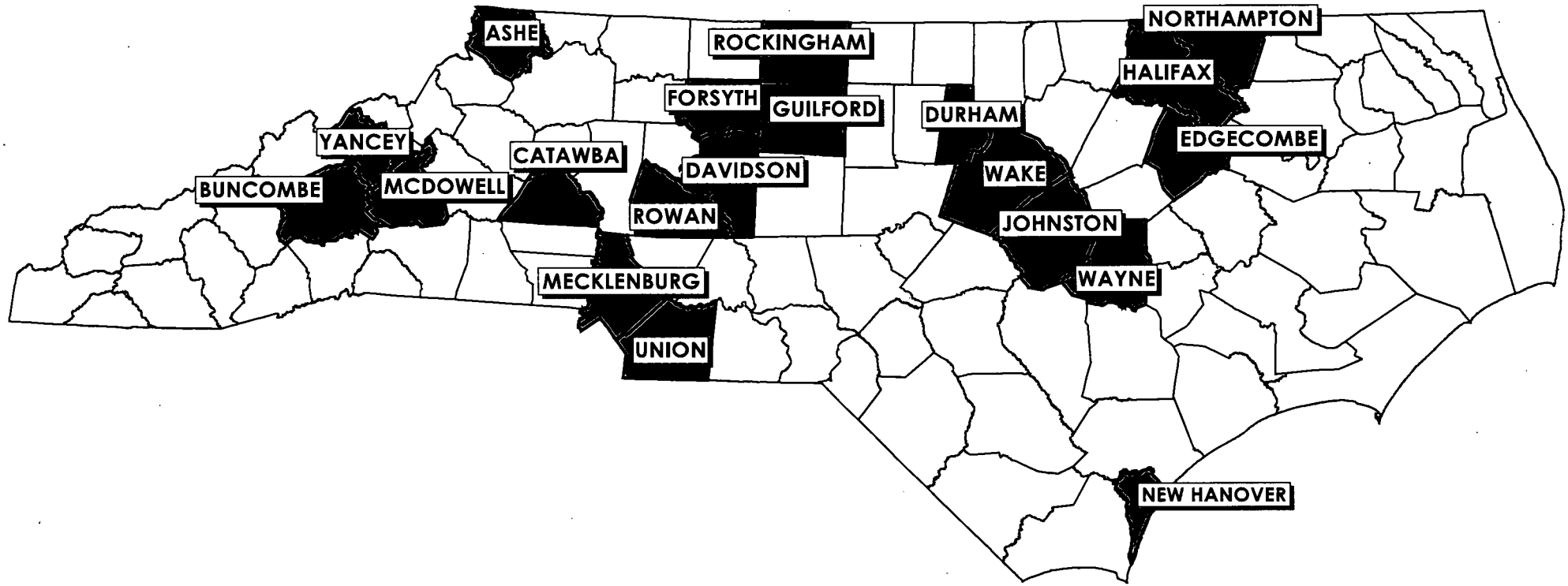
POLICY & RESEARCH
Strategic Planning
A Division of
The North Carolina Department of Commerce

Map prepared June 2006.

This map shows the geographic locations of all JDIG offered in negotiations.

NC Department of Commerce
Commerce Finance Center

Job Development Investment Grant Funds
Total Recipients by County 2003 to Present



JDIG Fund Awards by County

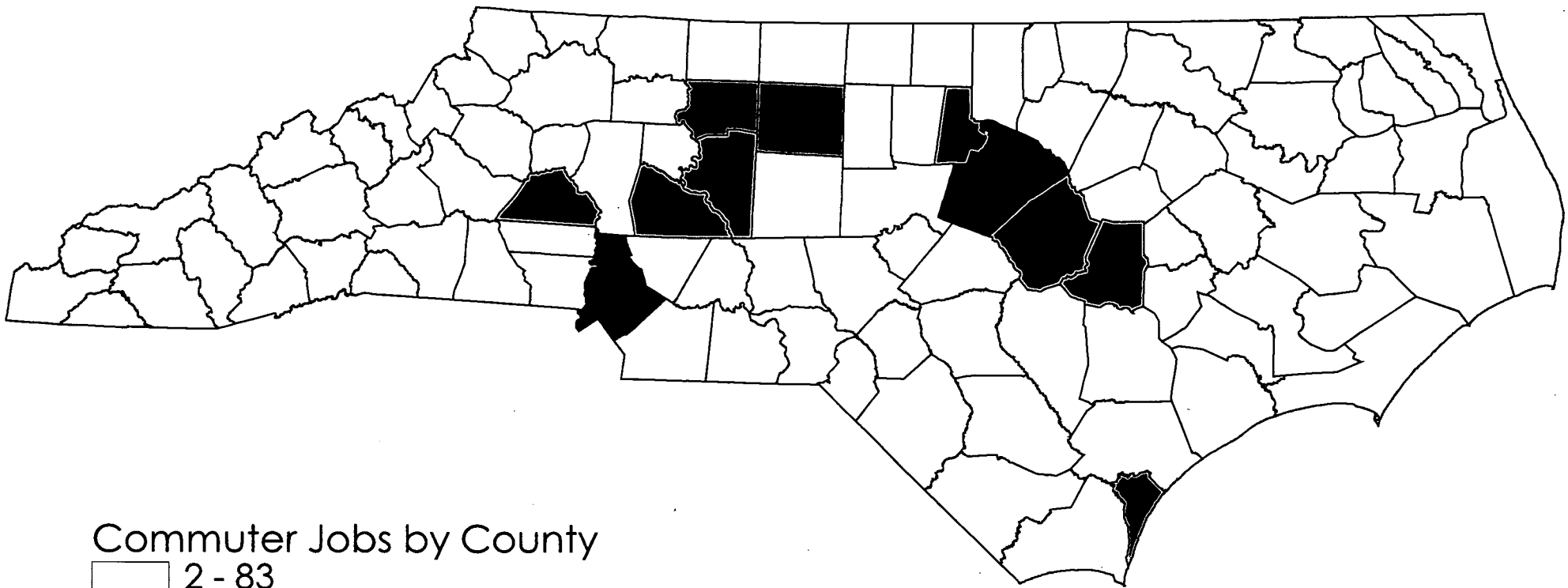
POLICY & RESEARCH Strategic Planning
A Division of The North Carolina Department of Commerce

Map prepared June, 2006

NC Department of Commerce

DRAFT

Job Development Investment Grant Funds
Commuter Jobs Created by County



Commuter Jobs by County

- 2 - 83
- 84 - 263
- 264 - 615
- 616 - 1,225
- 1,226 - 2,131

POLICY & RESEARCH
Strategic Planning
A Division of The North Carolina Department of Commerce

Map prepared June 2006.

Michael F. Easley, Governor

James T. Fain III, Secretary

North Carolina Department of Commerce

SUMMARY OF JOB DEVELOPMENT INVESTMENT GRANT ANNOUNCEMENTS

Forty-one Grants Bring 14,700 Jobs to North Carolina

The Job Development Investment Grant initiative, proposed by Gov. Mike Easley and the N.C. Economic Development Board, awards up to 25 grants annually to strategically important, new and expanding businesses and industrial projects. These grants are only awarded to projects whose benefits exceed their costs to the state and which would not locate in North Carolina without the grant. Cumulative annual grant amounts are capped at $15 million.

Since the first grant was awarded in May 2003, a total of 41 Job Development Investment Grants have been announced (six in 2003; 19 in 2004; nine in 2005; and seven in 2006). The JDIG program is proving effective in recruiting companies to North Carolina and has enabled the N.C. Department of Commerce to secure 14,741 jobs and approximately $2 billion in investment to our state. To date, JDIG awards made in [illegible]n counties are projected to generate up to $51.86 million to the Industrial Development Fund to be used for [illegible]l economic development projects. A summary of the announced grants follows.

JDIG Announcements through June 1, 2006:

(41) *5-12-06* – **Lotus Engineering** plans to open a research and development facility at the proposed Advanced Vehicle Research Center (AVRC) in Northampton County, creating 108 jobs during the next two years and investing $1.5 million. Lotus Engineering is an automotive engineering consultant company based in the United Kingdom. If the company creates the jobs called for under the agreement and sustains them for nine years, the company could receive a maximum benefit of $1.49 million.

(40) *5-11-06* – **Maersk Inc.**, the U.S.-based subsidiary of A.P. Moller-Maersk, will add 254 jobs during the next five years and invest $60 million to relocate its current Charlotte offices to an expanded facility. The company currently leases space for its regional offices in the South Park area of Charlotte. The facility supports the headquarters for several Maersk Inc. business units, including APM Terminal North America, Bridge Terminal Transport and Maersk Equipment Service Company as well as elements of Maersk Line and Maersk Logistics. Maersk Inc. plans to acquire the Royal Sun Alliance Building at 9300 Arrow Point Blvd in June 2006. This property consists of approximately 40 acres of land and 345,000 square feet of office space, which when completed, should accommodate up to 1300 employees. If the company creates the jobs called for under the agreement and sustains them for 11 years, the agreement could yield as much as $3.6 million in benefits to the company and nearly $1.2 million to the state's Industrial Development Fund.

North Carolina Department of Commerce
301 N. Wilmington St., Raleigh, NC 27601
919-733-7651, 733-8356 fax

(39) **4-18-06 – Credit Suisse** (formally known as Credit Suisse First Boston) a world-leading financial services firm, will add 400 jobs during the next two years and invest $40 million to expand its Research Triangle Park "Center of Excellence" facility. The "Center of Excellence" houses support staff for the company's investment banking division, including operations and information technology personnel. This is the second JDIG grant for the company -- the first award came in 2004. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield as much as $12.7 million in maximum benefits to the company and $4.2 million for rural infrastructure improvements through the state's Industrial Development Fund.

(38) **3-06-06 - RFMD** (formerly known as RF Micro Devices), a Greensboro-based leader in wireless technology will add 300 jobs during the next three years and invest $80 million to expand its Greensboro facility. If RFMD creates the jobs and investment and retains the workers for the 11-year period of the grant, the company could receive a maximum benefit of $4.9 million. In addition, the grant will provide up to $1.64 million in rural infrastructure improvements through the state's Industrial Development Fund.

(37) **2-15-2006** - Global packaging company **MeadWestvaco Corporation** will establish a new Packaging Innovation Center on N.C. State University's Centennial Campus in Raleigh. The new center, which will centralize the company's research and development, engineering and other technology-focused functions, will create 200 jobs and an investment of $14 million during the next four years. If MeadWestvaco creates the jobs and investment and retains the workers for the 10-year period of the grant, the company could receive a maximum benefit of $5.19 million. In addition, the grant will provide up to $1.72 million in rural infrastructure improvements through the state's Industrial Development Fund.

(36) **2-10-2006- PGT Industries Inc.,** a manufacturer of hurricane resistant doors and windows, will open a manufacturing plant in Rowan County, creating 712 jobs and an investment of $31 million over the next five years. The company will move into a Salisbury plant being vacated by GDX Automotive that will result in the loss of 700 full- and part-time jobs. If PGT creates the jobs and investment and retains the workers for the 10-year grant period, the company could receive a maximum benefit of $5.35 million.

(35) **1-11-06 – August C. Stiefel Research Institute (SRI)**, a wholly-owned subsidiary of global pharmaceutical leader Stiefel Laboratories Inc., will create 200 jobs and invest more than $50 million in the Research Triangle Park over the next five years as it relocates its headquarters from New York to Durham County. Stiefel Laboratories, which has its world headquarters in Coral Gables, Fla., employs nearly 2,800 people worldwide and specializes in the research, development and manufacture of prescription and over-the-counter skin care products to treat acne, psoriasis and other conditions. The SRI facility in Durham County will conduct research and development in support of the company's worldwide initiatives. If Stiefel creates the jobs and investment called for in the grant agreement and sustains them for 9 years, the company could reap a maximum benefit of $3 million. In addition, the grant will provide up to $1 million in rural infrastructure funds.

(34) **12-22-05 – Andrew Corporation** - a global designer, manufacturer and supplier of communications equipment and services, will move into a new facility in Wayne County in 2006 adding 204 new jobs and retaining and relocating 232 existing jobs from the company's Smithfield facility. The project represents an investment by Andrew of $11.5 million over six years. Andrew Corporation is an Illinois-based, S&P 500 company that bought selected assets of Channel Master LLC, out of bankruptcy in 2003, including Channel Master's Johnston County plant, which is under the control of a bankruptcy judge and is scheduled to close next year. If Andrew creates the jobs and investment called for in the grant agreement and sustains them for 10 years, the company could reap a maximum benefit of $1.4 million.

(33) **12-14-05 – Hewitt Associates LLC** - Hewitt Associates, the world's largest provider of human resources outsourcing and consulting services, will expand in Charlotte, creating 900 jobs and investing $8 million over the next four years. Hewitt Associates consults with more than 2,300 companies and administers human resources, health care, payroll and retirement programs to millions of employees and retirees worldwide. The company currently employs approximately 22,000 workers in 35 countries. If the company creates the jobs and investment called for in the grant agreement and sustains them for 10 years, Hewitt could reap a maximum yield of $8 million.

(32) **10-27-05 – Smiths Aerospace Components Inc.** - Smiths Aerospace Components Inc., the largest European-based aerospace equipment company, will invest $44 million to build and equip a plant in West Jefferson in Ashe County to produce turbine engine components. The facility, which will employ 305 workers within five years, will be the company's second in North Carolina. Smiths Aerospace currently operates a similar plant in Asheville with 295 employees. If the company creates the jobs and investment called for in the agreement and sustains them for 12 years, Smiths could receive a maximum benefit from the grant of $2.4 million. *

(31) **10-27-05 – Lenovo (United States) Inc.** -Personal computer manufacturer Lenovo (United States) Inc. will invest $84 million to build a research and development center in Morrisville, creating 400 jobs during the next five years. The new jobs will bring Lenovo's total North Carolina workforce to more than 2,200 people. If the company creates the jobs and investment called for in the agreement and sustains them for 11 years, Lenovo could receive a maximum benefit of $8.4 million.

(30) **10-25-05 – Headway Corporate Resources Inc.** -- Headway Corporate Resources, a leading human capital management company, will move its corporate headquarters and central administrative offices from New York City to Raleigh, and also will open a national recruitment center in Tarboro, creating a total of 188 full-time jobs and an investment of $4.25 million over the next five years. If the company creates the jobs and investment called for in the agreement and sustains them for 10 years, the company could receive a maximum yield of $2.6 million.

(29) **10-24-05 – American Institute of Certified Public Accountants** – The AICPA will move one of its main offices from New Jersey to Durham, creating 360 new jobs and investing $5.2 million over the next five years. The AICPA, which has its headquarters in New York City, is the national professional organization for certified public accountants. The organization provides its nearly 350,000 members with resources, information and leadership to enable them to meet the needs of employers, clients and the public. If the company creates the jobs and investment called for under the agreement and sustains them for 12 years, the maximum benefit to the institute would be $6.98 million.

(28) **9-1-05 – General Electric** – will expand its aircraft engine and nuclear energy divisions at its Wilmington facility, creating 200 jobs and an investment of $78 million over five years. The nuclear business will be relocating its inspection and field services, controls and new plants business from Memphis, Tenn., and San Jose, Calif., while the aircraft engine division will add new products lines to support both civilian and military contracts. If the company creates the jobs called for under the agreement and sustains them for 10 years, GE could receive a maximum benefit of $3.1 million.

(27) **8-22-05 – Cobia Boats** – a manufacturer specializing in off-shore, saltwater fishing boats, Cobia will open a production facility in McDowell County, creating 292 jobs and an investment of $5.5 million over the next five years. The company is owned by Scott Deal, who also owns a controlling interest in Maverick Boats LLC, a company headquartered in Fort Pierce, Fla., that specializes in freshwater fishing crafts. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield a maximum benefit to the company of $2.36 million.

(26) **8-15-05 – GlaxoSmithKline** – the second largest pharmaceutical company in the world, will expand its Zebulon facility, creating 200 jobs and an investment of $92 million over the next four years. The expansion will allow the U.K.-based company to add new production lines at the Wake County facility. If the company creates the jobs called for under the agreement and sustains them for 12 years, the agreement could yield a maximum benefit to the company of $1.46 million.

(25) **6-20-05 – Prairie Packaging (awarded in 2004; announced 2005)** – a maker of foam and plastic disposable dinnerware products is building a 700,000-square-foot manufacturing plant and distribution center in Huntersville (Mecklenburg Co.) creating 242 jobs and an investment of $48 million. Prairie Packaging was founded by Earl Shapiro, a former president of the Sweetheart Cup Corporation, in 1986. The company is headquartered in Bedford Park, IL, and is still controlled by the Shapiro family. The company's products are sold worldwide, and the company is a major supplier to such foodservice industry giants as Sysco Corp., McDonald's and Sam's Club. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield a maximum benefit to the company of $1.45 million.

(24) **3-7-05 –Hospira, Inc., (awarded in 2004; announced 2005)** a manufacturer of hospital products and medical devices is creating 152 new jobs over the next five years and investing $14 million. Hospira, Inc. (NYSE: HSP) is a global specialty pharmaceutical and medication delivery company created from the hospital products business of Abbott Laboratories in 2004. Headquartered in Lake Forest, Illinois, Hospira has a manufacturing facility in Rocky Mount that employs more than 2,000 people and acquired Fresenius Kabi's facility in Clayton and their 40 employees. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield $1.35 million in maximum benefits to the company.

(23) **1-26-05 –SYSCO Corporation, (awarded in 2004; announced 2005)** the largest foodservice, marketing and distribution organization plans to build a 300,000-square-foot distribution center in Selma, creating up to 600 jobs over the next seven years and investing $37 million in the area. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield $5.2 million in maximum benefits to the company.

(22) **12-22-04 – Altec Industries, Inc.** is locating a manufacturing facility in Burnsville, bringing 300 new jobs over the next five years and investing more than $7.5 million. Altec Industries is a leading manufacture of mobile equipment such as aerial lifts, digger derricks and specialty equipment for the electric utility, telecommunications and tree care industries. If the company creates the jobs called for under the agreement and sustains them for 11 years, the agreement could yield $1.9 million in maximum benefits to the company.

(21) **11-9-04 – Dell, Inc.,** will build a computer manufacturing facility in the Piedmont Triad, creating 1,500 jobs and investing $100 million. Employment by other strategic partners located at the facility will bring the total number of jobs up to 2,000. The project is expected to have a $24.5 billion impact on the state's economy over the next 20 years and bring an estimated $743 million in net revenue to the state. Dell, Inc., a leading manufacturer and distributor of computers and related products, plans to build and equip a state-of-the-art, 400,000-square-foot manufacturing and distribution facility in the Piedmont Triad. If the company creates the jobs called for under the JDIG agreement and sustains them for 12 years, the agreement could yield $14.1 million in maximum benefits to the company. Additionally, nearly $4.7 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(20) **10-29-04 -- GETRAG Corporation,** one of the world's leading manufacturers of power-train technology for the automotive industry, will expand its presence in Maiden (Catawba County), creating 302 new jobs and investing $81 million. GETRAG Corporation manufactures axles, gears and transmissions for foreign and domestic automotive companies. They currently employ 368 people in Maiden and plan to hire an additional 302 employees over a four-year period beginning in 2005. If the company creates the jobs called for under the agreement and sustains them for 11 years, the agreement could yield $2.5 million in maximum benefits to the company. Additionally, nearly $830,000 will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(19) **10-28-04 -- Novo Nordisk,** a world leader in diabetes care, will expand in Clayton, creating 187 new jobs and $100 million investment. With headquarters in Denmark, Novo Nordisk employs about 19,600 people full-time in 69 countries and markets its products in 179 countries. If the company creates the jobs called for under the JDIG agreement and sustains them for 10 years, the agreement could yield $2.3 million in maximum benefits to the company. An additional $758,000 will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(18) **10-21-04 – Credit Suisse First Boston** will locate a Global Business Center in the Triangle, creating 400 jobs and investing more than $100 million. Headquartered in New York with more than 18,000 employees worldwide, CSFB is a leading global investment bank serving institutional, corporate, government and individual clients. The JDIG award could yield a maximum of $8.9 million for the company if it creates the jobs called for under the agreement and sustains them for 10 years. Additionally, $2.9 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(17) **10-06-04—PCB Piezotronics, Inc.** will locate a new manufacturing facility in Roanoke Rapids, bringing 250 new jobs and about $5 million in additional investment to the area. PCB Piezotronics is one of the world's leaders in the design, development and manufacture of laboratory and industrial grade sensors. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield $1.6 million in maximum benefits to the company.

(16) **8-10-04—Cree, Inc.** will expand its semiconductor production in the Triangle, bringing 300 new jobs and approximately $300 million in additional investment. Cree is one of the world's leaders in the development and manufacturing of semiconductor materials. Developed from technology learned at N.C. State University, Cree is a homegrown success story. If the company creates the jobs called for under the agreement and sustains them for 11 years, the agreement could yield $5.1 million in maximum benefits to the company. Additionally, $1.7 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(15) **7-27-04—Network Appliance, Inc.** will expand its operations in the Triangle, bringing 361 new jobs and $59 million in additional investment. Network Appliance, a world-leading data storage provider. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $8.9 million over the life of the grant. Additionally, nearly $3 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

Grants Awarded in 2004

(14) **6-07-04—Superior Essex Inc. (SESX)** is expanding its facilities in Tarboro, creating 130 new jobs and about $9 million investment. The company manufactures and supplies copper and fiber optic communications wire and cable products to telephone companies, distributors and system integrators. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $930,000 over the life of the grant. Superior Essex is the first recipient of JDIG in a Tier 1 rural county. *

(13) **6-03-04—Harris Microwave Communications Division** is relocating its corporate headquarters to Durham from Silicon Valley, creating 258 new jobs and an investment of $1 million. Harris Microwave Communications Division, one of five divisions within Harris Corporation (NYSE: HRS) is the largest supplier of microwave systems in North America and a leading supplier worldwide. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $4 million over the life of the grant. Additionally, $1.3 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(12) **4-06-04 –Merck & Co., Inc.**, a global research-driven pharmaceutical products company, will locate its new vaccine manufacturing facility in Durham County. They are bringing approximately 200 jobs and up to $300 million in additional investment to the area. The facility will manufacture vaccine products to fight measles, mumps, rubella and chicken pox. This will be the first vaccine manufacturing facility for Merck outside of its vaccine division headquarters in West Point, PA. If the company creates the jobs called for under the agreement and sustains them for 12 years, the agreement could yield maximum benefits to the company of $4.1 million over the life of the grant. Additionally, nearly $1.4 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(11) **3-26-04—Time Warner Cable**, the second largest operator of cable systems in the United States has chosen Charlotte to expand their corporate support offices. They are bringing 350 new jobs and up to $36 million in additional investment to the area. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $4.2 million over the life of the grant with an additional $1.4 million going to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(10) **3-18-04 – ZF Lemforder Corporation**, an automotive component manufacturing and supply company, is bringing 200 new jobs and up to $28.8 million in additional investment to Catawba County. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $1.7 million over the life of the grant with an additional $560,000 going to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(9) **3-16-04—Unilin**, a manufacturer of superior quality glueless laminate flooring known as Quick-Step, will expand its operations in Davidson County, bringing 330 jobs and up to $80 million in additional investment to the area. The agreement could yield maximum benefits to the company of as much as $2 million over the life of the grant and contribute nearly $654,000 to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(8) **3-15-04 – Verizon Wireless**, one of the nation's leading providers of wireless communications, will create up to 1,211 jobs and invest up to $29 million to the Wilmington area. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $7.2 million over the life of the grant with an additional $2.4 million going to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(7) **3-01-04—Citi Cards**, a division of Citigroup, the preeminent global financial services company, will create 900 jobs and invest $35 million in Guilford County. If the company creates all the jobs called for under the agreement and sustains them for all grant years, the JDIG could yield maximum benefits to the company of $5.2 million with an additional $1.7 million going to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

Grants Awarded in 2003:

(6) **11-17-03—A.F.G. Wipes**, headquartered in Israel, will locate its first U.S. operation in Reidsville, NC (Rockingham County), creating 200 jobs and $25 million in investment in a facility that will manufacture non-woven wet wipes for baby, skin care, household and health care industries. If the company creates all of the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $1.6 million over the life of the grant.

North Carolina Department of Commerce
301 N. Wilmington St., Raleigh, NC 27601
919-733-7651, 733-8356 fax

(5) **10-30-03—GE Nuclear Energy** is relocating its global headquarters to Wilmington, a move that will create 200 jobs with an investment of roughly $4 million. Estimated total compensation for the new positions will average $100,000 a year. If the company creates all of the jobs called for under the agreement and sustains them for all grant years, the agreement could yield maximum benefits to the company of as much as $5.9 million over the life of the nine-year grant. This grant could contribute nearly $2 million to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(4) **10-28-03—Goodrich Corporation**, global aerospace and defense systems supplier, will add 300 new jobs to their facility in Monroe, NC and an investment of nearly $11 million. The company will add 150 new jobs by next year and expects to add another 150 within five years. The jobs will have average salaries of $15-$18 an hour. If the company creates all of the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $2.7 million over the life of the grant and could contribute approximately $1.1 million to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(3) **7-28-03—General Dynamics Armament and Technical Products, Inc.** (GDATP) is relocating their headquarters and light manufacturing operation to North Carolina, a move that will create 405 jobs with a $30 million investment. If GDATP, which designs, develops and manufactures aerospace and defense products, creates all of the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $5.9 million over the life of the grant. This grant could contribute approximately $2 million to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(2) **7-23-03—R.H. Donnelley Corporation (NYSE: RHD)** will relocate its corporate headquarters to North Carolina, a move that will create 275 jobs over three years. R.H. Donnelley is the largest public, U.S., stand-alone publisher of yellow pages directories. If the company creates all of the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $4.3 million over the life of the grant. Because the grant will be awarded in an urban county, a portion of the total grant, amounting to as much as $1.4 million, will be set aside in the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(1) **5-14-03—Infineon Technologies North America Corporation**, the initial recipient of the new state job-development grant program, create as many as 400 new jobs over five years with estimated salaries for the new positions averaging over $75,000, as well as an initial investment of at least $8 million over two years in corporate facilities in Cary. If the company creates all of the jobs called for under the agreement and sustains them for 11 years, the agreement could yield maximum benefits to the company of as much as $9.5 million over the life of the grant. The grant could also provide up to $3.2 million for infrastructure improvements in rural North Carolina.

###

North Carolina Department of Commerce
301 N. Wilmington St., Raleigh, NC 27601
919-733-7651, 733-8356 fax

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 2744 (Third Edition)

SHORT TITLE: Economic Development Program Modifications.

SPONSOR(S): Representatives Owens and Daughtridge

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
State General Fund (Bill Lee, Sales Tax Refund)		**(See "Assumptions and Methodology")**			
EXPENDITURES:					
JDIG Program		**(See Attachment)**			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Commerce.

EFFECTIVE DATE: When the bill becomes law.

CURRENT LAW: The Job Development Investment Grant (JDIG) Program was created in 2002 as a new economic development tool for new and expanding businesses in North Carolina. JDIG is used to attract businesses to the State by allowing a five-member committee to award grants to businesses. The amounts of the grants are based on income tax withholdings from new jobs created by the businesses.

The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, and for worker training. In 2000, the General Assembly extended the sunset on the Act until January 1, 2006. During the 2005 Regular Session, the General Assembly further extended the Act until January 1, 2008. There are several exceptions to the 2006 sunset date, one of which involves eligible major industries. Eligible major industries that qualify as such before January 1, 2006, are allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least $100 million in acquiring, constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing.

The definition of eligible major industries for the purposes of the Bill Lee Act largely conforms to the list of taxpayers who are eligible for a refund on the sales and use taxes paid by the taxpayer on building materials for construction of a new facility in this State. Taxpayers that are eligible for the refund of sales and use taxes are not required to qualify as such by a specific date, but the refund provision expires for purchases made on or after January 1, 2010.

BILL SUMMARY: This bill would make numerous changes to the JDIG Program, the Bill Lee Act, and certain sales and use tax refunds. Most of the provisions of the bill would be effective when they became law.

Part I. JDIG Changes. This bill makes numerous changes to the JDIG program. Some of these changes significantly expand or extend the program, whereas others of these changes make changes intended to streamline the administration of the program, clarify certain aspects of the program, or reduce penalties for failure to comply with agreements under the program.

Section 1.2, of the bill increases the maximum amount of total annual liability for agreements entered into during the 2006 calendar year (grant year) from $15 million to $30 million. This change is effective for agreements entered into during 2006 only; for agreements entered into in later years, the maximum amount of the total annual liability would return to $15 million. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding 12 years.

Section 1.11, of the bill extends the sunset on the JDIG program by an additional two years, through the end of the 2009 calendar year, potentially resulting in payments through the year 2020. In addition, the bill makes changes to how fees collected under the program are directed and how corresponding positions that monitor the program are funded. Under current law, an applicant for a JDIG grant must pay a one-time application fee of $5,000. Grantees must then pay an annual fee of $1,500 to help offset monitoring costs. Currently, those fees are divided between the Departments of Commerce and Revenue, in the discretion of the EIC, to offset the costs of the two agencies associated with the program. Those fees then become departmental receipts. This bill would change that by crediting the fees to the General Fund and by providing for an appropriation of $500,000 to the Department of Commerce. It is the intent of the bill that this be a recurring appropriation.

Part II. Bill Lee Act Changes. The Bill Lee Act generally sunsets January 1, 2008. However, a taxpayer who qualifies as an eligible "major industry" on or before January 1, 2006 would have a January 1, 2010 sunset. The bill moves the January 1, 2006 eligibility deadline to January 1, 2008.

Part III. Sales Tax Refund Changes. Adds "financial services and securities operations and systems development" to the list of industries eligible for the refund. In addition, January 1, 2010 sunset on the refunds is extended to January 1, 2013.

ASSUMPTIONS AND METHODOLOGY:

Part I. JDIG Changes. This analysis addresses fiscal impact as a result of the proposed changes to the program in House Bill 2744 and does not address costs associated with the current legislation for the program.

The bill increases the maximum annual total liability cap from $15 million to $30 million for the 2006 calendar year, and extends the sunset requirement by two years (from 2008 to 2010). Current legislation stipulates grant terms shall not exceed 12 years starting with the first year a grant payment is made. *This analysis assumes that the first payment is made during the first year of the award, and that the maximum allowable amount will be awarded in each grant year.*

Increase Maximum Annual Liability for the 2006 Calendar Year:

Increasing the maximum annual liability amount for the 2006 grant year could potentially result in an additional $15 million dollar obligation from the state for awards for that year and the following 12 years (based on the existing legislation for grant terms). Assuming that the Department would award the maximum amount allowed for new agreements during 2006, the total fiscal impact associated with the maximum cap increase would potentially equal $180 million (12 years x $15,000,000). It should be noted that this is not the total cost for *all* grants awarded under the JDIG program, only the additional grants awarded due to increasing the annual cap for one calendar year. (See Attachment)

Extend the Sunset from January 1, 2008 to January 1, 2010:

Extending the sunset date for the program will allow for new grants to be awarded for an additional two years. The bill allows for new grants be awarded up to a maximum amount of $15 million for 2008 (potentially paid through 12 years or 2020); and for an additional $15 million to be awarded for up to 12 years beginning in 2009 (ending in 2021). The cumulative impact of allowing the award of new grants for two additional years would potentially equal $390 million (assuming maximum payout over the allowable 12 grant years). (See Attachment)

Credit JDIG Fees to the General Fund/Administrative Costs:

Current legislation allows for JDIG fees to be used as departmental receipts to assist in covering the administrative costs of the program. Each company applying for a grant pays a one-time application fee of $5,000 and successful applicants pay a $1,500 annual fee after receiving a JDIG grant. The bill will credit revenue generated from both fees to the General Fund and appropriate $500,000 to the department to fund administration. The Department of Commerce has reported that the projected collections for JDIG Fees will be approximately $173,000 for 2007. If enacted, the bill will credit the estimated $173,000 to the general fund and appropriate ($500,000) to the Department of Commerce for administration, resulting in a net change of ($327,000) to the general fund to cover administrative costs for the program for 2007. (See Technical Considerations Section for additional information)

Nine companies were awarded JDIG Grants in 2005, generating approximately $45,000 in fee revenue. Assuming that increasing the grant cap by $15 million will result in an estimated *nine new* companies, nine additional companies will begin paying the $1,500 annual fee in 2007. Those companies would potentially pay an additional $13,500 that would be credited to the General Fund for approximately 11 years. Assuming that *nine new companies* would receive awards in 2006 (due to the increase in the maximum cap) the net loss to the general fund stated above ($327,000) could potentially be minimized by $45,000 (9 x $5,000) in 2006, and decreased annually by $13,500 (9 x $1,500), resulting in a net change of ($313,500) to the General Fund (for the 2007 grant year). (See Attachment)

Total Fiscal Impact Estimate of JDIG Portion of HB 2744:

Proposed Legislative Change:	General Fund Cost Estimate:
Increase the Maximum Cap to $30 million for 2006	($180,000,000)
Extend Sunset for Two Years	($390,000,000)
Credit Fees to General Fund and Appropriate $500,000 for Administration (net annual impact beginning 2007)	($313,500)
Total Projected Cost of Proposed JDIG Changes	**($570,313,500)***

*Note: This analysis does not include any projections regarding potential increases to General Fund Revenue directly associated with the award of JDIG Grants.

Part II. Bill Lee Act Changes. The practical effect of this provision is to extend from January 1, 2006 to January 1, 2008 the window of time for eligible companies to qualify for later sunset in the Bill Lee Act (2010 instead of 2008) applying to major industry tax incentives. This time extension for qualification might allow a company being recruited to take advantage of the longer sunset. At this time the Department of Commerce is not aware of any companies who will be able to use this provision. In any case, the provision would have no immediate impact but could affect 2009-10 and 2010-11 fiscal year revenues to the extent that additional taxpayers qualify.

Part III. Sales Tax Refund Changes. The Department of Commerce requested the extension of sales tax refund eligibility to financial service and securities facilities in order to have the potential to recruit companies contemplating a move from a money center to North Carolina. At this time the Department is not aware of any major companies who will be able to take advantage of this change. The other change in the bill extends the sunset on refunds from 2010 to 2013. The Department of Revenue's October 2005 report on state tax expenditures does not list the historical revenue loss from this item. One reason might be that the original 2003 special session legislation creating the refund was adopted for the purpose of attracting a single major taxpayer to the state. Thus, the reporting of this item could lead to a confidentiality issue. For information purposes, the original 2003 session fiscal note indicated a potential 2007-08 cost of $2.6 million, primarily from one client the Department of Commerce was attempting to attract.

TECHNICAL CONSIDERATIONS:

Total projected costs are based on an assumption that increasing the annual cap by$15 million for one year obligates the state to pay *up to $15 million per year* for those new agreements for a maximum of 12 years. The fact that the annual total liability returns to the current cap of $15 million effective January 1, 2007 will not impact the requirement that the state continue to pay for the new agreements entered into during 2006 for up to 12 years. If the Department does not award the maximum amount of $30,000,000 for 2006 the cumulative impact would be less than the amounts indicated in this analysis.

The estimated additional revenue generated from application fees ($13,500) and annual JDIG fees to be credited to the general fund is based on the number of JDIG grants awarded by the Department of Commerce in 2005. The actual fee revenue generated in each year will be determined by the *additional* number of applicants and the *additional* number of companies that will receive an award due to increasing the maximum cap by $15,000,000 in 2006 *and* current companies paying the two fees. The Department has estimated that future revenue generated from JDIG fees at the amounts listed below:

- 2007 $173,000
- 2008 $198,000
- 2009 $225,000
- 2010 $245,000

If the actual collections for JDIG fees increase in future years, the net negative impact to the General Fund (associated with administrative costs) would decrease.

The Department of Commerce has indicated that the amount of fees generated by the JDIG program have not been sufficient to cover the entire cost of administering the program, therefore the department has requested an appropriation that is greater than the historical amount of fees collected for administrative purposes. If no state funds are appropriated for administration the program, the amount of the fees currently established ($5,000 application fee and $1,500 annual fee) for the program could potentially be adjusted to fully cover the associated administrative costs of the program.

Any projected increases in revenue generated by the award of JDIG grants have not been included in this analysis. The analysis covers only the projected costs associated with the program. Section1.13 of the bill does require the Department of Commerce to conduct a study of the program by February 1, 2007.

SOURCES OF DATA: Department of Commerce

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Susan Morgan David Crotts

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division



DATE: July 6, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

Fiscal Analysis HB 2744 - Potential Impact of Changes to the Job Development Investment Grant (JDIG) Program

$15,000,000 to$30,000,000 for Calendar Year 2006
nuary 1, 2008, To January 1, 2010)
he General Fund
f Commerce for Administration

for 2006 (Increase of$15,000,000 per year for 12 years)*

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)
$ (45,000,000)	$ (60,000,000)	$ (75,000,000)	$ (90,000,000)	$ (105,000,000)	$ (120,000,000)	$ (135,000,000)	$ (150,000,000)	$ (165,000,000)	$ (180,000,000)

),000 will be awarded in 2006 and that the first payments will begin in 2006.

s**

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (15,000,000)
$ (75,000,000)	$ (105,000,000)	$ (135,000,000)	$ (165,000,000)	$ (195,000,000)	$ (225,000,000)	$ (255,000,000)	$ (285,000,000)	$ (315,000,000)	$ (345,000,000)	$ (375,000,000)	$ (390,000,000)

)0,000 allowing for payments to be made up to 12 years following the first year of payment; assuming first payment is made in the first year of the award notification.

e General Fund;Section 1.12 Appropriate Funds for Administration

	2006	2007
	$ 173,000	$ 173,000
imum cap in	$ 45,000	$ 13,500
	$ 218,000	$ 186,500
for Admin.		$ (500,000)
		$ (313,500)

Adjusted Net Impact Due to New Companies

$ (570,313,500)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2339
Committee Substitute Favorable 6/27/06

Short Title: Lincoln County Tax Certification. (Local)

Sponsors:

Referred to:

May 23, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW CASWELL, DAVIE, AND LINCOLN COUNTIES TO REQUIRE THAT ALL TAXES BE PAID ON REAL PROPERTY BEFORE THE REGISTER OF DEEDS MAY RECORD A DEED TRANSFERRING THAT PROPERTY AND BEFORE A BUILDING PERMIT MAY BE ISSUED WITH RESPECT TO THAT PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties."

SECTION 2. Section 3(b) of S.L. 2005-433 reads as rewritten:

"**SECTION 3.(b)** This section applies to Caswell, Davie, Greene, Lenoir, Lincoln, Iredell, Wayne, and Yadkin Counties only."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 2339:
Lincoln County Tax Certification

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 11, 2006
Introduced by:	Rep. Kiser	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: House Bill 2339 adds Lincoln, Caswell and Davie Counties to the list of counties that have the authority to require tax certification of a deed prior to recording. It would also allow the counties to pass an ordinance prohibiting the issuance of a building permit to a person who owes delinquent property taxes on that property. HB 2339 received a favorable report from House Local Government II Committee on June 21, 2006. The Proposed Committee Substitute (PCS), adding Caswell and Davie Counties, received a favorable report from House Finance Committee on June 27, 2006. The bill is effective when it becomes law.

CURRENT LAW: G.S. 161-31 provides that in certain counties, the board of county commissioners may adopt a resolution to require the register of deeds to refuse to register a deed unless the county tax collector has certified that no delinquent taxes are due on the property. The register of deeds must still accept an uncertified deed that is submitted for registration under the supervision of a closing attorney if the deed contains the following statement, *"This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."*

The following counties have received this authorization under G.S. 161-31: Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Lee, Lenoir, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties.

In addition to G.S. 161-31, the General Assembly has enacted similar laws that prohibit a register of deeds from registering deeds unless the tax collector has certified that no delinquent taxes are due. These provisions apply to the following local governments: Avery County (1963); Mitchell County (1987); Ashe County (1993); the Towns of Newland, Spruce Pine, and Alleghany County (1997); the Town of Banner Elk (1998); and the Town of Bakersville (1999).

In a county or local government where G.S. 161-31 and other similar State laws do not apply, the register of deeds registers deeds submitted for registration regardless of whether delinquent taxes are due on the property.

S.L. 2005-433, Sec. 3.(a) provides that a county may by ordinance provide that a building permit may not be issued to a person who owes delinquent property taxes on property owned by that person. The ordinance may provide that a building permit may be issued to a person who is protesting the assessment or collection of the property taxes. This law applies to Green, Lenoir, Iredell, Wayne and Yadkin Counties.

H2339e2-SMRE

Kory Goldsmith, Counsel to House Local Government I Committee substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

SENATE BILL 1242*

Short Title:	Striped Bass Permit.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE MARINE FISHERIES COMMISSION TO ESTABLISH GEAR SPECIFIC PERMITS TO TAKE STRIPED BASS FROM THE ATLANTIC OCEAN, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-169.1 reads as rewritten:

"**§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.**

(a) The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams.

(b) The Commission may adopt rules to establish gear specific permits to take striped bass from the Atlantic Ocean and to limit the number and type of these permits that may be issued to a person. The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed ten dollars ($10.00) per permit."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 1242: Striped Bass Permit

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 11, 2006
Introduced by:	Sen. Albertson	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1242 would authorize the Marine Fisheries Commission (MFC) to establish gear specific striped bass permits and to limit the number and type of these permits that may be issued to a person. This act would be effective when it becomes law.

CURRENT LAW: Under current law, the MFC has the general authority to adopt rules to establish gear permits, but the MFC does not have the authority to limit the number and type of permits that may be issued or to establish a fee to compensate for the administrative costs associated with the permit.

BILL ANALYSIS: Senate Bill 1242 would authorize the MFC to:

- Adopt rules to establish gear specific permits to take striped bass from the Atlantic Ocean.
- Limit the number and type of these permits that may be issued to a person.
- Establish a fee to compensate the Division of Marine Fisheries for the administrative costs associated with the permits, not to exceed $10.00.

BACKGROUND:

For the striped bass fishery, the Atlantic States Marine Fisheries Commission sets a total annual commercial harvest quota for all Atlantic coast states based on historical commercial landings. In 2006, North Carolina's striped bass quota was set at 480,480 pounds. The MFC has chosen to divide the State's annual quota among three gear types: haul seines, gill nets, and trawls. Each gear type is used during a separate fishing season. Any person who holds a Standard Commercial Fishing License can harvest striped bass using one, two, or all three gears during the applicable season.

Since striped bass are plentiful, they sell for a good price, and they are relatively easy to catch, the number of fishermen involved in the fishery has been increasing. At the same time, our quota has remained small. In order to try to stay within our quota, the striped bass seasons are only a few days long. Due to these conditions, the quota for a particular gear type is often exceeded, which causes reductions in the quotas for the other gear types. This causes resentment and conflict between the users of the three different gear types.

The MFC hopes to better manage the striped bass fishery and the conflicts between commercial fishermen by establishing gear specific striped bass permits and requiring each participant in the fishery to be limited to one gear type. This approach would provide the MFC with more detailed harvest information for use in setting season lengths and catch limits and would prevent fishermen from harvesting striped bass from more than one segment of the overall quota.

Jeff Hudson, counsel to Senate Environment, Agriculture, and Natural Resources Committee, substantially contributed to this summary.

S1242e1-SMSV

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1242 (First Edition)

SHORT TITLE: Striped Bass Permit.

SPONSOR(S): Senator Albertson

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES: Departmental Receipts	$7,000	$7,000	$7,000	$7,000	$7,000
EXPENDITURES: See Assumptions and Methodology Division of Marine Fisheries					
POSITIONS (cumulative):	N/A	N/A	N/A	N/A	N/A

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Department of Environment and Natural Resources, Division of Marine Fisheries

EFFECTIVE DATE: Effective when bill becomes law.

BILL SUMMARY: SB 1242 authorizes the Marine Fisheries Commission to establish gear specific permits to take striped bass from the Atlantic Ocean and to limit the number and type of permits that may be issued to a person, as recommended by the Joint Legislative Commission on Seafood and Aquaculture. Additionally, the Commission may establish a fee for each permit in an amount that compensates the Division of Marine Fisheries (Division) for the administrative costs associated with the permit but that does not exceed ten dollars per permit.

ASSUMPTIONS AND METHODOLOGY: The commercial harvest of striped bass in the Atlantic Ocean is managed under a quota system established by the Atlantic States Marine Fisheries Commission. The Marine Fisheries Commission divides North Carolina's statewide quota equally among three gear types: haul seines, gill nets and trawls. These gear types each have separate seasons and trip limits. Under current law, all fishermen with a Standard Commercial Fishing License can harvest striped bass using one or all three gears during the open season.

From 2002 through 2004, approximately 700 fishermen annually have participated in the striped bass harvest. Assuming a permit fee of ten dollars, and assuming the same level of participation, the permit fee will generate approximately $7,000 per year.

The Division of Marine Fisheries developed a cost estimate on its various permits in April 2006. Administrative and operational costs were allocated to determine the individual impact of each permit by type. The Division noted that For Hire Fishing Permits had a similar number of participants as the estimated proposed permit for stripped bass gear, averaging three percent of all permits sold. In this study, For Hire Fishing Permits had an average cost of $52.81 per permit. The Division arrived at this estimate by cost allocating three percent of its 15.82 full time employees' salaries and benefits, as well as a percentage of it fixed costs, including office rent, supplies and insurance. Assuming a similar cost per permit of $52.81 and assuming 700 permits annually, the total direct annual impact for stripped bass gear permits as estimated by the Division will be $36,967.

According to the Department, the Division does not charge a fee for all of its permits. The Division should be able to absorb the administrative costs of this new permit with minimal impact. This bill does not include an appropriation or positions for the administering of this new permit fee.

SOURCES OF DATA: Division of Marine Fisheries

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Joy Hicks

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: July 7, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1327

Committee Substitute Favorable 5/25/05

Committee Substitute #2 Favorable 7/7/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1327-PCS60858-SV-101

Short Title: Crim. Record Checks/Psychology Practice Act. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.4(e) reads as rewritten:

"(e) Nothing in this Article shall be construed to prevent qualified members of other professional groups licensed or certified under the laws of this State from rendering services ~~consistent with their professional training and code of ethics,~~within the scope of practice, as defined in the statutes regulating those professional practices, provided they do not hold themselves out to the public by any title or description stating or implying that they are psychologists or are licensed, certified, or registered to practice psychology."

SECTION 2. Article 18A of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-270.22. Criminal history record checks of applicants for licensure and licensees.**

(a) The Board may request that an applicant for licensure or reinstatement of a license or that a licensed psychologist or psychological associate currently under investigation by the Board for allegedly violating this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure or reinstatement of a license to an applicant or take disciplinary action against a licensee, including revocation of a license. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the

applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for the cost of conducting the criminal history record check.

(b) Limited Immunity. – The Board, its officers and employees, acting reasonably and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or the revocation of a license or other discipline of a licensee based on information provided in the applicant's or licensee's criminal history record check."

SECTION 3. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.16. Criminal record checks of applicants for licensure and licensees.**

The Department of Justice may provide to the North Carolina Psychology Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license to practice psychology or a licensed psychologist or psychological associate under Article 18A of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge each applicant or licensee a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1025
PROPOSED SENATE COMMITTEE SUBSTITUTE H1025-CSRBx-54 [v.15]

6/21/2006 11:30:28 AM

Short Title: Various ABC Law Changes. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOL BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(16) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(38) Winemaking on premises permit. -- $400.00.

(39) Wine shipper packager permit --$100.00."

SECTION 4. G.S. 18B-1001.1(c) reads as rewritten:

"(c) A wine shipper permittee may contract with the holder of a wine shipper packager permit for the packaging and shipment of wine pursuant to this section. The direct shipment of wine by wine shipper or wine shipper packager permittees ~~made~~ pursuant to this section shall be made by approved common carrier only. Each common carrier shall apply to the Commission for approval to provide common carriage of wines shipped by holders of permits issued pursuant to this section.

Each common carrier making deliveries pursuant to this section shall:

(1) Require the recipient, upon delivery, to demonstrate that the recipient is at least 21 years of age by providing a form of identification specified in G.S. 18B-302(d)(1).

(2) Require the recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the Commission.

(3) Refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification as required by subdivision (1) of this subsection.

(4) Submit any other information that the Commission shall require.

All wine shipper and wine shipper packager permittees shipping wines pursuant to this section shall affix a notice in 26-point type or larger to the outside of each package of wine shipped within or to the State in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY". Any delivery of wines to a person under 21 years of age by a common carrier shall constitute a violation of G.S. 18B-302(a)(1) by the common carrier. The common carrier and the wine shipper or wine shipper packager permittee shall be liable only for their independent acts.'

SECTION 5. G.S. 18B-1001.2 reads as rewritten:

'**§ 18B-1001.2. Additional wine shipping requirements.**

(a) A wine shipper permittee shall:

(1) Compile and submit to the Commission quarterly a summary indicating all wine products shipped, including brand and price of each

product, date of each shipment, quantity of each shipment, and amount of excise and sales tax remitted to the Department of Revenue. The report shall include all wine products shipped on the permittee's behalf under contract with a wine shipper packager.

(2) Register with the Department of Revenue as a wine shipper permittee and provide any additional information required by the Department.

(b) The Commission may adopt rules to carry out the provisions of this section and other related provisions governing the direct shipping of wine."

SECTION 6. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1001.3. Authorization of wine shipper packager permit.**

The holder of a wine shipper packager permit may provide services for the warehousing, packaging and shipment of wine on behalf of a winery holding a wine shipper permit. A wine shipper packager permit authorizes the holder to receive, in closed containers, wine produced by and belonging to a wine shipper permittee, and to place the unopened wine in containers or packaging materials as a service to the wine shipper permittee in connection with the marketing and sale of its wine products. A wine shipper packager may package and return wine products to the wine shipper permittee or, on behalf of the wine shipper permittee, may package and ship wine products in closed containers to individual purchasers inside and outside this State in accordance with the provisions of G.S. 18B-1001.1. The permit may be issued to a USDA-approved company specializing in warehousing and contract packaging.'

SECTION 7. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 ~~seats.~~seats, or to any golf courses owned or leased by the institutions and open to the public for use."

SECTION 8. G.S. 18B-105(a) reads as rewritten:

"(a) General Rule. – No person shall advertise alcoholic beverages in this State except in compliance with this Article and the rules of the Commission."

SECTION 9. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1010. Use of discounts in advertising.**

Advertising for an alcoholic beverage may not include a coupon offering a free alcoholic beverage. A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise by means of a coupon, a membership card, a discount card, or a retailer's loyalty card in the following circumstances:

(1) The permittee may provide a discount coupon for a malt beverage or wine the person sells at retail for off-premises consumption.

(2) The permittee may require a customer to use the permittee's membership card, discount card, or loyalty card when purchasing a malt beverage or wine the person sells at retail for off-premises consumption in order to receive a discounted price on the malt beverage or wine."

SECTION 10. G.S. 18B-603(f2) reads as rewritten:

"(f2) Permits for Special ABC Areas. – The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(2), G.S. 18B-1001(3), G.S. 18B-1001(4), G.S. 18B-1001(5), G.S. 18B-1001(6), and G.S. 18B-1001(10) to qualified persons and establishments located within a Special ABC area as defined in G.S. 18B-101, provided that: (i) if such area is a municipal corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S. 18B-600, which election may be held regardless of the number of registered voters located within the municipal corporation; or (ii) if such area is unincorporated but has within such area a private association or club, the board of such private association or club shall call and conduct a special meeting at which meeting a majority of private association members, club members, lot and home owners, votes and approves the sale of mixed beverages, and the board certifies the results of such meeting to the Alcoholic Beverage Control Commission. The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(3), G.S. 18B-1001(5), and G.S. 18B-1001(10) to a restaurant located on property contiguous to a special ABC area, if, according to the 2000 census, the population of the county in which the area is located does not exceed 30,000 and a city in that county has approved ABC stores and has a population of at least 6,500. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the Special ABC area."

SECTION 11. G.S. 18B-108 reads as rewritten:

"**§ 18B-108. Sales on trains.**

Alcoholic beverages may be sold on railroad trains in this State upon compliance with Article 2C of Chapter 105 of the General Statutes. Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of a rail line that carries at least 60,000 passengers annually."

SECTION 12. G.S. 18B-1001(16) reads as rewritten:

"**§ 18B-1001. Kinds of ABC permits; places eligible.**

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

...

(16) Wine Shop Permit. – A wine shop permit authorizes the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, and authorizes wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. ~~The sale of wine for consumption on the premises shall be limited to those amounts that remain in opened bottles upon the conclusion of an authorized wine tasting, and individual servings shall not exceed four ounces per glass.~~The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6. of Article 8 of Chapter 130A of the General Statutes."

SECTION 13. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1025

Short Title:	Winemaking on Premises Permit.	(Public)
Sponsors:	Representatives Luebke; LaRoque and Ross.	
Referred to:	Alcoholic Beverage Control.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR 'WINEMAKING ON PREMISES' BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(16) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(37) Winemaking on premises permit. – $400.00."

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 1025:
Various ABC Law Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 14, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to First Edition H1025-CSRB		

SUMMARY: ***House Bill 1025 creates a new "Winemaking on Premises" permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. There is a $400 application fee for the permit. The Proposed Senate Committee Substitute adds six provisions to the bill:***

- ***It would allow a third party business to contract with a wine shipper permittee for the packaging and shipment of wine. (Sections 4-6, Added at the request of Sen. Purcell)***
- ***It would incorporate the contents of Sen. Rand's Senate Bill 2035, which would allow the sale of beer and wine at golf courses owned or leased by constituent institutions of the UNC. (Section 7)***
- ***It would allow a retailer to issue coupons or utilize discount or loyalty cards to provide a discount off the price of beer and wine sold by the retailer for off-premises consumption. (Sections 8 and 9, Added at the request of Sen. Hagan)***
- ***It would allow the ABC Commission to issue beer, wine, and mixed beverage permits to a restaurant that is located in an area that meets the conditions in the bill. The only area that meets these conditions at this time is Transylvania County. (Section 10, Added at the request of Sen. Rand)***
- ***It would allow a beer and wine wholesaler to sale and deliver beer and wine to an officer or agent of a rail line that carries at least 60,000 passengers annually. (Section 11, Added at the request of Sen. Hoyle)***
- ***It would make changes to the wine shop permit. (Section 12, Added at the request of Sen. Hagan)***

WINEMAKING ON PREMISES PERMIT (Sections 1-3): Under G.S. 18B-307 it is generally unlawful for any person without the appropriate ABC permit to:

- Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage
- Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage.
- Manufacture any alcoholic beverage, without first obtaining the applicable ABC permit and revenue licenses.

There are two notable exceptions to the general prohibition against the unlicensed manufacture of alcoholic beverages. G.S. 18B-306 allows an individual to make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests; and G.S. 18B-1001(14) provides for the manufacture of malt beverages pursuant to a "Brew on Premises" permit. A brew on premises permit authorizes the holder to rent the equipment and space necessary to produce malt beverages only; it does not apply to the manufacture of wine.

A Brew on Premises permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in federal law. The statute requires the customer to do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

Sections 1 through 4 of House Bill 1025 would provide for the licensing of commercial establishments in which individuals could purchase ingredients and rent equipment, time, and space to make unfortified wine on the premises for their personal and family use, similar to the current brew on premises permit for making malt beverages. The permit holder will not engage in the actual production of the wine, and all wine must be removed from the premises by the customer and used only for home consumption and the customer's personal use. The fee for the permit is $400. That is same amount as a 'Brew on Premises' permit.

WINE SHIPPER PACKAGER PERMIT (Sections 3-6): Current ABC laws does not provide for third parties to handle wine shipments unless that party takes ownership of the wine. The PCS for House Bill 1025 establishes a 'wine shipper packager' permit and authorizes a wine shipper packager to provide services for the warehousing, packaging, and shipment of wine on behalf of a winery holding a wine shipper permit. The creation of a wine shipper packager permit would allow third party businesses that specialize in warehousing and contract packaging to support the wine industry by providing a means for distribution of wine to customers. A wine shipper packager permit would authorize the holder of the permit to receive, in closed containers, wine produced by and belonging to a wine shipper permittee, and to place the unopened wine in containers or packaging materials in connection with the marketing and sale of the wine products. The cost of the permit would be $100. The permit must be renewed annually.

SALE OF BEER AND WINE AT GOLF COURSES OWNED OR LEASED BY CONSTITUENT INSTITUTIONS OF THE UNC SYSTEM (Section 7): Current law does not permit the sale of beer and wine by a business on the campus or property of a public school or college. There are some exceptions to this rule: regional facilities operated by a facility authority; a hotel or nonprofit alumni organization with a mixed beverage or special occasion permit; and performing arts centers if the seating capacity does not exceed 2000 seats. The PCS for House Bill 1025 would create exception for golf courses owned or leased by the institutions and open to the public. This change in the law is one of the items approved by the Board of Governors for its legislative agenda this session.

USE OF DISCOUNTS IN ADVERTISING AT THE RETAIL LEVEL (Sections 8 and 9): Under current law, no person may advertise alcoholic beverages in the State except in compliance with the rules of the ABC Commission.[1] The rules of the Commission prohibit the use of cents-off coupons or coupons offering free alcoholic beverages as a method of advertising.[2] The PCS for House Bill 1025

[1] G.S. 18B-105.
[2] NCAC 02S.1006.

would give retailers who have on-premises or off-premises beer and wine permits or a wine shop permit the ability to advertise beer and wine by offering a discount coupon for off-premises consumption. The discount may be offered through the use of a permittee's membership card. The advertising may not include a coupon offering a free alcoholic beverage.

RESTAURANT BEER, WINE, AND MIXED BEVERAGE PERMIT (Section 10): Under current law the ABC Commission may only issue permits to qualified applicants in areas specified in G.S. 18B-603. Subsection (f) of G.S. 18B-603 authorizes the Commission to issue certain permits in Special ABC areas. (The definition of a Special ABC area is included below.) The PCS for House Bill 1025 would allow the Commission to issue on-premises beer, wine, and mixed beverage permits to a restaurant located on property that is contiguous to a Special ABC area established before January 1, 1993, that meets both of the following conditions:

- The Special ABC area is located in a county that has a population of less than 35,000, based on the 2000 federal census.
- At least one city within the county with a population in excess of 6,500 has approved ABC stores.

The only county that has a Special ABC area that meets these conditions is Transylvania County.

SALES ON TRAINS (Section 11): Current law permits the sale of alcoholic beverages on trains. However, the agent or officer of a rail line must purchase the alcoholic beverages from a retailer. The PCS for House Bill 1025 would allow a rail line to purchase alcoholic beverages from a wholesaler or a retailer if the rail line carries at least 60,000 passengers annually. This provision would allow the Great Smoky Mountain Railroad to purchase beer and wine from wholesalers.

EFFECTIVE DATE: The bill would be effective when it becomes law.

Brenda Carter, counsel to the House Committee on Alcoholic Beverage Control, contributed to this summary.

H1025e1-SMRB-CSRB

§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

...

(13a) **(See note)** "Special ABC area" means an area that meets the following requirements: Either:

a. The area has fewer than 500 permanent residents, and the area:

1. Is located in a county that borders another state, that has at least one city that has approved the operation of an ABC store, and in which the sale of unfortified wine and malt beverages is permitted countywide or in one city; and
2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

b. The area has more than 500 permanent residents, and the area:

1. Is located in a county:
   I. Where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved;
   II. That borders on a county that has approved the sale of alcoholic beverages countywide and contains an international airport; and
   III. Borders on a county where ABC stores have heretofore been established by petition pursuant to law; and
2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

c. The area is an area of a county where the following requirements are met:

1. The county borders on the Atlantic Ocean and has a seaport supporting oceangoing vessels;
2. ABC stores have been established in the county and the sale of mixed beverages is allowed in six or more municipalities;
3. The population of the county, according to the 2000 census, exceeds 52,000;
4. The tourism economy of the county is made up of more than 3,000 tourism-related jobs; and
5. Tourism expenditures within the county exceed two hundred million dollars ($200,000,000) annually.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1025

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1025-ARV-31 [v.5]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H1025-CSRBx-54[v15]

Senator Hagan

moves to amend the bill on page 4, line 1, by rewriting that line to read:

"(a) Authorization – Advertising for an alcoholic beverage may not include a coupon offering a free";

And on page 4, lines 6-11, by rewriting those lines to read:

(1) The permittee may provide a discount coupon for use by a customer when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption.

(2) The permittee may require a customer to use the permittee's membership card, discount card, or loyalty card in order for the customer to receive a discounted price when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption " ;

And on page 4, lines 11 and 12, by inserting between those lines the following:

"(b) Scope – This section does not authorize cooperation between a retailer and an industry member in violation of G.S. 18B -1116."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1025

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1025-ARV-31 [v.5]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1025

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1025-ARB-110 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H1025-CSRBx-54

Senator Hartsell

moves to amend the bill on page 3, line 39 through page 4, line 11, by deleting those lines and by renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1025

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1025-ALB-179 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
h1025-csrbX-54

Senator Hunt

moves to amend the bill on page 3, by deleting lines 23-38 (all of Section 7) in its entirety, and renumbering the succeeding sections accordingly:

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1050

Committee Substitute Favorable 8/23/05

PROPOSED SENATE COMMITTEE SUBSTITUTE H1050-CSMCx-9 [v.1]

7/11/2006 1:09:19 PM

Short Title: Local Tax for Public Schools & Comm Colleges. (Local)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTIES TO LEVY ONE-HALF CENT LOCAL SALES AND USE TAXES FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES, IF APPROVED BY THE VOTERS OF THE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax.

"**§ 105-535. Short title.**

This Article is the Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax Act.

"**§ 105-536. Limitations.**

This Article applies only to counties that levy the first one-cent (1¢) local sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"**§ 105-537. Levy.**

(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the taxes, the board of commissioners of the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Vote. – The board of commissioners of a county may, by resolution, direct the county board of elections to conduct an advisory referendum on the question of whether to levy local one-half percent (1/2%) sales and use taxes in the county as

provided in this Article. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

(c) Timing. – The board of county commissioners must adopt the resolution directing the advisory referendum under this Article before October 1, 2006. A county may not levy the tax authorized under this Article if the board of county commissioners does not adopt a resolution calling for the referendum by that date. The advisory referendum must be held on or after January 1, 2007.

(d) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public school capital outlay purposes.'

"**§ 105-538. Administration.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"**§ 105-539. Distribution and use.**

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the monthly distribution.

(b) Use. – Counties may use the proceeds of a tax levied under this Article only for public school capital outlay purposes as defined in G.S. 115C-426(f) and to retire indebtedness incurred by the counties for these purposes.

(c) Nonsupplant Restriction. – It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for public school capital outlay purposes above the level of spending before the levy of the tax authorized in this Article. A county that levies a tax under this Article must continue to spend for public school capital outlay purposes the same amount of money it would have spent for those purposes if it had not levied the tax.

(d) Medicaid Limitation. – A county that levies a tax under this Article is ineligible for any future relief granted by the State to the counties with respect to Medicaid Assistance Program costs. This subsection does not apply if the county repeals the tax previously levied under this Article."

SECTION 2. A tax levied under Article 46 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 46 of Chapter 105 of the General Statutes.

SECTION 3. G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute a portion of the net use tax proceeds collected under this section to counties and cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, ~~and 44~~44, 45, and 46 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

SECTION 4. This act is effective when it becomes law.

KEY FEATURES OF LOCAL SALES TAX PROPOSAL
H1050-CSLYX-112

- All counties eligible to levy an additional ½% local sales and use tax.
- Additional tax must be approved by an advisory referendum.
- County must call for the referendum before October 1, 2006, and the referendum must be held after January 1, 2007.
- Proceeds distributed based on point of origin.
- Additional tax does not apply to food.
- Proceeds used only for public school capital outlay purposes.
- Other funds used for public school capital outlay purposes may not be supplanted.
- A county that has the tax in effect is not eligible for any future Medicaid relief.

SENATE FINANCE COMMITTEE
Tuesday, July 11, 2006 at 2:45 pm
on the Senate floor during recess

MINUTES

The Senate Finance Committee met at 2:45 on July 11, 2006, in the Senate Chamber. Thirty-five members of the committee were present. Senator David Hoyle presided.

HB 1522 – Film Incentive Changes.

Senator Boseman was recognized to explain the proposed committee substitute. Senator Albertson motioned to adopt the PCS for discussion and the motion carried. Senator Albertson moved to approve the proposed committee substitute and the motion carried. A copy of the proposed committee substitute is attached.

The meeting adjourned at 2:50 pm.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Tuesday, July 11, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1522** Amend State Ports Enabling Legislation.

Draft Number:	30629
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1522
PROPOSED SENATE COMMITTEE SUBSTITUTE H1522-PCS30629-SV-100

Short Title: Film Incentive Changes. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE TAX CREDIT FOR PRODUCTION COMPANIES TO THE STANDARD TAX TREATMENT WITH RESPECT TO THE DEDUCTION OF BUSINESS EXPENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.5(a)(18) is repealed.

SECTION 2. G.S. 105-130.47(i) is repealed.

SECTION 3. G.S. 105-134.6(c)(9) is repealed.

SECTION 4. G.S. 105-151.29(i) is repealed.

SECTION 5. This act is effective for taxable years beginning on and after January 1, 2007.

SENATE FINANCE COMMITTEE
Thursday, July 13, 2006 at 9:00 AM
Room 643, Legislative Office Building

MINUTES

The Senate Finance Committee met at 9:00 AM, July 13, 2006, in room 643 of the Legislative Office Building. Twenty-four members of the committee were present. Senator John Kerr presided. Courtney Cooper, Hannah Challenger, Luke Pickard and Laney Schenk of Gaston County served as pages.

HB 2873 – Safe Drinking Water/Private Wells.

Representative Insko was recognized to explain the bill. Paul Wilms, Director of Government Affairs for the NC Homebuilders Association, was recognized to speak in favor of the bill. Rick Zechini, lobbyists for the NC Association of Realtors, was recognized to speak in favor of the bill. Franklin Freeman, Senior Assistant for Governmental Affairs for the Office of the Governor was recognized to speak in favor of the bill. Jon Carr, lobbyist for the Commercial Laboratories Association of NC, was recognized to express reservations regarding the bill. Senator Kerr motioned for a favorable report and the motioned passed. A copy of the bill and the summary are attached.

HB 2027 – Golf Carts Benson, Tabor City, Caswell Beach.

Senator Soles was recognized to explain the bill. The motion carried. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 1891 – Simplify Fire/Lightning Insurance Rate.

Senator Hoyle was recognized and motioned to adopt the proposed committee substitute for discussion. The motion carried. Cindy Avrette, staff attorney with the Research Division, was recognized to explain the bill. Senator Bland moved for a favorable report and the motion carried. A copy of the proposed committee substitute, the summary, and the fiscal note are attached.

The meeting adjourned at 9:30 am.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Thursday, July 13, 2006

Senator KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS #1) **2027** Golf Carts Benson, Tabor City, Caswell Beach
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **2873** Safe Drinking Water/Private Wells.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1891** Simplify Fire & Lightning Tax Rate.
Draft Number: 10647
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Bumgarner	Governor's Office
Emily Kirby	NC Conservation Network
Amanda Ward	NC Sierra Club
ANTHONY ALLEN	NCAE
Chris Hayes	Civitas Institute
Frank Tracy	Gov. Office
Paul Meyer	NCACC
Elizabeth Self	NC Sierra Club
Doug Howey	NCPMA
GREG FLYNN	NC DPI
Mike Hunter	" "

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

July 13, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andy Sabol	NCDOR
Lennie Collins	DOR
Greg Radford	DOR
Steve Keene	NCMS
Jerry Scoggins	NCBCC
Doug R. Anders	PFF-PWC
M. ROCK	NCDENR
Terry L. Pierce	DEH, DENR
Kathleen Edwards	UNC-CH Daily Bulletin
Steve Wall	DENR
Pat Starr	NVO

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

July 13, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amy Jo Horne	NCMS

Senate Finance Committee
Thursday, July 13, 2006, 9:00 AM
643 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1891	Simplify Fire & Lightning Tax Rate.	Rep. Hill Rep. Luebke Rep. Church Rep. Wainwright
HB 2027	Golf Carts Benson, Tabor City, Caswell Beach	Rep. Hill
HB 2873	Safe Drinking Water/Private Wells.	Rep. Allen Rep. Insko

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1891

Committee Substitute Favorable 7/10/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1891-CSRBx-83 [v.1]

7/12/2006 8:23:54 PM

Short Title: Simplify Fire Tax Rate/Other Tax Changes. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND SIMPLIFY THE APPLICATION OF THE ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING COVERAGE AND TO MAKE TECHNICAL AND CLARIFYING TAX LAW CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.5(d)(3) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. – An additional tax ~~shall be applied to gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies,~~ at the rate of one and thirty-three hundredths percent ~~(1.33%).~~(1.33%) applies to gross premiums on insurance contracts applicable to fire and lightning coverage, except marine and automobile contracts. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in this subdivision. Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

Type of Insurance Contract	**Taxable Percentage**
Fire Loss	100%
Commercial Multiple Peril	
Nonliability portion	100%
Liability portion	0%
Homeowners	50%

Farm Owners 30%."

SECTION 2. G.S. 105-228.5(b)(2) and G.S. 105-228.5(d)(4) are repealed.

SECTION 3. G.S. 105-228.5(d)(3), as amended by Section 1 of this act, reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional ~~Statewide Fire and Lightning Rate.~~ Rate on Property Coverage Contracts. – An additional tax at the rate of ~~one and thirty-three hundredths percent (1.33%)~~ eighty-five hundredths percent (.85%) applies to gross premiums on insurance contracts ~~applicable to fire and lightning coverage, except marine and automobile contracts.~~ for property coverage. The tax is imposed on ten percent (10%) ~~a percentage~~ of the gross premiums from ~~the~~ insurance contracts for automobile physical damage coverage ~~contracts, determined in accordance with the table in this subdivision.~~ and on one hundred percent (100%) of the gross premiums from all other contracts for property coverage. Twenty ~~five~~ percent ~~(25%)~~ (20%) of the net proceeds of this additional tax ~~shall be deposited in~~ must be credited to the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. Twenty-five percent (25%) of the net proceeds must be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25. The remaining net proceeds ~~shall~~ must be credited to the General Fund.

~~Type of Insurance Contract~~	~~Taxable Percentage~~
~~Fire Loss~~	~~100%~~
~~Commercial Multiple Peril~~	
~~Nonliability portion~~	~~100%~~
~~Liability portion~~	~~0%~~
~~Homeowners~~	~~50%~~
~~Farm Owners~~	~~30%.~~

The following definitions apply in this subdivision:

a. Automobile physical damage. – The following lines of business identified by the NAIC: private passenger automobile physical damage and commercial automobile physical damage.

b. Property coverage. – The following lines of business identified by the NAIC: fire, farm owners multiple peril, homeowners multiple peril, nonliability portion of commercial multiple peril, ocean marine, inland marine, earthquake, private passenger automobile physical damage, commercial automobile physical damage, aircraft, and boiler and machinery.

c. NAIC. – National Association of Insurance Commissioners."

SECTION 4. G.S. 105-228.5(e) reads as rewritten:

"(e) Report and Payment. – Each taxpayer doing business in this State shall, within the first 15 days of March, file with the Secretary of Revenue a full and accurate

report of the total gross premiums as defined in this section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The taxes imposed by this section shall be remitted to the Secretary with the report.

~~In the case of an insurer liable for the additional local fire and lightning tax, the report shall include the information required under G.S. 58-84-1.~~"

SECTION 5. G.S. 105-228.5(f) reads as rewritten:

"(f) Installment Payments Required. – Taxpayers that are subject to the tax imposed by this section and have a premium tax ~~liability, not including the additional local fire and lightning tax,~~ liability of ten thousand dollars ($10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Secretary of Revenue may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

An underpayment of an installment payment required by this subsection shall bear interest at the rate established under G.S. 105-241.1(i). Any overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited to the company and applied against the taxes imposed upon the company under this Article."

SECTION 6. G.S. 58-84-1 is repealed.

SECTION 7. G.S. 58-84-25 reads as rewritten:

"**§ 58-84-25. Disbursement of funds by Insurance Commissioner.**

The Insurance Commissioner shall deduct the sum of three percent (3%) from the tax proceeds credited to the Department pursuant to ~~G.S. 105-228.5(d)(4)~~ G.S. 105-228.5(d)(3) and pay the same over to the treasurer of the State Firemen's Association for general purposes. The Insurance Commissioner shall deduct the sum of two percent (2%) from the tax proceeds and retain the same in the budget of the Department of Insurance for the purpose of administering the disbursement of funds by the board of trustees in accordance with the provisions of G.S. 58-84-35. The Insurance Commissioner shall, pursuant to G.S. 58-84-50, credit the amount forfeited by nonmember fire districts to the North Carolina State Firemen's Association. The Insurance Commissioner shall pay the remaining tax proceeds to the treasurer of each fire district ~~in proportion to the amount of business done in the fire district.~~ on a per capita basis, using the most recent annual population estimates certified by the State Budget Officer. These funds shall be held by the treasurer as a separate and distinct fund. The fire district shall immediately pay the funds to the treasurer of the local board

of trustees upon the treasurer's election and qualification, for the use of the board of trustees of the firemen's local relief fund in each fire district, which board shall be composed of five members, residents of the fire district as hereinafter provided for, to be used by it for the purposes provided in G.S. 58-84-35."

SECTION 8. G.S. 58-87-1 reads as rewritten:

"**§ 58-87-1. Volunteer Fire Department Fund.**

(a) Fund. – ~~There is created the~~ The Volunteer Fire Department Fund is created as an interest-bearing, nonreverting fund in the Department to provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. The Commissioner shall administer the ~~Fund shall be distributed under the direction of the Commissioner of Insurance.~~ Fund. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year.

(a1) Grant Program. – ~~Beginning January 1, 1988, an~~ An eligible fire department may apply to the Commissioner ~~of Insurance~~ for a grant under this section. In awarding grants under this section, the Commissioner must to the extent possible select applicants from all parts of the State based upon need. ~~Beginning May 1, 1988, and on each May 15, thereafter, the~~ The Commissioner must award the grants on May 15 of each year ~~shall make grants to eligible fire departments~~ subject to the following limitations:

(1) The size of a grant may not exceed twenty thousand dollars ($20,000);

(2) The applicant shall match the grant on a dollar-for-dollar basis;

(3) The grant may be used only for equipment purchases, payment of highway use taxes on those purchases, or capital expenditures necessary to provide fire protection services; and

(4) An applicant may receive no more than one grant per fiscal year.

~~In awarding grants under this section, the Commissioner shall to the extent possible select applicants from all parts of the State based upon need. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year.~~

~~No fire department may be declared ineligible for a grant under this section solely because it is classified as a municipal fire department.~~

(b) Eligible Fire Department. – A fire department is eligible for a grant under this section if it meets all of the ~~following conditions:~~ conditions of this subsection. No fire department may be declared ineligible for a grant solely because it is classified as a municipal fire department.

(1) It serves a response area of 6,000 or less in population. In making the population determination, the Department must use the most recent annual population estimates certified by the State Budget Officer.

(2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of three full-time paid positions.

(3) It has been certified by the Department of Insurance.

~~In making the population determination under subdivision (1) of this subsection, the Department shall use the most recent annual population estimates certified by the State Budget Officer.~~

(c) Report. – The Commissioner ~~of Insurance shall~~ must submit a written report to the General Assembly within 60 days after the grants have been made. This report ~~shall~~ must contain the amount of the grant and the name of the recipient."

SECTION 9. G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is ~~any~~a corporation ~~which~~that receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting ~~stock.~~stock or voting capital interests."

SECTION 10. G.S. 105-130.7A(c) reads as rewritten:

"(c) Election. – For the purpose of computing its State net income, a taxpayer must add royalty payments made to, or in connection with transactions with, a related member during the taxable year. This addition is not required for an amount of royalty payments that meets ~~either~~ any of the following conditions:

(1) The related member includes the amount as income on a return filed under this Part for the same taxable year that the amount is deducted by the taxpayer, and the related member does not elect to deduct the amount pursuant to G.S. 105-130.5(b)(20).

(2) The taxpayer can establish that the related member during the same taxable year directly or indirectly paid, accrued, or incurred the amount to a person who is not a related member.

(3) The taxpayer can establish that the related member to whom the amount was paid is organized under the laws of a country other than the United States, the country has a comprehensive income tax treaty with the United States, and the country imposes a tax on the royalty income of the related member at a rate that equals or exceeds the rate set in G.S. 105-130.3."

SECTION 11. G.S. 105-259(b)(5d) reads as rewritten:

"(5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for the administration of its local ~~tax on~~ prepared food and ~~beverages.~~beverages tax or room occupancy tax:

a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in ~~the~~ a business ~~of selling~~ subject to a local prepared food and ~~beverages.~~beverages tax or room occupancy tax.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county or city in the administration of its local ~~tax on~~ prepared food and ~~beverages.~~beverages tax or room occupancy tax."

SECTION 12. Section 24.9(b) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.9.(b)** This section becomes effective ~~January~~ July 1, 2007."

SECTION 13. The Revenue Laws Study Committee shall study the following issues:

(1) The simplification of the additional tax imposed on insurance contracts on property coverage, as enacted in Section 3 of this act, and the distribution of the revenue generated by the tax. The study of this issue may include a recommendation on the percentage of revenue to be distributed to the firemen's local relief funds and the formula for making this distribution. The study may also consider the increasing difference between the amount of revenue available in the Volunteer Fire Department Fund for matching grants to purchase equipment and make capital improvements and the amount of grant requests received.

(2) The authority of the Secretary of Revenue to require taxpayers to file consolidated returns. The study of this issue may include consideration of whether the State should require some corporations or all corporations to file a consolidated return.

(3) The feasibility of replacing the State's current corporate income and franchise tax laws with a commercial activity tax based upon business gross receipts.

(4) The administrative process for the review of disputed tax matters.

SECTION 14. Sections 1 and 10 of this act are effective for taxable years beginning on or after January 1, 2006. Sections 2, 3, 4, and 5 of this act are effective for taxable years beginning on or after January 1, 2008. Sections 6, 7, and 8 of this act become effective January 1, 2008, and apply to proceeds credited to the Department of Insurance on or after that date. Section 9 of this act is effective for taxable years beginning on or after January 1, 2007. The remainder of this act is effective when it becomes law.

HOUSE BILL 1891

Short Title:	Clarify Additional Gross Premiums Tax.	(Public)
Sponsors:	Representatives Wainwright, Luebke, Church, Hill (Primary Sponsors); Carney and Wilkins.	
Referred to:	Finance.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING COVERAGE AND TO APPLY THE ADDITIONAL TAX TO ALL POLICIES THAT PROVIDE FIRE AND LIGHTNING COVERAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.5(d)(3) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. – An additional tax ~~shall be applied to gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies,~~ at the rate of one and thirty-three hundredths percent ~~(1.33%).~~(1.33%) applies to gross premiums on insurance contracts that provide fire and lightning coverage, except in the case of marine and automobile policies. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in this subdivision. Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

Type of Insurance Contract	Taxable Percentage
Fire Loss	100%
Commercial Multiple Peril	
Nonliability portion	100%
Liability portion	0%
Homeowner's	50%
Farm Owner's	35%."

SECTION 2. G.S. 105-228.5(d)(4) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(4) Additional Local Fire and Lightning Rate. – An additional tax ~~shall be applied to gross premiums on contracts of insurance applicable to fire and lightning coverage within fire districts~~ at the rate of one-half of one percent ~~(½ of 1%).~~ (0.5%) applies to gross premiums on insurance contracts that provide fire and lightning coverage within a fire district. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in subdivision (3) of this subsection. The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25."

SECTION 3. G.S. 105-228.5(d)(3), as amended by Section 1 of this act, reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. – An additional tax at the rate of one and thirty-three hundredths percent (1.33%) applies to gross premiums on insurance contracts that provide fire and lightning ~~coverage, except in the case of marine and automobile policies.~~ coverage. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in this subdivision. Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

Type of Insurance Contract	Taxable Percentage
Fire Loss	100%
Commercial Multiple Peril	
Nonliability portion	100%
Liability portion	0%
Homeowner's	50%
Farm Owner's	35%
Marine	20%
Automobile	10%
Other	10%."

SECTION 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 2006. Section 3 of this act is effective for taxable years beginning on or after January 1, 2007. The remainder of this act is effective when it becomes law.

HOUSE BILL 1891:
Simplify Fire Tax Rate/Other Tax Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 12, 2006
Introduced by:	Reps. Wainwright, Luebke, Church, Hill	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to Second Edition H1891-CSRBx-83		

SUMMARY: House Bill 1891 clarifies the application of the additional gross premiums tax on fire and lightning coverage and simplifies the administration and payment of the tax, effective January 1, 2008, by establishing a new application of the additional tax on insurance contracts that provide property coverage. The proposed Senate committee substitute for House Bill 1891 addresses several issues initially raised in proposals recommended by the Revenue Laws Study Committee:

- *It makes a technical change to the definition of holding company. (Section 9)*
- *It clarifies the application of the royalty reporting option when one of the related members is in a foreign country. (Section 10)*
- *It allows the Department of Revenue to share information with a county or city on a room occupancy tax to the same extent as a prepared food and beverages tax. (Section 11)*
- *It corrects an effective date in S.L. 2006-66. (Section 12)*
- *It directs the Revenue Laws Study Committee to study various issues. (Section 12)*

ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING COVERAGE: North Carolina imposes a 1.9% tax rate on the gross premiums of most insurance policies.[1] In addition to the general rate, there is a 1.33% rate applied to the gross premiums on insurance policies that provide fire and lightning coverage. The statute specifically excludes marine and automobile policies from this additional tax. Twenty-five percent of the net proceeds of this additional tax are credited to the Volunteer Fire Department Fund[2] and the remainder is credited to the General Fund. There is also a 0.5% rate applied to gross premiums on insurance policies that provide fire and lightning coverage within fire districts. The statute does not provide any exceptions from this tax. The net proceeds of this tax are credited to the Department of Insurance.[3]

The General Assembly enacted the additional statewide fire and lightning tax in 1959. Although the statute does not provide that the tax will apply differently to different types of policies, the Department has administered the tax this way. The additional tax has been imposed on 100% of premiums from

[1] Workers' compensation policies are taxed at 2.5%. HMO policies are currently taxed at a rate of 1%; however, effective January 1, 2007, these policies will be taxed at the general rate of 1.9%.

[2] Funds in the Volunteer Fire Department Fund provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. In 2005, the Department received 567 applications for grants requesting matching funds of $6,577,455. The available monies in the Fund totaled only $4,369,976. The Department approved 500 applications totaling $4,365,489.

[3] Three percent (3%) of the tax proceeds are credited to the State Firemen's Association for general purposes. Two percent (2%) of the proceeds are used by the Department of Insurance for the purpose of administering the disbursement. The remaining funds are allocated among the fire districts in proportion to the amount of business done in the district and used by the local district for firemen's local relief purposes. *See Article 84 of Chapter 58 of the General Statutes.*

insurance that covers only fire losses and on a percentage of premiums from insurance that covers multiple risks. The percentages applied are neither statutory nor imposed by administrative rule. Within the past few years, the Department has been informally advised by both the Department of Insurance and the Attorney General's Office that the statute as written does not provide for assessing the tax against only a percentage of a policy's premium. Rather, without a statutory change, it is their opinion that the tax should be applied to 100% of the premiums of any policy that includes fire and lightning coverage.

Section 1 of the bill would codify the current administrative practice of the Department by setting in statute the percentage of an insurance policy's gross premiums to which the additional tax applies. It would provide that policies covering fire loss would be taxable at 100%. It would set by statute the taxable percentages for the following types of policies:

Type of Insurance Policy	Taxable Percentage
• Non-liability portion of a Commercial Multiple Peril policy	100%
• Homeowner's Policy	50%
• Farm Owner's Policy	30%

The bill would establish a new method of taxing insurance policies that provide property coverage, effective for taxable years beginning on or after January 1, 2008. The bill proposes broadening the base and lowering the rate applicable to insurance contracts that provide property coverage. The revenue neutral tax rate proposed in the bill is .85%. The revenue generated by the tax would be distributed in the same proportion as the current State and local fire and lightning tax revenue is distributed. Under the current method of taxation, the local tax is applied to contracts of insurance applicable to fire and lightning coverage within fire districts. A portion of the revenue from this tax is distributed to these fire districts. The bill would not limit the application of the tax to fire districts. It would also not require the accounting by insurance companies of the amount of premiums written in fire districts. The bill proposes a new method of distribution based upon a per capita allocation among fire districts. This new method of distribution needs further review. The bill directs the Revenue Laws Study Committee to study the new method of taxation as well as the distribution of the revenues.

PROPOSED COMMITTEE SUBSTITUTE: The proposed Senate committee substitute adds the following provisions to the bill:

- Holding company definition. – The Revenue Laws Study Committee recommended applying the corporate franchise tax to limited liability companies (LLC) that elect to be taxed as a C corporation for federal income tax purposes. S.L. 2006-66 enacted this recommendation. Section 9 of this bill makes a conforming change to the definition of holding company to recognize that LLCs do not have voting stock. Instead, they have capital interests. The holding company cap was intended to apply to LLCs that elect to be treated as C corporations. This change ensures that the cap applies.
- Royalty reporting option. – The Revenue Laws Study Committee recommended expanding the reporting option available to corporations and their related members with regard to reporting the receipt of royalty payments by including payments on patents and copyrights. S.L. 2006-66 enacted

this recommendation. Section 10 of the bill provides that a taxpayer that makes payments to a related member may still deduct the payment if the taxpayer can establish that the related member to whom the payment was made is organized under the laws of another country, the country has a comprehensive income tax treaty with the United States, and the country imposes a tax on the royalty income of the related member at a rate that equals or exceeds the State's tax rate.

- Tax sharing. – Current law allows the Department of Revenue to share tax information with a county or city if the information is relevant to the administration of the county's or city's food and beverage tax. Section 11 of the bill expands the provision to include the administration of a county's or city's room occupancy tax.
- Effective date correction. – S.L. 2006-66 exempts research and development equipment from the 7% State and local sales tax rate and in its place imposes a 1% privilege tax, with an $80 cap, on the equipment. The effective date of this change should be July 1, 2007. Section 12 corrects the effective date in S.L. 2006-66.
- Revenue Laws Study. – Section 13 of the bill directs the Revenue Laws Study Committee to study the following issues: distribution of the additional gross premiums tax on property coverage, consolidated corporate returns, replacement of the corporate income and franchise tax with a commercial activity tax, and the administrative process for the review of disputed tax matters.

H1891e2-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 12, 2006

TO: Representatives Wainwright, Luebke, Church and Hill

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 1891 (PCS to Second Edition)

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	The bill broadens the base for the additional fire and lightning tax and establishes a revenue neutral rate. See assumptions and methodology.				
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue, NC Department of Insurance.

EFFECTIVE DATE: Sections 1 and 10 of this act are effective for taxable years beginning on or after January 1, 2006. Sections 2, 3, 4, and 5 of this act are effective for taxable years beginning on or after January 1, 2008. Sections 6, 7, and 8 of this act become effective January 1, 2008, and apply to proceeds credited to the Department of Insurance on or after that date. Section 9 of this act is effective for taxable years beginning on or after January 1, 2007. The remainder of this act is effective when it becomes law.

BILL SUMMARY:

Under the current insurance tax structure there is a supplemental state tax of 1.33% on the gross premiums of fire and lightning coverage and a local tax of 0.5% with fire districts. In the case of a policy that is exclusively for fire and lightning coverage, 100% of the supplemental tax is levied. For situations where the policy provides insurance coverage in addition to these two lines, the agencies administering the tax have applied a number of different partial percentages to the policy

premiums, with the percentage differing by type of auxiliary coverage. The issue is that the percentages have been not been adopted either in statutory language or formal administrative rulings. In some cases the ratios have been tied to industry loss experience data. In recent years the Department of Revenue has received inquiries about the source of the percentages as well as requests to use individual insurance carrier experience in lieu of an overall percentage. At the same time some legal experts feel that 100% of the supplemental tax is due on all premiums from policies that contain any fire and lightning coverage.

Section 1 of the bill would codify the current administrative practice of the Department by setting in statute the percentage of an insurance policy's gross premiums to which the additional tax applies. It would provide that policies covering fire loss would be taxable at 100% and that commercial multiple peril liability coverage would be taxable at 100%. It would provide that 50% of homeowner's policy premiums and 30% of farm owners' policy premiums would be subject to the tax.

Sections 2 through 6 of the bill combines the state and local taxes, broadens the base by applying the tax to 10% of policies covering auto physical damage policies, and establishes a revenue neutral tax rate based on tax revenue for FY 2005-06.

The proposed Senate committee substitute for House Bill 1891 addresses several issues initially raised in proposals recommended by the Revenue Laws Study Committee:

- It makes a technical change to the definition of holding company. (Section 9)
- It clarifies the application of the royalty reporting option when one of the related members is in a foreign country. (Section 10)
- It allows the Department of Revenue to share information with a county or city on a room occupancy tax to the same extent as a prepared food and beverages tax. (Section 11)
- It corrects an effective date in S.L. 2006-66. (Section 12)
- It directs the Revenue Laws Study Committee to study various issues. (Section 12)

ASSUMPTIONS AND METHODOLOGY:
The first section of the bill, which is effective for taxable years after January 1, 2006, codifies current practice. There is no fiscal impact for this section of the bill.

Sections 2 through 6 are effective for taxable years beginning January 1, 2008. Section 2 repeals the additional local tax. This tax is combined with the statewide tax and the revenue is distributed by the Department of Insurance to local fire districts. The new statewide tax rate is calculated to hold fire districts harmless.

Section 3 establishes a new statewide tax rate of 0.85 percent. This rate is calculated by dividing the tax revenue for fiscal year 2005-06 for the statewide and the local fire and lightning tax by the sum of 100% of direct premiums for property coverage and 10% of direct premiums for auto physical damage for calendar year 2005. The property coverage premiums include the following lines of business: fire, farm owners multiple peril, homeowners multiple peril, non-liability portion

of commercial multiple peril, ocean marine, inland marine, earthquake, private passenger automobile physical damage, commercial automobile physical damage, aircraft, and boiler and machinery.

Sections 4, 5 and 6 provide for distribution of proceeds and use of grant funds from the Volunteer Fire Department Fund. The distribution percentages for the new combined statewide tax are calculated to provide for distributions proportional to current percentages for the State Fireman's Association (1.5%), local fire districts (23%), Volunteer Fire Department Fund (20%) and DOI Administration (0.5%). The remainder of revenue (55%) is distributed to the General Fund.

The bill also requires the Revenue Laws Study Committee to recommend a method of distributing a portion of the tax to firemen's local relief funds. The report will be included in the report to the 2007 Session of the General Assembly.

The provisions added in the Proposed Committee Substitute are clarifying or technical in nature and would not result in a significant fiscal impact.

SOURCES OF DATA: Department of Revenue, Department of Insurance.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

4

HOUSE BILL 2027*

Committee Substitute Favorable 6/1/06

Third Edition Engrossed 6/12/06

Senate State and Local Government Committee Substitute Adopted 6/28/06

Short Title: Golf Carts Benson,Tabor City, Caswell Beach. (Local)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWNS OF BENSON, CASWELL BEACH, AND TABOR CITY TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2005-11 reads as rewritten:

"**SECTION 3.** Section 1 of this act applies only to the Towns of Benson, Bladenboro, Elizabethtown, Rose Hill ~~and Bladenboro.~~ and Tabor City. Section 2 of this act applies only to Moore County."

SECTION 1.1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Town of Caswell Beach may, by ordinance, regulate the operation of golf carts on any street or road within the confines of the municipal limits of Caswell Beach. By ordinance, the Town may require the registration of golf carts, specify the persons authorized to operate golf carts, and specify required equipment, load limits, and the hours and methods of operation of the golf carts.

SECTION 1.2. S.L. 2005-58 is repealed.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 2027:
Golf Carts Benson,Tabor City, Caswell Beach

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 132, 2006
Introduced by:	Rep. Hill	**Summary by:**	Trina Griffin
Version:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 2027 amends S.L. 2005-11 to add Benson and Tabor City to the list of municipalities authorized to regulate the operation of golf carts on any public street or road within the municipality and allows the municipality to charge a fee for golf cart registration.

The bill also allows Caswell Beach to regulate the operation of golf carts on any street or road within the confines of the municipal limits and does not allow a registration fee. The bill repeals S.L. 2005-58 which allows Caswell Beach to operate electric golf carts on public streets or roads. The bill becomes effective when it becomes law.

CURRENT LAW: Under current law, vehicles intended to be operated on the streets and highways of the State must be registered (G.S. 20-50). Golf carts may not be registered (G.S. 20-54), and therefore may not operate on the streets and highways.

G.S. 20-4.01.(12a) defines a golf cart as a vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

S.L. 2005-58 authorizes the Town of Caswell Beach to regulate the operation of electric golf carts on any public street or road within the Town.

BILL ANALYSIS: **Section 1** amends S.L. 2005-11 (see reverse side) to include Benson and Tabor City. Under this provision, the municipalities are authorized to enact an ordinance to regulate the operation of golf carts on any public street or road within the town. With regard to golf carts, by ordinance, the municipality may:

- require registration,
- specify the persons authorized to operate,
- specify load limits, and
- charge a fee for the registration,
- specify required equipment,
- specify hours and methods of operation.

Section 1.1 authorizes the Town of Caswell Beach to regulate by ordinance the operation of golf carts on any public street or road. Under this bill, all of the bulleted items above may be regulated by ordinance in Caswell Beach, except it does not authorize the Town to charge a fee for the registration of golf carts. **Section 1.2** repeals S.L. 2005-58 regarding the regulation of electric golf carts on any public street or road in Caswell Beach.

Section 2 provides that the bill becomes effective when it becomes law.

BACKGROUND:

- The General Assembly has enacted legislation for golf carts in the following locations: Lake Waccamaw (S.L. 2001-356), Cary (S.L. 2001-485), Whispering Pines (S.L. 2002-82), Seven Lakes (S.L. 2002-82), and Caswell Beach (S.L. 2005-58). The General Assembly has enacted similar legislation for golf carts and utility vehicles in: Beech Mountain (S.L. 2003-124) and Seven Devils (S.L. 2004-58). The General Assembly has enacted golf cart legislation allowing fees to be charged in: the Town of Lake Waccamaw (S.L. 2001-356); the Village of Bald Head Island (S.L. 2002-129); and the Towns of Elizabethtown, Rose Hill, and Bladenboro (S.L. 2005-11).

H2027e4-SMSV

SESSION LAW 2005-11
SENATE BILL 166

AN ACT TO AUTHORIZE THE TOWNS OF ELIZABETHTOWN, BLADENBORO, AND ROSE HILL TO REGULATE GOLF CARTS AND TO CLARIFY LAW ENFORCEMENT AUTHORITY FOR THE ENFORCEMENT OF LAWS RELATING TO MOTOR VEHICLES WITHIN THE SEVEN LAKES COMMUNITY IN MOORE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a town may, by ordinance, regulate the operation of electric golf carts on any public street or road within the town.

By ordinance, a town may require the registration of golf carts, charge a fee for the registration, specify the persons authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

SECTION 2. Section 2 of Chapter 13 of the 1995 Session Laws, as amended by Session Law 2002-82, reads as rewritten:

"**Sec. 2.** This act is enforceable by any company policeman appointed under Chapter 74E of the General Statutes, certified by the North Carolina Criminal Justice Education and Training Standards Commission, and employed by the Seven Lakes Landowners Association, ~~Inc.~~ Inc., or by any law enforcement officer acting within the officer's territorial jurisdiction."

SECTION 3. Section 1 of this act applies only to the Towns of Elizabethtown, Rose Hill and Bladenboro. Section 2 of this act applies only to Moore County.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of April, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker Pro Tempore of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 2873*

Committee Substitute Favorable 6/29/06

Committee Substitute #2 Favorable 7/6/06

Short Title: Safe Drinking Water/Private Wells. (Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERMITTING AND INSPECTION OF NEW PRIVATE DRINKING WATER WELLS AND TO REQUIRE WATER QUALITY TESTING OF PRIVATE DRINKING WATER WELLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-85 is amended by adding a new subdivision to read:

"(10a) 'Private drinking water well' means any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve 14 or fewer service connections or that serves or is proposed to serve 24 or fewer individuals. The term 'private drinking water well' includes a well that supplies drinking water to a transient noncommunity water system as defined in 40 Code of Federal Regulations § 141.2 (1 July 2003 Edition)."

SECTION 2. G.S. 87-87 reads as rewritten:

"**§ 87-87. Authority to adopt rules, regulations, and procedures.**

The Environmental Management Commission shall ~~adopt, and may from time to time amend, rules and regulations not inconsistent with this Article~~ adopt rules governing the location, construction, repair, and abandonment of wells, the operation of water wells or well systems with a designed capacity of 100,000 gallons per day or greater, and the installation and repair of pumps and pumping ~~equipment, and~~ equipment. The Environmental Management Commission shall be responsible for the administration of this ~~Article. With respect thereto it~~ Article and shall:

(1) Hold public hearings, upon not less than 30 days' prior notice setting forth the date, place, and time of hearing, and the proposed rules and regulations to be considered at said public hearing, which notice shall be published in one or more newspapers having general circulation

throughout the State, in connection with proposed rules and regulations and amendments ~~thereto;~~thereto.

(2) Enforce the provisions of this Article, and any rules and regulations not inconsistent with the provisions of this Article adopted pursuant ~~thereto;~~thereto.

(3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this ~~Article;~~Article.

(4) Issue such additional regulations as may be necessary to carry out the provisions of this ~~Article; and~~Article.

(5) Neither adopt nor enforce any rule or regulation that concerns the civil liability of an owner to a well driller for any costs or expenses of drilling and installing a well for the owner.

(6) Adopt rules governing the permitting and inspection by the Commission of private drinking water wells with a designed capacity of 100,000 gallons per day or greater.

(7) Adopt rules governing the permitting and inspection by local health departments of private drinking water wells pursuant to G.S. 87-97."

SECTION 3. G.S. 87-88 reads as rewritten:

"**§ 87-88. General standards and requirements.**

(a) Prior Permission. – Prior permission shall be obtained from the Environmental Management Commission for the construction of (i) any water well or of well systems with a designed capacity of 100,000 gallons per day or greater; and (ii) of any well in a geographical area where the Environmental Management Commission finds, after public hearings, such permission to be reasonably necessary to protect the groundwater resources and the public welfare, safety and health, taking into consideration other applicable State laws; provided, however, that the Environmental Management Commission shall not reject any application under this subsection for permission to construct a well except upon the ground that the well would not be in compliance with a provision of this Article or with a rule or regulation of the Environmental Management Commission adopted pursuant to the provisions of G.S. 87-87 of this Article. Notification of approval or rejection of an application for permission to construct a well shall be given the applicant within a period of 15 days after receipt of such application. Private drinking water wells (i) with a designed capacity of 100,000 gallons per day or greater or (ii) that are to be constructed in a geographical area where the Environmental Management Commission has found that prior permission is necessary shall be subject to permitting and inspection by the Environmental Management Commission and shall not be subject to permitting and inspection by a local health department. All other private drinking water wells shall be subject to permitting and inspection by the local health department as provided in G.S. 87-97.

(b) Reports. – Any person completing or abandoning any well shall furnish the Environmental Management Commission a certified record of the construction or

abandonment of such well within a period of 30 days after completion of construction or abandonment.

(c) Prevention of Contamination. – Every well shall be constructed and maintained in a condition whereby it is not a source or channel of contamination of the groundwater supply or any aquifer. Wells subject to the provisions of subdivision (a)(i) of this section shall be operated in such a way that they shall not cause the violation of applicable groundwater quality standards. Contamination as used herein shall mean the act of introducing into water foreign materials of such a nature, quality, and quantity as to cause degradation of the quality of the water.

(d) Valves and Casing on Flowing Artesian Wells. – Valves and casing on all flowing artesian wells shall be maintained in a condition so that the flow of water can be completely stopped when the well is not being put to a beneficial use. Valves shall be closed when a beneficial use is not being made.

(e) Access Port. – Every water-supply well and such other wells, as may be specified by the Environmental Management Commission, shall be equipped with a usable access port or air line and to be a minimum of 0.5 inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.

(f) Mineralized Water. – Whenever a water-bearing stratum or aquifer that contains nonpotable mineralized water is encountered in well construction, the stratum shall be adequately cased or cemented off as conditions may require so that contamination of the overlying or underlying groundwater zones will not occur.

(g) Polluted Water. – In constructing any well, all water-bearing zones that are known to contain polluted water shall be adequately cased or cemented off so that pollution of the overlying and underlying groundwater zones will not occur.

(h) Well Test. – Every water-supply well shall be tested for capacity by a method and for a period of time acceptable to the Department and depending on the intended use of the well.

(i) Chlorination of the Well. – Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for ~~domestic~~ human consumption and all private drinking water wells shall be sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service.

(j) Use of Well for Recharge or Disposal. – No well shall be used for recharge, injection or disposal purposes without prior permission from the Environmental Management Commission.

(k) Abandonment of Wells. –

(1) Temporary Abandonment: When any well is temporarily removed from service, the top of the well shall be sealed with a water-tight cap or seal.

(2) Permanent Abandonment: Any well that is to be permanently abandoned shall be filled, plugged, or sealed in such a manner as to

prevent the well from being a channel allowing the vertical movement of water and a source of contamination of the groundwater supply.

(3) Abandonment of Water Supply Wells for Other Use: Any water supply well that is removed from service as a potable water supply source may be used for other purposes, including, but not limited to, irrigation, commercial use, or industrial use, and such well is not subject to either subdivision (1) or (2) of this subsection during its use for other purposes."

SECTION 4. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article.

(b) Permit Required. – Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

(1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.

(2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department, except that a permit shall not be required for the repair or replacement of a pump.

(c) Permit Not Required for Maintenance. – A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal.

(d) Well Site Evaluation. – The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat, as defined in G.S. 130A-334.

(e) Issuance of Permit. – The local health department shall issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article. The local health department may impose any conditions on the

issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article.

(f) Expiration and Revocation. – A construction permit or repair permit shall be valid for a period of five years except that the local health department may revoke a permit at any time if it determines that there has been a material change in any fact or circumstance upon which the permit is issued. The foregoing shall be prominently stated on the face of the permit. The validity of a construction permit or a repair permit shall not be affected by a change in ownership of the site on which a private drinking water well is proposed to be located or is located if the location of the well is unchanged and the well and the facility served by the well remain under common ownership.

(g) Certificate of Completion. – Upon completion of construction of a private drinking water well or repair of a private drinking water well for which a permit is required under this section, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion.

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Health Services to Adopt Drinking Water Testing Rules. – The Commission for Health Services shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Health Services may by rule require testing for additional parameters if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health.

(j) Test Results. – The local health department shall provide test results to the owner of the newly constructed private drinking water well and, to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled.

(k) Registry of Permits and Test Results. – Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is issued. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The

local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

(l) Authority Not Limited. – This section shall not be construed to limit any authority of local boards of health, local health departments, the Department of Health and Human Services, or the Commission for Health Services to protect public health."

SECTION 5. G.S. 130A-4 reads as rewritten:

"**§ 130A-4. Administration.**

(a) Except as provided in subsection (c) of this section, the Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission. A local health director shall administer the programs of the local health department and enforce the rules of the local board of health.

(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules.

(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission.

(d) When requested by the Secretary of Environment and Natural Resources, a local health department shall enforce the rules of the Commission and the rules adopted by the Environmental Management Commission pursuant to G.S. 87-87 under the supervision of the Department of Environment and Natural Resources. The local health department shall utilize local staff authorized by the Department of Environment and Natural Resources to enforce the specific rules."

SECTION 6. G.S. 130A-39(g) reads as rewritten:

"(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", ~~and~~ for services performed pursuant to Part 11, Article 8 of this Chapter, ~~"Tattooing".~~ "Tattooing", and for services performed pursuant to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

SECTION 7. G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian enforcing rules of the Commission for Health Services or of the Environmental Management Commission under the supervision of the

Department of Environment and Natural Resources pursuant to ~~G.S. 130A-4(b)~~ G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health ~~Services.~~Services or of the Environmental Management Commission. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6."

SECTION 8. G.S. 87-97, as enacted by Section 4 of this act, becomes effective 1 July 2008 except that G.S. 87-97(i) becomes effective when this act becomes law. All other sections of this act become effective when this act becomes law.

HOUSE BILL 2873:
Safe Drinking Water/Private Wells

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 13, 2006
Introduced by:	Reps. Insko, L. Allen	**Summary by:**	Trina Griffin
Version:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 2873 would establish permitting, inspection, and water quality testing requirements for new private drinking water wells. It would also exclude the repair or replacement of a pump from the requirement to obtain a permit. This bill is in Finance because Section 6 authorizes local health departments to charge a fee for services rendered under this Article.

BACKGROUND: Private drinking water wells play an important role in meeting the State's drinking water needs. Greater than 50 percent of North Carolina's population receives its drinking water supplies from groundwater. Currently, there are local well programs in 35 out of the 100 counties. This bill provides for consistent statewide enforcement of regulations governing the location, construction, operation, repair, maintenance, and abandonment of private drinking water wells.

BILL ANALYSIS: House Bill 2873 would make the following changes:

Section 1 defines a "private drinking water well" to include wells that serve or are proposed to serve 14 or fewer service connections or that serve or are proposed to serve 24 or fewer individuals.

Section 2 clarifies the existing authority of the Environmental Management Commission (EMC) to adopt rules governing the permitting and inspection of private drinking water wells with a designed capacity of 100,000 gallons per day or greater or where the EMC finds that prior permission from the EMC is necessary.

This section also authorizes the EMC to adopt rules governing the permitting and inspection of private drinking water wells by local health departments.

Section 3 authorizes the EMC to permit and inspect private drinking water wells with a designed capacity of 100,000 gallons per day or greater or where the EMC finds that prior permission from the EMC is necessary. The bill authorizes local health departments to permit and inspect all other private drinking water wells.

This section also requires all private drinking water wells installed for the purpose of obtaining groundwater for human consumption to be sterilized in accordance with standards established by the United States Public Health Service.

Section 4 requires:

- Each county, through its local health department, to implement and administer a private drinking water well permitting, inspection, and testing program.
- A permit for the construction or repair of a private drinking water well. A repair permit is not required for private drinking water well maintenance that does not involve breaking or opening the well seal or for the repair or replacement of a pump.
- The local health department to conduct a field investigation to evaluate the proposed site of the private drinking water well and issue a construction permit if it determines that the proposed well can be constructed and operated in compliance with this section. Construction

or repair permits are valid for five years and may be revoked by the local health department if it determines that material changes in fact or circumstance upon which the permit is issued have been made.

- A local health department to issue a "certificate of completion" when a new or repaired private drinking water well is inspected and determined to have been constructed or repaired in compliance with the applicable permit. Without a certificate of completion issued by a local health department, no person may place a private drinking water well into service.
- A local health department to test the drinking water obtained from a newly constructed drinking water well within 30 days after it issues a certificate of completion for the presence of 19 pollutants. The Commission will adopt rules governing sampling, testing, and reporting and will allow a local health department to designate third parties to collect and test samples and report test results. The Commission may require the testing of additional pollutants if it is determined that testing for additional pollutants is necessary to protect public health. The local health department must provide the test results to the owner of a newly constructed private drinking water well, and to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled.
- Each local health department to maintain a registry identifying the location of each private drinking water well and a record of the results of all tests conducted until the well is properly closed.

Section 5 requires a local health department to enforce the private drinking water well rules of the EMC (in addition to those of the Commission for Health Services) when requested by the Secretary of Environment and Natural Resources.

Section 6 authorizes a local health department to impose fees for services rendered under this Article.

Section 7 provides that local health department sanitarians who enforce the rules of the EMC shall be defended by the Attorney General and be protected from civil and criminal liability for acts done or omissions made in the scope of enforcing the EMC's rules (existing law provides this same protection for sanitarians enforcing the Commission for Health Services rules). The State can refuse to provide for the defense of a criminal or civil action or proceeding brought against a current or former employee if the act or omission was not within the scope and course of the employment, the employee acted or failed to act because of actual fraud, corruption or malice, defense of the action would create a conflict of interest between the State and the employee, or defense of the action or proceeding would not be in the best interests of the State. Payment of a judgment or settlement of a claim against a State employee or several State employees may not exceed the amount payable for one claim ($500,000) under the Tort Claims Act.

EFFECTIVE DATE: The provisions concerning permitting, inspections, and testing of private drinking water wells by local health departments (Section 4) would become effective 1 July 2008, except the rulemaking authority of the Commission for Health Services, which would become effective when the bill becomes law. The remainder of the act would become effective when it becomes law.

Jennifer Mundt, Research Assistant, substantially contributed to this summary.

H2873e4-SMSV

SENATE FINANCE COMMITTEE
Wednesday, July 19, 2006 at 11:00 AM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 11:00 AM, July 19, 2006, in room 544 of the Legislative Office Building. Twenty-six members of the committee were present. Senator David Hoyle presided. Terrell White, Allison Ellis, Chelsea Davis, Ashley Graham, Karitha McDowell, Kara Simpson, Merritt Anderson and Elizabeth Biggerstaff of Gaston County served as pages.

HB 749 – Agreement for Transportation Improvements –AB.

This bill was removed from the agenda.

HB 2468 – Regulation of Golf Carts in Clarkton.

Representative Nye was recognized to explain the bill. Senator Albertson moved for a favorable report and the motion carried. A copy of the bill and the summary are attached.

HB 2181 – Revise Capital Improvement Plan.

Representative Wright was recognized to explain the bill. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill is attached.

SB 1621 – Special Indebtedness Projects.

Senator Hoyle was recognized to explain the bill and made a motion for its concurrence. The motion carried. A copy of the bill and the summary are attached.

HB 2170 – Bill Lee Changes.

Representative Daughtridge and Representative Harrell were recognized to explain the bill. Senator Kerr made a motion to adopt the proposed committee substitute for discussion. The motion carried. Senator Hoyle offered an amendment and made a motion for its adoption. The motion carried. Senator Albertson moved for a favorable report and the motion carried. A copy of the proposed committee substitute, the amendment, the summary, the bulleted summary, and the fiscal note are attached.

HB 1843 – Revise Legislative Ethics Act – 1.

Senator Clodfelter was recognized to explain the bill and motioned to adopt the proposed committee substitute for discussion. Senator Rand motioned for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note are attached.

HB 1413 – Enhance Local Govt. Adm. Of Env. Prgms.

Representative Lucy Allen was recognized to explain the bill. Senator Kerr motioned to adopt the proposed committee substitute for discussion and the motion carried. Senator Clodfelter offered an amendment and motioned for its adoption. The motion carried. Senator Dannelly motioned for a favorable report and the motion carried. A copy of the PCS, the summary, the fiscal note and the amendment are attached.

SB 1436 – Local Government Debt Revisions.

Senator Albertson moved to adopt the proposed committee substitute and the motion carried. Canaan Huie, a staff attorney with the Bill Drafting Division, was recognized to explain the bill. Senator Jenkins motioned for a favorable report and the motion carried. A copy of the proposed committee substitute is attached.

SB 1211 – Blaire Thompson Drug Dealer Liability Act.

This bill was not taken up due to time constraints.

The meeting adjourned at 11:54 am.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

CORRECTED REPORT

Wednesday, July 19, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1436** Revise University Special Indebtedness.

Draft Number:	15437
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **2170** Bill Lee Changes.

Draft Number:	70810
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1413** Enhance Local Govt. Adm. of Env. Prgms.

Draft Number:	70809
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

Report II

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Wednesday, July 19, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **749** Agreement for Transportation Improvements.-AB

Draft Number:	30633
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Report III

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Wednesday, July 19, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **2468** Regulation of Golf Carts in Clarkton.
Sequential Referral: None
Recommended Referral: None

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #1) **1621** Special Indebtedness Projects.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1843** State Government Ethics Act - 1.
Draft Number: 60873
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

Senate Finance Committee
Wednesday, July 19, 2006, 11:00 AM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 749	Agreement for Transportation Improvements.-AB	Rep. Cole Rep. Coates
HB 1413	Enhance Local Govt. Adm. of Env. Prgms.	Rep. Justice Rep. Weiss Rep. Hackney
HB 1843	Revise Legislative Ethics Act - 1.	Rep. Allen Rep. Brubaker Rep. Hackney Rep. Howard Rep. Luebke
HB 2170	Bill Lee Changes.	Rep. Harrell Rep. Gibson Rep. Daughtridge Rep. Owens
HB 2181	Revise Capital Improvement Plan.	Rep. Crawford Rep. Wright
HB 2468	Regulation of Golf Carts in Clarkton.	Rep. Nye
SB 1211	Blaire Thompson Drug Dealer Liability Act.	Senator Boseman
SB 1436	Revise University Special Indebtedness.	Senator Garrou
SB 1621	Special Indebtedness Projects.	Senator Hoyle

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 19, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Brandon Reid	NCGA Intern
Heather Croshaw	TNC intern
Emily Kirby	NC Conservation Network
Tom BEAN	NR ED NCWF
Steve Wall	DENR
[illegible]	NCATL
Lennie Collins	DOR
Anita Watkins	NCLM
Kim [illegible]	NCLM
Doug Miskam	Capstrat
Jim Johnson	

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

July 19, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Rice	Manning Fulton & Skinner
Amy Sholder	Hibbs & Co
	RJR
Jim Blackburn	NC Association of County Commissioners
Rob Schofield	NC Center for Nonprofits
Chris Hayes	Civitas
Bob Gillam	Public Staff - NCUC
Jim Lora	OSBM
Amy Sykes	NCDENR
Patrick Hannah	Durham Chamber
	NCCPS

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 19, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joy Peters	JP Assoc
Stacy Flannery	AXIOM
Peter Mezzen	NL CO
[illegible]	Bone Assoc.
Sandra Long	Martin Marietta
Roger Bone	Bone Assoc
Lisa Long	Martin Marietta
Susan Valauri	Nationwide
Andy Vann	Gov's office
Jeff Wolf	Daily Bulletin
Calyn Riggs	Gov's office

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 19, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Janice Carmichael	CCPS
Angie Harris	Hampton Taylor
BERRY JENKINS	CAROLINAS AGC
Jim Simons	DENR
Francis W. Nash Jr	DLR - DE DIR
Sandy Sanders	WCSR
Molly Ryan	NCSBA
Dana Simpson	Smith Anderson
SUSANNE STREB	NCRA
Amy Fullbright	Hunton & Williams
[illegible]	BSC
Barbara Carolan	BSCR
Lee Wilson	NCALTCF

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 19, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Fitzsimon	NC Policy Watch
Louisa Warren	NCCLR
Lori Schmidt	NC Justice Center
John Rust	NCFPC
Stephanie Evans	"
Lauren Rogers	"
Tori Fitzgerald	"
Stephanie Harrison	NCAR
Karen Johnson	Invisible Handshake

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

HOUSE BILL 2468

Short Title:	Regulation of Golf Carts in Clarkton.	(Local)
Sponsors:	Representative Nye.	
Referred to:	Local Government II.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF CLARKTON TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2005-11 reads as rewritten:

"**SECTION 3.** Section 1 of this act applies only to the Towns of Clarkton, Elizabethtown, Rose Hill and Bladenboro. Section 2 of this act applies only to Moore County."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 2468:
Regulation of Golf Carts in Clarkton

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 19, 2006
Introduced by:	Rep. Nye	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: House Bill 2468 amends S.L. 2005-11 to add the Town of Clarkton to the list of municipalities authorized to regulate the operation of golf carts on any public street or road within the municipality and allows the municipality to charge a fee for golf cart registration. The bill becomes effective when it becomes law.

HB 2468 received favorable reports from House Local Government II Committee on July 12, 2006 and Senate State and Local Government Committee on July 17, 2006.

CURRENT LAW:

Under current law, vehicles intended to be operated on the streets and highways of the State must be registered (G.S. 20-50). Golf carts may not be registered (G.S. 20-54), and therefore may not operate on the streets and highways.

G.S. 20-4.01.(12a) defines a golf cart as a vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

BILL ANALYSIS:

House Bill 2468 amends S.L. 2005-11 (copy on summary page 3) to include the Town of Clarkton. Under this provision, the municipalities are authorized to enact an ordinance to regulate the operation of golf carts on any public street or road within the town. With regard to golf carts, by ordinance, the municipality may:

- require registration,
- specify the persons authorized to operate,
- specify load limits, and
- charge a fee for the registration,
- specify required equipment,
- specify hours and methods of operation.

The bill becomes effective when it becomes law.

BACKGROUND:

- The General Assembly has enacted legislation for golf carts in the following locations: Lake Waccamaw (S.L. 2001-356), Cary (S.L. 2001-485), Whispering Pines (S.L. 2002-82), Seven Lakes (S.L. 2002-82), and ***Caswell Beach (S.L. 2005-58[1])***. The General Assembly has enacted similar legislation for golf carts and utility vehicles in: Beech Mountain (S.L. 2003-124) and Seven Devils (S.L. 2004-58). The General Assembly has enacted golf cart legislation allowing fees to be charged in: the Town of Lake Waccamaw (S.L. 2001-356); the Village of Bald Head

[1] S.L. 2005-58 was repealed in House Committee Substitute to the 3rd edition of House Bill 2027 (Session 2006), but reinstated via House Amendments to the 2nd edition of HB 2027—No. 1 on June 6, 2006 and No. 2 on June 12, 2006.

Island (S.L. 2002-129); and the Towns of Bladenboro, Elizabethtown, and Rose Hill (S.L. 2005-11).

- In the current session, House Bill 2027:
  - As introduced, adds the Town of Tabor City to the municipalities listed in S.L. 2005-11.
  - House Committee Substitute to the 1st edition adds the provisions of HB 1990, authorizing the Town of Benson to regulate golf carts and adds the town to the municipalities listed in S.L. 2005-11.
  - House Amendment (No. 1) on June 6, 2006 changes the 2nd edition of the bill by adding the Town of Caswell Beach to the list of municipalities authorized to regulate the operation of electric golf carts on public streets and roads.
  - House Amendment (No. 2) on June 12, 2006 changes the 2nd edition of the bill by rewriting Amendment No. 1, to add Sec. 1.1 permitting the Town of Caswell Beach by ordinance to regulate the operation and require the registration of golf carts.
  - House Committee Substitute to the 3rd edition adds Section 1.2 to ***repeal S.L. 2005-58***, which authorized the Town of Caswell Beach to regulate golf carts on public streets (Section 1.1 lists types of regulations that the Town may adopt, which S.L. 2005-58 did not enumerate.)
  - Senate Amendment (No. 1) on July 17, 2006 changes the 4th edition of the bill by adding the Town of Chadbourn to the list of towns authorized to regulate golf carts in S.L. 2005-11.
  - The 5th edition of House Bill 2027 has been placed on the House Calendar for July 19, 2006, for concurrence with the Senate Committee Substitute.

H2468e1-SMRE
Theresa Matula, staff to Senate State and Local Government Committee, substantially contributed to this summary.

SESSION LAW 2005-11
SENATE BILL 166

AN ACT TO AUTHORIZE THE TOWNS OF ELIZABETHTOWN, BLADENBORO, AND ROSE HILL TO REGULATE GOLF CARTS AND TO CLARIFY LAW ENFORCEMENT AUTHORITY FOR THE ENFORCEMENT OF LAWS RELATING TO MOTOR VEHICLES WITHIN THE SEVEN LAKES COMMUNITY IN MOORE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a town may, by ordinance, regulate the operation of electric golf carts on any public street or road within the town.

By ordinance, a town may require the registration of golf carts, charge a fee for the registration, specify the persons authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

SECTION 2. Section 2 of Chapter 13 of the 1995 Session Laws, as amended by Session Law 2002-82, reads as rewritten:

"**Sec. 2.** This act is enforceable by any company policeman appointed under Chapter 74E of the General Statutes, certified by the North Carolina Criminal Justice Education and Training Standards Commission, and employed by the Seven Lakes Landowners Association, ~~Inc.~~ Inc., or by any law enforcement officer acting within the officer's territorial jurisdiction."

SECTION 3. Section 1 of this act applies only to the Towns of Elizabethtown, Rose Hill and Bladenboro. Section 2 of this act applies only to Moore County.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of April, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker Pro Tempore of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2181*

Short Title:	Revise Capital Improvement Plan.	(Public)
Sponsors:	Representatives Crawford, Wright (Primary Sponsors); Jeffus, Luebke, and Owens.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO INCLUDE IN THE SIX-YEAR CAPITAL IMPROVEMENT PLAN THE RECOMMENDED FUNDING SOURCES FOR THE PROJECTS PROPOSED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-34.45 reads as rewritten:

"**§ 143-34.45. Six-year capital improvement plan.**

(a) The State capital improvement plan shall address the long-term capital improvement needs of all State government agencies and shall incorporate all capital projects, however financed, proposed to meet those needs, except that transportation infrastructure projects shall be excluded. On or before December 31 of each even-numbered year, the Director of the Budget shall prepare and transmit to the General Assembly a six-year capital improvement plan. When preparing the plan, the Director of the Budget shall consider the capital improvement needs estimates submitted by State agencies as required in G.S. 143-34.44. The plan shall be prepared in two parts.

(b) The first part of the capital improvement plan shall set forth repair and renovations requirements that, in the judgment of the Director of the Budget, must be met to protect and preserve existing capital improvement facilities. ~~General Fund expenditure levels anticipated in this part of the plan shall be consistent with the formula establishing the repair and renovation reserve in G.S. 143-15.3A.~~ The plan shall identify individual projects in priority order by State agency and shall specify the proposed means of financing.

(c) The second part of the capital improvement plan shall set forth an integrated schedule for land acquisition, new construction, or rehabilitation of existing facilities that, in the judgment of the Director of the Budget, should be initiated within each year of the six-year planning period. ~~The plan shall contain an estimated schedule for each project, along with estimates of planning, design, and construction cost.~~ The plan shall contain all of the following for each project:

(1) An estimate of land acquisition and construction or rehabilitation costs.

(2) The proposed means of financing the project. Where the means of financing would involve direct or indirect debt service obligations, the plan shall include a schedule of those obligations.

(3) An estimated schedule for the completion of the project."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 1621

Finance Committee Substitute Adopted 6/15/06
House Committee Substitute Favorable 7/10/06
Fourth Edition Engrossed 7/13/06

Short Title: Special Indebtedness Projects. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL SPECIAL INDEBTEDNESS FOR THE CONSTRUCTION OF UP TO FIVE YOUTH DEVELOPMENT CENTERS; TO AUTHORIZE SPECIAL INDEBTEDNESS FOR THE PURCHASE OF STATE GAME LANDS; TO AUTHORIZE SPECIAL INDEBTEDNESS FOR A PARKING FACILITY IN DOWNTOWN RALEIGH; AND TO EXEMPT SALES OF TIMBER FROM THE SERVICE CHARGE IMPOSED BY THE DEPARTMENT OF ADMINISTRATION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.2 of S.L. 2004-179 reads as rewritten:

"**SECTION 1.2.** In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~thirty-five million dollars ($35,000,000)~~forty-two million dollars ($42,000,000) to finance the costs of constructing up to five youth development centers totaling up to 224 beds to be operated by the Department of Juvenile Justice and Delinquency Prevention and to be located as determined by that Department. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of constructing the projects described by this section. Of the special indebtedness authorized by this section, no more than thirteen million dollars ($13,000,000) may be issued or incurred before July 1, 2005."

SECTION 2. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the costs of purchasing land to be administered by the Wildlife Resources Commission as State game lands. The State, with the prior approval of the State Treasurer and the Council of State, as

provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of purchasing the land described in this section.

SECTION 3. G.S. 143-64.05 reads as rewritten:

"**§ 143-64.05.** ~~**Definitions.**~~**Service charge; receipts.**

(a) The State agency for surplus property may assess and collect a service charge for the acquisition, receipt, warehousing, distribution, or transfer of any State surplus property and for the transfer or sale of recyclable material. The service charge authorized by this subsection does not apply to the transfer or sale of timber on land owned by the Wildlife Resources Commission.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity."

SECTION 4. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the capital facility costs of a new parking deck to be constructed in downtown Raleigh. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this section.

SECTION 5. Section 1 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law.

SENATE BILL 1621:
Special Indebtedness Projects

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 18, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Canaan Huie
Version:	Fourth Edition		Committee Counsel

SUMMARY: ***This bill would authorize the issuance of up to $20 million of special indebtedness to finance the purchase by the Wildlife Resources Commission of land to be used as State game lands, an addition $7 million of special indebtedness to complete the construction of five youth development centers, and $20 million of special indebtedness to finance a parking deck in downtown Raleigh. The portion of the bill dealing with the youth development centers would become effective January 1, 2007: the remainder of the bill would become effective when it became law.***

CURRENT LAW: Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that is typically secured only by an interest in State property being acquired or improved. The term "special indebtedness" covers the various forms this type of debt can take: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and bonds.

The particular form of special indebtedness to be used for a given project will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of special indebtedness may be the least expensive and most practical for the State to utilize. Article 9 of Chapter 142 of the General Statutes prohibits the issuance of special indebtedness except for projects specifically authorized by the General Assembly.

Before any type of special indebtedness may be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the details of the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

In 2004, the General Assembly authorized the State to issue or incur up to $35 million of special indebtedness for five youth development centers with a total of 224 beds to be operated by the Department of Juvenile Justice.

Under general law, the Department of Administration may assess and collect a service charge when a State agency transfers or sells recyclable material.

BILL ANALYSIS: This bill would authorize the issuance of up to $20 million of special indebtedness to finance the purchase by the Wildlife Resources Commission of land to be used as State game lands. In addition, the bill would eliminate the service charge assessed by the Department of Administration on sales of timber. The effect of this would be to free up resources to be used to repay the indebtedness.

In addition, this bill would authorize an additional $7 million of special indebtedness to complete the five youth development centers for which special indebtedness was authorized in 2004. The increase in the amount of the authorization is due to bids on the projects coming in higher than anticipated in 2004.

Finally, this bill would authorize $20 million of special indebtedness to construct a parking deck in downtown Raleigh. The bill does not specify a location for the facility other than to say that it will be in downtown Raleigh. The deck is expected to serve State employees and visitors to the State government complex.

EFFECTIVE DATE: The portion of the bill dealing with the youth development centers would become effective January 1, 2007: the remainder of the bill would become effective when it became law.

BACKGROUND: The Nature Conservancy is in negotiations with International Paper to purchase over 173,000 acres of land located at 22 sites in 9 southeastern states. The North Carolina portion of the purchase would total over 76,000 acres at 4 sites (on the Chowan River, the Roanoke River and the Upper Tar River in northeastern North Carolina and on Juniper Creek in southeastern North Carolina). The Wildlife Resources Commission would then purchase from The Nature Conservancy over 64,000 acres of this land to be used as State game lands. It is anticipated that timber receipts from the land will be sufficient to pay the special indebtedness authorized by this bill.

S1621e4-SMLY

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1621 (Third Edition)

SHORT TITLE: Special Indebtedness Projects.

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11**
EXPENDITURES:					
WRC					
Debt Service	575,000	2,121,250	2,063,750	2,006,250	1,948,750
Operating & Capital	575,199	407,387	420,712	434,488	448,040
WRC Total	**1,150,199**	**2,528,637**	**2,484,462**	**2,440,738**	**2,396,790**
DJJDP					
Debt Service	$201,250	$742,438	$722,313	$702,188	$682,063
Operating and Maint.			No Impact		
DOA					
Debt Service	$575,000	$2,121,250	$2,063,750	$2,006,250	$1,948,750
POSITIONS (cumulative):					
WRC	**8**	**8**	**8**	**8**	**8**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wildlife Resources Commission, Department of Juvenile Justice and Delinquency Prevention, and the Department of Administration

EFFECTIVE DATE: Effective when the bill becomes law.

BILL SUMMARY:

May 18, 2006

S 1621. WAGE STANDARD—TEXTILE MANUFACTURERS. Filed 5/18/06. TO REVISE THE WAGE STANDARD UNDER THE BILL LEE ACT FOR CERTAIN TEXTILE MANUFACTURERS WHOSE BUSINESS UTILIZES A CONTINUOUS MANUFACTURING PROCESS IN SEPARATE FACILITIES. Amends GS 105-129.4(b) as title indicates. Provides that for purpose of establishing the appropriate wage standard, the manufacturer may use either the

location of one facility or all facilities in the county in which parts of the process are performed. Effective retroactively for taxable years beginning on or after January 1, 1996.

June 15, 2006
S 1621. WAGE STANDARD - CERTAIN MANUFACTURERS (NEW). Filed 5/18/06. Senate committee substitute makes the following changes to 1st edition. Amends GS 105-129.4(b) to provide that for the purpose of establishing the appropriate wage standard, a fiber, yarn, or thread mill (was, textile) manufacturer that uses a sequential (was, a continuous) manufacturing process may use either the location of one facility or all facilities in the county in which parts of the process are performed.

July 10, 2006
S 1621. SPECIAL INDEBTEDNESS PROJECTS (NEW). Filed 5/18/06. House committee substitute deletes all provisions of 2nd edition and replaces it with AN ACT TO AUTHORIZE ADDITIONAL SPECIAL INDEBTEDNESS FOR THE CONSTRUCTION OF UP TO FIVE YOUTH DEVELOPMENT CENTERS; TO AUTHORIZE SPECIAL INDEBTEDNESS FOR THE PURCHASE OF STATE GAME LANDS; TO AUTHORIZE SPECIAL INDEBTEDNESS FOR A PARKING FACILITY IN DOWNTOWN RALEIGH; AND TO EXEMPT SALES OF TIMBER FROM THE SERVICE CHARGE IMPOSED BY THE DEPARTMENT OF ADMINISTRATION. As title indicates, amends Section 1.2 of SL 2004-179 to increase from $35 to $42 million the amount of special indebtedness authorized for the construction of five youth development centers; authorizes $20 million of special indebtedness for the cost of purchasing land to be used as State game lands and to be administered by the Wildlife Resources Commission; and authorizes $20 million in special indebtedness to finance the capital facility costs of a new parking deck to be constructed in downtown Raleigh. Amends GS 143-64.05(a) to exempt sales of timber on land owned by the Wildlife Resources Commission from the service charge imposed on the receipt or transfer of State surplus property
Source: Bill Digest S.B. 1621 (05/18/2006).

ASSUMPTIONS AND METHODOLOGY:

Wildlife Resources Commission

The proposed land acquisition involves a total of 77,090 acres currently owned by the International Paper Corporation and located in four separate tracts. The total estimated cost for purchasing the lands is $80 million, and the Nature Conservancy has approached the State to fund the purchase in the following manner:

- $45 million from the Clean Water Management Trust Fund
- $10 million from the Natural Heritage Trust Fund
- $5 million from the Parks and Recreation Trust Fund
- $20 million from the Wildlife Resources Commission (WRC)

SB 1621 authorizes the Governor and the Council of State to issue special indebtedness in the amount of $20 million for Wildlife Resources Commission (WRC). WRC would purchase roughly 66,000 acres of International Paper lands through a land deal brokered by the Nature Conservancy. The purchase of all 77,090 acres would occur over three years.

The four tracts available for purchase include:

- 22,009 acres along the Roanoke River

- 20,749 acres of the Upper Tar River watershed
- 18,341 acres along Juniper Creek
- 15,464 acres along the Chowan River

The lands proposed for allocation to WRC would be lands that are contiguous or approximate to existing game lands in the WRC system.

Debt Service - The debt service schedule in Chart 1 was developed by the Office of State Treasurer based on the following assumptions:

- Certificates of participation would be issued
- All $20 million would be issued in Fall 2006
- 5.57% average interest rate
- 20-year term

Wildlife Resources Commission Debt Service			
Fiscal Year	**Principal**	**Interest**	**Debt Service Payment**
2006-07		575,000	575,000
2007-08	1,000,000	1,121,250	2,121,250
2008-09	1,000,000	1,063,750	2,063,750
2009-10	1,000,000	1,006,250	2,006,250
2010-11	1,000,000	948,750	1,948,750
2011-12	1,000,000	891,250	1,891,250
2012-13	1,000,000	833,750	1,833,750
2013-14	1,000,000	776,250	1,776,250
2014-15	1,000,000	718,750	1,718,750
2015-16	1,000,000	661,250	1,661,250
2016-17	1,000,000	603,750	1,603,750
2017-18	1,000,000	546,250	1,546,250
2018-19	1,000,000	488,750	1,488,750
2019-20	1,000,000	431,250	1,431,250
2020-21	1,000,000	373,750	1,373,750
2021-22	1,000,000	316,250	1,316,250
2022-23	1,000,000	258,750	1,258,750
2023-24	1,000,000	201,250	1,201,250
2024-25	1,000,000	143,750	1,143,750
2025-26	1,000,000	86,250	1,086,250
2026-27	1,000,000	28,750	1,028,750
TOTALS	**20,000,000**	**12,075,000**	**32,075,000**

Revenue Estimate – The WRC has proposed to pay for the debt service, operating, and capital costs from the sale of timber on land acquired through SB 1892 and other State lands allocated to WRC. Chart 2 presents the revenue estimate provided by WRC. The following assumptions were used to develop Chart 2:

- **IP Lands Projected Revenue** – Timber receipts estimate developed by WRC for the project's feasibility study

- **WRC Lands Projected Revenue** – Timber receipts estimate developed by WRC for other State game lands to be included in the feasibility study
- **Total Revised Revenue** – The sum of all projected receipts. These feasibility study estimates are revised based on WRC's experience with timber sales from FY 2000-01 to FY 2004-05. **The revenue estimate is revised up 1.5 times.**

Wildlife Resources Commission Revenue Projection			
Fiscal Year	**IP Lands Projected Revenue**	**WRC Lands Projected Revenue**	**Total Revised Revenue**
2006-07	$263,047	$1,779,315	$3,063,543
2007-08	$263,047	$1,172,861	$2,153,862
2008-09	$263,047	$1,267,998	$2,296,568
2009-10	$263,047	$1,092,790	$2,033,756
2010-11	$263,047	$929,610	$1,788,986
2011-12	$500,000	$928,915	$2,143,373
2012-13	$822,700	$796,418	$2,428,677
2013-14	$822,700	$706,553	$2,293,880
2014-15	$822,700	$809,188	$2,447,832
2015-16	$822,700	$818,609	$2,461,964
2016-17	$822,700	$690,121	$2,269,232
2017-18	$1,225,000	$832,315	$3,085,973
2018-19	$1,225,000	$784,000	$3,013,500
2019-20	$1,280,000	$993,715	$3,410,573
2020-21	$1,280,000	$700,565	$2,970,848
2021-22	$1,300,000	$641,000	$2,911,500
2022-23	$1,300,000	$787,315	$3,130,973
2023-24	$1,300,000	$598,000	$2,847,000
2024-25	$1,534,868	$944,715	$3,719,375
2025-26	$1,534,868	$711,565	$3,369,650
2026-27	$1,534,868	$851,000	$3,578,802
Totals	**$19,443,339**	**$18,836,568**	**$57,419,861**

Operating and Capital Improvements Costs - According to WRC, the purchase of this land will result in operating cost increases associated with managing the new game lands. WRC anticipates needing eight new positions to manage the new game lands and associated equipment. WRC also anticipates the construction of new depots on the lands to serve as workspace for the new personnel. Please see Chart 3 for a five year estimate of new personnel costs, equipment and capital costs. Operating and capital costs are proposed to be 100% receipt supported from the sale of timber on State game lands.

Wildlife Resources Commission Operating and Capital Expenditures		
Fiscal Year	**Personnel Costs**	**Capital / Equipment / Maintenance**
2006-07	$311,999	$263,200
2007-08	$323,543	$83,844
2008-09	$335,191	$85,521
2009-10	$347,257	$87,231
2010-11	$359,064	$88,976
Total	**$1,677,054**	**$608,772**

Cash Flow - WRC proposes to service the special indebtedness authorized in SB 1892 through receipts generated by the sale of timber on State game lands. WRC also proposes funding all operating expenditures and capital improvements through the same revenue sources. **When estimated receipts are compared with proposed expenditure impacts, WRC is projected to have insufficient timber receipts for fiscal years 2011-12 through 2016-17.** In each of those years, WRC would produce enough timber receipts to service the debt, but not cover all projected operating and capital expenditures. WRC would need to use other receipts available to the Commission or seek assistance from the General Fund. Please see Chart 4 for details.

Wildlife Resources Commission Cash Flow Analysis				
Fiscal Year	**Projected Revenue**	**Existing & New Operating & Capital Costs**	**Debt Service**	**Projected Cumulative Year-end Cash Balance**
2005-06		$631,192		**$3,109,096**
2006-07	$3,063,543	$1,215,859	$575,000	**$4,381,780**
2007-08	$2,153,862	$1,057,657	$2,121,250	**$3,356,736**
2008-09	$2,296,568	$1,080,735	$2,063,750	**$2,508,818**
2009-10	$2,033,756	$1,104,413	$2,006,250	**$1,431,910**
2010-11	$1,788,986	$1,128,013	$1,948,750	**$144,133**
2011-12	$2,143,373	$1,342,200	$1,891,250	**($945,945)**
2012-13	$2,428,677	$1,176,991	$1,833,750	**($582,064)**
2013-14	$2,293,880	$1,202,403	$1,776,250	**($684,774)**
2014-15	$2,447,832	$1,228,453	$1,718,750	**($499,371)**
2015-16	$2,461,964	$1,255,160	$1,661,250	**($454,447)**
2016-17	$2,269,232	$1,482,542	$1,603,750	**($817,061)**
2017-18	$3,085,973	$1,310,619	$1,546,250	**$229,103**
2018-19	$3,013,500	$1,339,411	$1,488,750	**$414,443**
2019-20	$3,410,573	$1,368,937	$1,431,250	**$1,024,828**
2020-21	$2,970,848	$1,399,221	$1,373,750	**$1,222,705**
2021-22	$2,911,500	$1,640,282	$1,316,250	**$1,177,673**
2022-23	$3,130,973	$1,462,144	$1,258,750	**$1,587,751**
2023-24	$2,847,000	$1,494,831	$1,201,250	**$1,738,670**
2024-25	$3,719,375	$1,528,365	$1,143,750	**$2,785,930**

Fiscal Year	Projected Revenue	Existing & New Operating & Capital Costs	Debt Service	Projected Cumulative Year-end Cash Balance
2025-26	$3,369,650	$1,562,772	$1,086,250	**$3,506,557**
2026-07	$3,578,802	$1,598,078	$1,028,750	**$4,458,532**
Total	**$57,419,861**	**$28,610,278**	**$32,075,000**	

Department of Juvenile Justice and Delinquency Prevention

The additional $7 million in debt authority will increase the debt service requirements for the General Fund. The special indebtedness model created by the Office of State Treasurer was used by the Fiscal Research Division to generate the following debt service schedule. These are the assumptions used in the model:

- $7 million in principal
- 20-year term to pay back the principal
- Issued in Fall 2006
- 5.75% average interest rate

Debt Service for Increased Special Indebtedness for the Youth Development Centers			
Fiscal Year	**Principal**	**Interest**	**Debt Service Payment**
2006-07		201,250	201,250
2007-08	350,000	392,438	742,438
2008-09	350,000	372,313	722,313
2009-10	350,000	352,188	702,188
2010-11	350,000	332,063	682,063
2011-12	350,000	311,938	661,938
2012-13	350,000	291,813	641,813
2013-14	350,000	271,688	621,688
2014-15	350,000	251,563	601,563
2015-16	350,000	231,438	581,438
2016-17	350,000	211,313	561,313
2017-18	350,000	191,188	541,188
2018-19	350,000	171,063	521,063
2019-20	350,000	150,938	500,938
2020-21	350,000	130,813	480,813
2021-22	350,000	110,688	460,688
2022-23	350,000	90,563	440,563
2023-24	350,000	70,438	420,438
2024-25	350,000	50,313	400,313
2025-26	350,000	30,188	380,188
2026-27	350,000	10,063	360,063
TOTALS	**$7,000,000**	**$4,226,250**	**$11,226,250**

This increased special indebtedness authority would not increase the scope of the capital projects. As a result, no increase in operating and maintenance costs is expected from this increase in debt authorization. **The only impact to the General Fund from this proposed bill is the increase debt service requirements.**

Department of Administration

Debt Service Requirements – The special indebtedness model created by the Office of State Treasurer was used by the Fiscal Research Division to generate the following debt service schedule. These are the assumptions used in the model:

- $20 million in principal
- 20-year term to pay back the principal
- Issued in Fall 2006
- 5.75% average interest rate

Department of Administration Debt Services			
Fiscal Year	**Principal**	**Interest**	**Debt Service Payment**
2006-07		$575,000	$575,000
2007-08	$1,000,000	$1,121,250	$2,121,250
2008-09	$1,000,000	$1,063,750	$2,063,750
2009-10	$1,000,000	$1,006,250	$2,006,250
2010-11	$1,000,000	$948,750	$1,948,750
2011-12	$1,000,000	$891,250	$1,891,250
2012-13	$1,000,000	$833,750	$1,833,750
2013-14	$1,000,000	$776,250	$1,776,250
2014-15	$1,000,000	$718,750	$1,718,750
2015-16	$1,000,000	$661,250	$1,661,250
2016-17	$1,000,000	$603,750	$1,603,750
2017-18	$1,000,000	$546,250	$1,546,250
2018-19	$1,000,000	$488,750	$1,488,750
2019-20	$1,000,000	$431,250	$1,431,250
2020-21	$1,000,000	$373,750	$1,373,750
2021-22	$1,000,000	$316,250	$1,316,250
2022-23	$1,000,000	$258,750	$1,258,750
2023-24	$1,000,000	$201,250	$1,201,250
2024-25	$1,000,000	$143,750	$1,143,750
2025-26	$1,000,000	$86,250	$1,086,250
2026-27	$1,000,000	$28,750	$1,028,750
TOTALS	**$20,000,000**	**$12,075,000**	**$32,075,000**

Cash Flow Analysis – Parking services are considered an enterprise and are fully funded by parking fees. The debt service requirements for this new parking deck are proposed to be fully funded by receipts generated by public parking operations. The following revenue assumptions were used to generate the cash flow analysis. The assumptions were provided by the Office of State Budget and Management and the Department of Administration.

- **Anticipates $500,000 in available annual cash balance from current parking operations.** Parking operations have reverted $200,000-$300,000 to the General Fund in each of the past five fiscal years. The Department of Administration is anticipating further efficiencies, including the elimination of maintenance costs for the Blount Street parking lots. The Administration is also close to retiring some existing parking debt.
- All $500,000 in anticipated cash balances would be applied to debt service for the new deck before being applied to other needs, such as increase operating costs.
- $500,000 in cash balances would be available beginning in FY 2006-07.
- Visitor rates will be increased in FY 2006-07 from $0.50 to $1.00 an hour and from a $4.00 to an $8.00 maximum for the day. **The rate increase is expected to generate an additional $400,000 per year.**
- Employee parking rates will be increased by $10.00 per month. Parking rates are currently $10.00 for uncovered spaces and $15.00 for covered spaces. The new rates would be $20.00 and $25.00 respectively. **The new rates are projected to generate $720,000 annually.**
- The new parking deck will not result in a net gain in parking spots, but the rate increase for parking charged to State employees will result in an increase in revenues for parking operations. **A $10.00 increase in employee parking rates for 1200 new spaces is anticipated to generate $216,000.**
- Rate increases would become effective in FY 2006-07.
- All rate increases are assumed to be static over the term of the indebtedness.
- The new parking deck would be operational by July 1, 2008.

Department of Administration Cash Flow Analysis

Fiscal Year	Anticipated Parking Receipts Cash Balance	Visitor Rate Increase	Employee Parking Increase	New Parking Deck Receipts	Total Availability	Debt Service	Balance
2006-07	$500,000	$400,000	$720,000	$0	$1,620,000	$575,000	**$1,045,000**
2007-08	$500,000	$400,000	$720,000	$0	$1,620,000	$2,121,250	**$543,750**
2008-09	$500,000	$400,000	$720,000	$216,000	$1,836,000	$2,063,750	**$316,000**
2009-10	$500,000	$400,000	$720,000	$216,000	$1,836,000	$2,006,250	**$145,750**
2010-11	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,948,750	**$33,000**
2011-12	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,891,250	**($22,250)**
2012-13	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,833,750	**$2,250**
2013-14	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,776,250	**$62,000**
2014-15	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,718,750	**$179,250**

Fiscal Year	Anticipated Parking Receipts Cash Balance	Visitor Rate Increase	Employee Parking Increase	New Parking Deck Receipts	Total Availability	Debt Service	Balance
2015-16	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,661,250	**$354,000**
2016-17	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,603,750	**$586,250**
2017-18	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,546,250	**$876,000**
2018-19	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,488,750	**$1,223,250**
2019-20	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,431,250	**$1,628,000**
2020-21	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,373,750	**$2,090,250**
2021-22	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,316,250	**$2,610,000**
2022-23	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,258,750	**$3,187,250**
2023-24	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,201,250	**$3,822,000**
2024-25	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,143,750	**$4,514,250**
2025-26	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,086,250	**$5,264,000**
2026-27	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,028,750	**$6,071,250**
TOTALS	**$10,500,000**	**$8,400,000**	**$15,120,000**	**$4,104,000**	**$38,124,000**	**$32,075,000**	

The revenue assumptions provided by the Office of State Budget and Management and the Department of Administration result in sufficient revenues to fund the debt service requirements of the new parking deck in each of the years of the analysis, except FY 2011-12. In that fiscal year, the cash flow analysis anticipates a $22,250 shortfall.

SOURCES OF DATA: Office of State Treasurer, Wildlife Resources Commission, the Nature Conservancy, Office of the Governor, Office of State Budget and Management, and the Department of Administration.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jim Klingler

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 11, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2170

Committee Substitute Favorable 6/20/06
Committee Substitute # 2 Favorable 7/6/06
Fourth Edition Engrossed 7/13/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H2170-PCS30630-LY-115

Short Title: Bill Lee Changes. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT.

The General Assembly of North Carolina enacts:

PART I. REPLACEMENT OF BILL LEE ACT

SECTION 1.1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3I.

"Tax Credits for Growing Businesses.

"**§ 105-129.80. Legislative findings.**

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging, and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and

State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static, and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Article that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Article is necessary to stimulate the economy and create new jobs in North Carolina, and this Article will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Article is to stimulate economic activity and to create new jobs within the State.

(6) The State is in need of a focused tax credit program that encourages and facilitates economic growth and development within the State.

(7) The resources of the State are not evenly distributed throughout the State and different communities have different abilities and needs in attracting and maintaining new and expanding business and industry.

"**§ 105-129.81. Definitions.**

The following definitions apply in this Article:

(1) Agrarian growth zone. – Defined in G.S. 143B-437.10.

(2) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.

(3) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

(4) Business property. – Tangible personal property that is used in a business and capitalized under the Code.

(5) Company headquarters. – A corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decision making for the business on an international, national, or multistate regional basis.

(6) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(7) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.

(8) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.

(9) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.

(10) Establishment. – Defined in 29 C.F.R. § 1904.46, as it existed on January 1, 2002.

(11) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(12) Hub. – Defined in G.S. 105-164.3.

(13) Information technology and services. – An industry in one of the following:

a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.

b. Software publishers industry group 5112 as defined by NAICS.

c. Computer systems design and related services industry group 5415 as defined by NAICS.

(14) Long-term unemployed worker. – An individual that has been totally unemployed for at least the preceding 26 consecutive weeks as evidenced by records maintained by the Employment Security Commission.

(15) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.

(16) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.

(17) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.

(18) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.

(19) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job

currently located in this State that is transferred to the business from a related member of the business.

(20) Overdue tax debt. – Defined in G.S. 105-243.1.

(21) Purchase. – Defined in section 179 of the Code.

(22) Related member. – Defined in G.S. 105-130.7A.

(23) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.

(24) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.

(25) Warehousing. – An industry in warehousing and storage subsector 493 as defined by NAICS.

(26) Wholesale trade. – An industry in wholesale trade sector 42 as defined by NAICS.

"**§ 105-129.82. Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, 2011.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 143B-437.08 used to define development tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

(1) Studying the distribution of tax incentives across new and expanding businesses and industries.

(2) Examining data on economic recruitment for the period from 2005 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of this Article.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by June 1, 2009.

"**§ 105-129.83. Eligibility; forfeiture.**

(a) Eligible Business. – A taxpayer is eligible for a credit under this Article only with respect to activities occurring at an establishment whose primary activity is listed in this subsection. The primary activity of an establishment is determined based on the establishment's principal product or group of products produced or distributed, or services rendered.

(1) Aircraft maintenance and repair.
(2) Air courier services hub.
(3) Company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
(4) Customer service call centers.
(5) Electronic shopping and mail order houses.
(6) Information technology and services.
(7) Manufacturing.
(8) Motorsports facility.
(9) Motorsports racing team.
(10) Research and development.
(11) Warehousing.
(12) Wholesale trade.

(b) Company Headquarters Eligibility. – A taxpayer is eligible for a credit under this Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 24-month period. A taxpayer that meets this job creation requirement is eligible for credits under this Article with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period during a three-year eligibility period does not qualify for any extended eligibility period. However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied.

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

(d) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit allowed under this Article, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires, and the taxpayer may not take any remaining installment or carryforward of the credit.

(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources shall notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.

(g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims the credit or an installment or

carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved.

(h) Expiration. – If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section at the establishment for which the credit was claimed, the credit expires. If, during the period that installments of a credit under this Article accrue, the number of jobs of an eligible company headquarters falls below the minimum number required under subsection (b) of this section, any credit associated with that company headquarters expires. When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.89 if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment under G.S. 105-129.89(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(j) Change in Ownership of Business. – As used in this subsection, the term 'business' means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any credit or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if either of the following conditions is met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, before it was acquired.

(3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, 'acquired' means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the

employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars ($100,000,000) and has the majority of its operations located in a development tier one area.

(k) Advisory Ruling. – A taxpayer may request in writing from the Secretary of Revenue specific advice regarding eligibility for a credit under this Article. G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon advice offered by any other State or local government official or employee acting in an official capacity regarding eligibility for a credit under this Article.

(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress zone or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress zone or agrarian growth zone designations in effect at that time.

"**§ 105-129.84. Tax election; cap; carryforwards; limitations.**

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article for the taxable year.

(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of business and

real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the five-year carryforward period rather than the 20-year carryforward period.

(d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer shall claim a credit under this Article within six months after the date set by statute for the filing of the return, including any extensions of that date.

"**§ 105-129.85. Fees and reports.**

(a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the Department of Revenue a fee of five hundred dollars ($500.00) for each type of credit the taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid. Fees collected under this section shall be credited to the General Fund.

(b) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

(1) The number and amount of credits generated and taken for each credit allowed in this Article.

(2) The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.

(4) The cost and development tier area of real property investment with respect to which credits were generated and to which credits were taken.

"**§ 105-129.86. Substantiation.**

(a) Records. – To claim a credit allowed by this Article, the taxpayer shall provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Documentation. – Each taxpayer shall provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information shall be in the form prescribed by the Secretary and shall be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for a credit and any carryforwards and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the establishment.

(2) The type of business with respect to which the credit is claimed and the average weekly wage at the establishment with respect to which the credit is claimed.

(3) Any other qualifying information related to a specific credit allowed under this Article.

"**§ 105-129.87. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress zone or an agrarian growth zone, the amount of the credit is increased by one thousand dollars ($1,000) per job. In addition, if a job located in an urban progress zone or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars ($2,000) per job.

Area Development Tier	Amount of Credit
Tier One	$12,500
Tier Two	5,000
Tier Three	750

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15

(c) Calculation. – A job is located in a county, an urban progress zone, or an agrarian growth zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires, and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit, the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. When a credit expires under this subsection, the taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

"**§ 105-129.88. Credit for investing in business property.**

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but

shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible machinery and equipment in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires, and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net

reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible business property that is in service. If in a single taxable year business property with respect to two or more credits in the same county are disposed of, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all the business property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or to an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to business property for which the taxpayer claims a credit under G.S. 105-129.9 or G.S. 105-129.9A.

"**§ 105-129.89. Credit for investment in real property.**

(a) Credit. – If a taxpayer that has purchased or leased real property in a development tier one area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.83 and of subsection (b) of this section are met. For the purposes of this section, property is located in a development tier one area if the area the property is located in was a development tier one area at the time the taxpayer made a written application for the determination required under subsection (b) of this section. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was

using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.81 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this section with respect to an establishment only if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least ten million dollars ($10,000,000) of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or fails to timely create the required number of new jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.83.

(c) Mixed Use Property. – If the taxpayer uses only part of the property in an eligible business, the amount of the credit allowed under this section is reduced by multiplying it by a fraction, the numerator of which is the square footage of the property used in an eligible business and the denominator of which is the total square footage of the property.

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires, and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (c) of this section. If, in one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200, the credit expires, and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) No Double Credit. – A taxpayer may not claim a credit under this section with respect to real property for which a credit is claimed under G.S. 105-129.12 or G.S. 105-129.12A."

SECTION 1.2. Part 2 of Article 10 of Chapter 143B is amended by adding three new sections to read:

"**§ 143B-437.08. Development tier designation.**

(a) Tiers Defined. – A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring assessed property value, the Secretary shall use the tax records prepared in each county. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, and any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties.

(f) Adjustment for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in three or more contiguous counties.

(2) At least one of the counties in which the industrial park is located is a development tier one area.

(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 250 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.

"**§ 143B-437.09. Urban progress zone designation.**

(a) Urban Progress Zone Defined. – An urban progress zone is an area comprised of one or more contiguous census tracts, census block groups, or both, or parts thereof, in the most recent federal decennial census that meets all conditions in this subsection.

(1) All land within the zone is located in whole within the primary corporate limits of a municipality with a population of more than 10,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) Every census tract and census block group that composes part of the zone meets at least one of the following conditions:

a. More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

b. At least fifty percent (50%) of the area of the portion that is within the primary corporate limits of the municipality is zoned as nonresidential and the census tract or census block group is adjacent to a census tract or block group of which at least twenty percent (20%) of the population is below the poverty level.

(3) The area of the zone zoned as nonresidential does not exceed thirty-five percent (35%) of the total area of the zone.

(b) Limitations. – No census tract or block group may be located in more than one urban progress zone. The total area of all zones within a municipality may not exceed fifteen percent (15%) of the total area of the municipality unless the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality. In the case of a municipality where the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality, the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section may be designated as an urban poverty zone.

(c) Designation. – Upon application of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that satisfies the conditions and limitations of subsections (a) and (b) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.

(2) A detailed description of the boundaries of the area that would comprise the zone.

(3) A zoning map for the municipality with the proposed zone clearly delineated upon it.

(4) A certification regarding the size of the proposed zone and the areas within the proposed zone zoned as nonresidential.
(5) Detailed census information on the municipality and the proposed zone.
(6) A resolution of the governing body of the municipality requesting the designation of the area as an urban progress zone.
(7) Any other material required by the Secretary of Commerce.

(d) Parcel of Property Partially in Urban Progress Zone. – For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:
(1) At least fifty percent (50%) of the parcel is located within the zone.
(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary.

"**§ 143B-437.10. Agrarian growth zone designation.**

(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census that meets all conditions in this subsection. A county may have no more than one agrarian growth zone.
(1) All land within the zone is located in whole within a county that has no municipality with a population in excess of 10,000.
(2) Every census tract and census block group that composes part of the zone has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.
(3) The area of the zone less the smallest census tract included in the zone does not exceed five percent (5%) of the total area of the county in which the zone is located.

(b) Designation. – Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is an agrarian growth zone that satisfies the conditions and limitations of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.
(1) A map showing the census tracts and block groups that would comprise the zone.
(2) A detailed description of the boundaries of the area that would comprise the zone.
(3) A certification regarding the size of the proposed zone.
(4) Detailed census information on the county and the proposed zone.
(5) A resolution of the board of county commissioners requesting the designation of the area as an agrarian growth zone.
(6) Any other material required by the Secretary of Commerce.

(c) Parcel of Property Partially in Agrarian Growth Zone. – For the purposes of this section, a parcel of property that is located partially within an agrarian growth zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.

(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.

(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

SECTION 1.3. G.S. 105-129.2A reads as rewritten:

"**§ 105-129.2A. Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2008.~~2007.

(a1) Sunset for Interstate Air Couriers. – Notwithstanding subsection (a) of this section, in the case of an interstate air courier that enters into a real estate lease on or before January 1, 2006, with an airport authority that provides for the lease of at least 100 acres of real property with a lease term in excess of 15 years, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, 2006, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(a3) Sunset for Certain Taxpayers Located in Development Zones. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that satisfies all of the conditions of this subsection, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(1) Before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce describing a proposed new or expanding project and specifying the amount to be invested in real property and machinery and equipment, the number of new jobs to be created, and a proposed timetable for making the investment and creating the jobs.

(2) Before January 1, 2006, the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase, lease, or construct and place in service in an eligible business at a location within a development zone within a three-year period at least ten million dollars ($10,000,000) of real property and machinery and equipment and that the taxpayer will create at least 300 new jobs at the location within a three-year period beginning when the property is first placed in service in an eligible business.

(3) Before January 1, 2006, the taxpayer places at least four million dollars ($4,000,000) of real property and machinery and equipment in service at the location and creates at least 20 new jobs at the location.

(a4) Sunset for Taxpayers That Sign a Letter of Commitment. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that signs a letter of commitment

with the Department of Commerce on or before December 31, 2006, stating the taxpayer's intent to create new jobs or make new investments with respect to machinery and equipment, central office or aircraft facility property, or substantial investments in other real property at a specific site in this State, this Article is repealed effective for business activities that occur on or after January 1, 2008. If a taxpayer elects to take any credit under the provisions of this subsection for activities occurring in the 2007 taxable year, the taxpayer may not take any credit under Article 31 of this Chapter with respect to the same establishment for activities occurring in the 2007 taxable year.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

(1) Study of the distribution of tax incentives across new and expanding industries.

(2) Examination of data on economic recruitment for the period from 1994 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by April 1, 2001."

SECTION 1.4. The Department of Commerce shall, in consultation with the North Carolina Rural Center, Inc. and lower-tiered counties, develop additional strategies to enhance economic growth and development in economically distressed areas. The Department shall report on the results of this study to the Joint Legislation Economic Development Oversight Committee by January 1, 2007. For the purposes of this section, "economically distressed areas" means enterprise tier one areas as defined in G.S. 105-129.3.

SECTION 1.5. Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. The remainder of this part is effective when it becomes law.

PART II. CONFORMING CHANGES

SECTION 2.1. G.S. 105-129.55(a) reads as rewritten:

"(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this subsection. Only one credit is allowed under this subsection with respect to the same expenses. If more than one subdivision of this subsection applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under subdivision (2) of this subsection and the remainder qualifies under subdivision (3) of this subsection, the applicable percentages apply separately to each part of the expenses.

(1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three percent (3%).

(2) Low-tier research. – For expenses with respect to research performed in ~~an enterprise tier one, two, or three~~a development tier one area, the applicable percentage is three percent (3%).

(3) Other research. – For expenses not covered under subdivision (1) or (2) of this subsection, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	$50 million	1%
$50 million	$200 million	2%
$200 million	–	3%"

SECTION 2.2. G.S. 105-164.14(h) reads as rewritten:

"(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or a development tier one area, as defined in G.S. 143B-437.08. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or if it is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area, as defined in G.S. 143B-437.08.

(3) Machinery and equipment. – For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. ~~105-129.4(a).~~105-129.4(a) or G.S. 105-129.83(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3,~~105-129.3, or a development tier one area, as defined in G.S. 143B-437.08, capitalizes them for tax purposes under the Code, and does not lease them to another party."

SECTION 2.3. G.S. 105-164.14(j)(2) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

...

(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in ~~an enterprise tier one, two, or three~~ a development tier one area as defined in ~~G.S. 105-129.3,~~G.S. 143B-437.08 the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term 'facility' has the same meaning as under G.S. 105-129.61."

SECTION 2.4. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local

government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars ($5,000) per new job created up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in ~~an enterprise tier one area as defined in G.S. 105-129.3.~~a county that has one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.

(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b).

(a1) Definitions. – The following definitions apply in this section:

(1) Air courier services. – ~~A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages, except by the United States Postal Service.~~Defined in G.S. 105-129.81.

~~(2) Central administrative office. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(2a) Company headquarters. – Defined in G.S. 105-129.81.

~~(3) Data processing. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(4) Economically distressed county. – A county that has one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.~~designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.~~

(5) Eligible industry. – A ~~central administrative office~~company headquarters or a person engaged in the business of air courier services, ~~data processing,~~information technology and services, manufacturing, or warehousing and wholesale trade.

(6) Information technology and services. – Defined in G.S. 105-129.81.

(7) Major economic dislocation. – The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. – Defined in ~~the North American Industry Classification System adopted by the United States Office of Budget and Management.~~G.S. 105-129.81.

(9) Reserved.

(10) ~~Warehousing and wholesale trade. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~Warehousing. – Defined in G.S. 105-129.81.

(11) Wholesale trade. – Defined in G.S. 105-129.81.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of ~~enterprise tier one, two, and three areas, as defined in G.S. 105-129.3,~~the counties that have one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial

Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. – The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

SECTION 2.5. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

(1) No local match is required for grants awarded for projects located in ~~enterprise tier one areas as defined in G.S. 105-129.3.~~counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(2) To the extent practicable, priority consideration for grants is given to projects located in ~~enterprise tier one areas as defined in G.S. 105-129.3~~counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied or in ~~development~~ urban progress zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated ~~a development~~an urban progress zone under G.S. ~~105-129.3A,~~143B-437.09, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish ~~a development~~an urban progress zone committee to oversee the

strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

SECTION 2.6. G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a) and reads as rewritten:

"(4a) ~~Enterprise~~ Development tier. – The classification assigned to an area pursuant to G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.7. G.S. 143B-437.53(a) reads as rewritten:

"(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one ~~enterprise~~ development tier area, the location with the highest ~~enterprise~~ development tier area designation determines the minimum number of eligible positions that must be created.

~~Enterprise~~ Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	~~10~~20
Tier Three	~~10~~20
~~Tier Four~~	~~20~~
~~Tier Five~~	~~20~~"

SECTION 2.8. G.S. 143B-437.55(c)(3) reads as rewritten:

"(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

...

(3) The number and ~~enterprise~~ development tier area of eligible positions created by projects with respect to which grants were awarded."

SECTION 2.9. G.S. 143B-437.56(d) reads as rewritten:

"(d) The percentage established in the agreement shall be reduced by ~~one-fourth~~fifteen percent (15%) for any eligible position that is located in a development tier two area and twenty-five percent (25%) for any eligible position that is located in ~~an enterprise~~ a development tier ~~four or five~~three area."

SECTION 2.10. G.S. 158-7.3(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will

occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in ~~an enterprise~~ a development tier one area, as defined in G.S. ~~105-129.3.~~143B-437.08 and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

(2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.

(3) Unit or unit of local government. – A county, city, town, or incorporated village."

SECTION 2.11. G.S. 19A-64(c) reads as rewritten:

"(c) Distribution. – The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within ~~enterprise tier one, two, and three~~development tier one areas as defined in G.S. ~~105-129.3.~~143B-437.08. The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in ~~enterprise tier four and five~~development tier two and three areas as defined in G.S. ~~105-129.3.~~143B-437.08.

(2) Among the eligible counties and cities in ~~enterprise tier one, two, and three~~development tier one areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier one, two, or three~~development tier one areas.

(3) Among the eligible counties and cities in ~~enterprise tier four and five~~development tier two and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the

preceding fiscal year by all of the eligible applicants in ~~enterprise tier four and five~~development tier two and three areas.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for ~~enterprise tier one, two, or three~~development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in ~~enterprise tier four and five~~development tier two and three areas."

SECTION 2.12. G.S. 106-744(c2) reads as rewritten:

"(c2) A county that is ~~an enterprise tier four county or an enterprise tier five~~a development tier two or three county, as these tiers are defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is ~~an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are~~a development tier one county, as defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds."

SECTION 2.13. G.S. 113A-252 reads as rewritten:

"**§ 113A-252. Definitions.**

The following definitions apply in this Article:

(1) Council. – The advisory council for the Clean Water Management Trust Fund.

(2) Economically distressed local government unit. – An economically distressed county, as defined in ~~G.S. 105-129.3.~~G.S. 143B-437.01, or a local government unit located in that county.

(3) Fund. – The Clean Water Management Trust Fund created pursuant to this Article.

(4) Land. – Real property and any interest in, easement in, or restriction on real property.

(4a) Local government unit. – Defined in G.S. 159G-20.

(4b) Stormwater quality project. – Defined in G.S. 159G-20.

(5) Trustees. – The trustees of the Clean Water Management Trust Fund.

(6) Wastewater collection system. – Defined in G.S. 159G-20.

(7) Wastewater treatment works. – Defined in G.S. 159G-20."

SECTION 2.14. G.S. 146-22.3(d) reads as rewritten:

"(d) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.15. G.S. 146-22.4(c) reads as rewritten:

"(c) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.16. G.S. 146-22.5(b) reads as rewritten:

"(b) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.17. G.S. 153A-15.1(e) reads as rewritten:

"(e) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.18. G.S. 160A-425.1(c) reads as rewritten:

"(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.19. G.S. 160A-426(c) reads as rewritten:

"(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.20. G.S. 105-129.51(a) reads as rewritten:

"(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~105-129.83(c), (d), (e), and (f) relating to wage standard, health insurance, environmental impact, and safety and health programs, respectively."

SECTION 2.21. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(24) To furnish the Department of Commerce and the Employment Security Commission a copy of the qualifying information required in G.S. ~~105-129.7(b).~~105-129.7(b) or G.S. 105-129.86(b).

...

(27) To publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-129.85, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.

...

(36) To furnish the Department of Commerce with the information needed to complete the studies required under G.S. 105-129.2A and G.S. 105-129.82."

SECTION 2.22. G.S. 105-129.70, as enacted by S.L. 2006-40, reads as rewritten:

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in section 47 of the Code.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(3a) Development tier area. – Defined in G.S. 143B-437.08.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed three million dollars ($3,000,000) for the site as a whole.

~~(6) Enterprise tier area. – Defined in G.S. 105-129.3.~~

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36."

SECTION 2.23. G.S. 105-129.171(a), as enacted by S.L. 2006-40, reads as rewritten:

"(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For an eligible site located in ~~an enterprise tier one, two, or three~~a development tier one or two area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For an eligible site located in ~~an enterprise tier four or five~~a development tier three area, determined as of the date of certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures."

SECTION 2.24. G.S. 105-129.72(a), as enacted by S.L. 2006-40, reads as rewritten:

"(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. For an eligible site located in ~~an enterprise tier one, two, or three~~a development tier one or two area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in ~~an enterprise tier four or five~~a development tier three area."

SECTION 2.25.(a) G.S. 105-164.3(8e), as enacted by S.L. 2006-66, reads as rewritten:

"(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in ~~Internet~~ "Internet service providers and

Web search ~~portals~~ portals" industry 51811, as defined by NAICS.

b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three or a development tier one or two area pursuant to ~~G.S. 105-129.3.~~G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility."

SECTION 2.25.(b) G.S. 105-164.13(55), as enacted by S.L. 2006-66, reads as rewritten:

"(55) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet data center, then the exemption provided for ~~the~~ such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an

eligible Internet data center, then the exemption provided for ~~the~~ such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.1(i). If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 2.25.(c) Section 24.17(c) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.17.(c)** ~~This~~ Subsection (b) of this section becomes effective October 1, 2006, and applies to sales made on or after that date. The remainder of this section is effective when it becomes law."

SECTION 2.26. G.S. 105-164.3(23a), as enacted by S.L. 2006-66, reads as rewritten:

"(23a) NAICS. – ~~The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.~~ Defined in G.S. 105-129.81."

SECTION 2.27. Section 2.25(c) of this part and the changes made to G.S. 105-164.3(8e)a. by Section 2.25(a) of this part are effective when they become law. Subsection 2.25(b) of this part becomes effective October 1, 2006. The remainder of this part becomes effective January 1, 2007.

PART III. EFFECTIVE DATES

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2170

Committee Substitute Favorable 6/20/06
Committee Substitute # 2 Favorable 7/6/06
Fourth Edition Engrossed 7/13/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H2170-PCS30630-LY-115

Short Title: Bill Lee Changes. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT.

The General Assembly of North Carolina enacts:

PART I. REPLACEMENT OF BILL LEE ACT

SECTION 1.1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3I.

"Tax Credits for Growing Businesses.

"**§ 105-129.80. Legislative findings.**

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging, and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and

State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static, and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Article that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Article is necessary to stimulate the economy and create new jobs in North Carolina, and this Article will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Article is to stimulate economic activity and to create new jobs within the State.

(6) The State is in need of a focused tax credit program that encourages and facilitates economic growth and development within the State.

(7) The resources of the State are not evenly distributed throughout the State and different communities have different abilities and needs in attracting and maintaining new and expanding business and industry.

"**§ 105-129.81. Definitions.**

The following definitions apply in this Article:

(1) Agrarian growth zone. – Defined in G.S. 143B-437.10.

(2) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.

(3) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

(4) Business property. – Tangible personal property that is used in a business and capitalized under the Code.

(5) Company headquarters. – A corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decision making for the business on an international, national, or multistate regional basis.

(6) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(7) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.

(8) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.

(9) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.

(10) Establishment. – Defined in 29 C.F.R. § 1904.46, as it existed on January 1, 2002.

(11) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(12) Hub. – Defined in G.S. 105-164.3.

(13) Information technology and services. – An industry in one of the following:

a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.

b. Software publishers industry group 5112 as defined by NAICS.

c. Computer systems design and related services industry group 5415 as defined by NAICS.

(14) Long-term unemployed worker. – An individual that has been totally unemployed for at least the preceding 26 consecutive weeks as evidenced by records maintained by the Employment Security Commission.

(15) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.

(16) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.

(17) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.

(18) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.

(19) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job

currently located in this State that is transferred to the business from a related member of the business.

(20) Overdue tax debt. – Defined in G.S. 105-243.1.

(21) Purchase. – Defined in section 179 of the Code.

(22) Related member. – Defined in G.S. 105-130.7A.

(23) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.

(24) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.

(25) Warehousing. – An industry in warehousing and storage subsector 493 as defined by NAICS.

(26) Wholesale trade. – An industry in wholesale trade sector 42 as defined by NAICS.

"**§ 105-129.82. Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, 2011.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 143B-437.08 used to define development tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

(1) Studying the distribution of tax incentives across new and expanding businesses and industries.

(2) Examining data on economic recruitment for the period from 2005 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of this Article.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by June 1, 2009.

"**§ 105-129.83. Eligibility; forfeiture.**

(a) Eligible Business. – A taxpayer is eligible for a credit under this Article only with respect to activities occurring at an establishment whose primary activity is listed in this subsection. The primary activity of an establishment is determined based on the establishment's principal product or group of products produced or distributed, or services rendered.

(1) Aircraft maintenance and repair.
(2) Air courier services hub.
(3) Company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
(4) Customer service call centers.
(5) Electronic shopping and mail order houses.
(6) Information technology and services.
(7) Manufacturing.
(8) Motorsports facility.
(9) Motorsports racing team.
(10) Research and development.
(11) Warehousing.
(12) Wholesale trade.

(b) Company Headquarters Eligibility. – A taxpayer is eligible for a credit under this Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 24-month period. A taxpayer that meets this job creation requirement is eligible for credits under this Article with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period during a three-year eligibility period does not qualify for any extended eligibility period. However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied.

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

(d) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit allowed under this Article, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires, and the taxpayer may not take any remaining installment or carryforward of the credit.

(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources shall notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.

(g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims the credit or an installment or

carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved.

(h) Expiration. – If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section at the establishment for which the credit was claimed, the credit expires. If, during the period that installments of a credit under this Article accrue, the number of jobs of an eligible company headquarters falls below the minimum number required under subsection (b) of this section, any credit associated with that company headquarters expires. When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.89 if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment under G.S. 105-129.89(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(j) Change in Ownership of Business. – As used in this subsection, the term 'business' means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any credit or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if either of the following conditions is met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, before it was acquired.

(3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, 'acquired' means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the

employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars ($100,000,000) and has the majority of its operations located in a development tier one area.

(k) Advisory Ruling. – A taxpayer may request in writing from the Secretary of Revenue specific advice regarding eligibility for a credit under this Article. G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon advice offered by any other State or local government official or employee acting in an official capacity regarding eligibility for a credit under this Article.

(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress zone or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress zone or agrarian growth zone designations in effect at that time.

"**§ 105-129.84. Tax election; cap; carryforwards; limitations.**

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article for the taxable year.

(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of business and

real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the five-year carryforward period rather than the 20-year carryforward period.

(d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer shall claim a credit under this Article within six months after the date set by statute for the filing of the return, including any extensions of that date.

"**§ 105-129.85. Fees and reports.**

(a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the Department of Revenue a fee of five hundred dollars ($500.00) for each type of credit the taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid. Fees collected under this section shall be credited to the General Fund.

(b) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

(1) The number and amount of credits generated and taken for each credit allowed in this Article.

(2) The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.

(4) The cost and development tier area of real property investment with respect to which credits were generated and to which credits were taken.

"**§ 105-129.86. Substantiation.**

(a) Records. – To claim a credit allowed by this Article, the taxpayer shall provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Documentation. – Each taxpayer shall provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information shall be in the form prescribed by the Secretary and shall be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for a credit and any carryforwards and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the establishment.

(2) The type of business with respect to which the credit is claimed and the average weekly wage at the establishment with respect to which the credit is claimed.

(3) Any other qualifying information related to a specific credit allowed under this Article.

"**§ 105-129.87. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress zone or an agrarian growth zone, the amount of the credit is increased by one thousand dollars ($1,000) per job. In addition, if a job located in an urban progress zone or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars ($2,000) per job.

Area Development Tier	Amount of Credit
Tier One	$12,500
Tier Two	5,000
Tier Three	750

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15

(c) Calculation. – A job is located in a county, an urban progress zone, or an agrarian growth zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires, and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit, the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. When a credit expires under this subsection, the taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

"**§ 105-129.88. Credit for investing in business property.**

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but

shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible machinery and equipment in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires, and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net

reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible business property that is in service. If in a single taxable year business property with respect to two or more credits in the same county are disposed of, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all the business property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or to an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to business property for which the taxpayer claims a credit under G.S. 105-129.9 or G.S. 105-129.9A.

"**§ 105-129.89. Credit for investment in real property.**

(a) Credit. – If a taxpayer that has purchased or leased real property in a development tier one area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.83 and of subsection (b) of this section are met. For the purposes of this section, property is located in a development tier one area if the area the property is located in was a development tier one area at the time the taxpayer made a written application for the determination required under subsection (b) of this section. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was

using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.81 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this section with respect to an establishment only if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least ten million dollars ($10,000,000) of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or fails to timely create the required number of new jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.83.

(c) Mixed Use Property. – If the taxpayer uses only part of the property in an eligible business, the amount of the credit allowed under this section is reduced by multiplying it by a fraction, the numerator of which is the square footage of the property used in an eligible business and the denominator of which is the total square footage of the property.

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires, and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (c) of this section. If, in one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200, the credit expires, and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) No Double Credit. – A taxpayer may not claim a credit under this section with respect to real property for which a credit is claimed under G.S. 105-129.12 or G.S. 105-129.12A."

SECTION 1.2. Part 2 of Article 10 of Chapter 143B is amended by adding three new sections to read:

"**§ 143B-437.08. Development tier designation.**

(a) Tiers Defined. – A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring assessed property value, the Secretary shall use the tax records prepared in each county. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, and any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties.

(f) Adjustment for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in three or more contiguous counties.

(2) At least one of the counties in which the industrial park is located is a development tier one area.

(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 250 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.

"**§ 143B-437.09. Urban progress zone designation.**

(a) Urban Progress Zone Defined. – An urban progress zone is an area comprised of one or more contiguous census tracts, census block groups, or both, or parts thereof, in the most recent federal decennial census that meets all conditions in this subsection.

(1) All land within the zone is located in whole within the primary corporate limits of a municipality with a population of more than 10,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) Every census tract and census block group that composes part of the zone meets at least one of the following conditions:

a. More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

b. At least fifty percent (50%) of the area of the portion that is within the primary corporate limits of the municipality is zoned as nonresidential and the census tract or census block group is adjacent to a census tract or block group of which at least twenty percent (20%) of the population is below the poverty level.

(3) The area of the zone zoned as nonresidential does not exceed thirty-five percent (35%) of the total area of the zone.

(b) Limitations. – No census tract or block group may be located in more than one urban progress zone. The total area of all zones within a municipality may not exceed fifteen percent (15%) of the total area of the municipality unless the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality. In the case of a municipality where the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality, the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section may be designated as an urban poverty zone.

(c) Designation. – Upon application of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that satisfies the conditions and limitations of subsections (a) and (b) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.

(2) A detailed description of the boundaries of the area that would comprise the zone.

(3) A zoning map for the municipality with the proposed zone clearly delineated upon it.

(4) A certification regarding the size of the proposed zone and the areas within the proposed zone zoned as nonresidential.
(5) Detailed census information on the municipality and the proposed zone.
(6) A resolution of the governing body of the municipality requesting the designation of the area as an urban progress zone.
(7) Any other material required by the Secretary of Commerce.

(d) Parcel of Property Partially in Urban Progress Zone. – For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:
(1) At least fifty percent (50%) of the parcel is located within the zone.
(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary.

"**§ 143B-437.10. Agrarian growth zone designation.**

(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census that meets all conditions in this subsection. A county may have no more than one agrarian growth zone.
(1) All land within the zone is located in whole within a county that has no municipality with a population in excess of 10,000.
(2) Every census tract and census block group that composes part of the zone has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.
(3) The area of the zone less the smallest census tract included in the zone does not exceed five percent (5%) of the total area of the county in which the zone is located.

(b) Designation. – Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is an agrarian growth zone that satisfies the conditions and limitations of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.
(1) A map showing the census tracts and block groups that would comprise the zone.
(2) A detailed description of the boundaries of the area that would comprise the zone.
(3) A certification regarding the size of the proposed zone.
(4) Detailed census information on the county and the proposed zone.
(5) A resolution of the board of county commissioners requesting the designation of the area as an agrarian growth zone.
(6) Any other material required by the Secretary of Commerce.

(c) Parcel of Property Partially in Agrarian Growth Zone. – For the purposes of this section, a parcel of property that is located partially within an agrarian growth zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.

(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.

(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

SECTION 1.3. G.S. 105-129.2A reads as rewritten:

"**§ 105-129.2A. Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2008.~~2007.

(a1) Sunset for Interstate Air Couriers. – Notwithstanding subsection (a) of this section, in the case of an interstate air courier that enters into a real estate lease on or before January 1, 2006, with an airport authority that provides for the lease of at least 100 acres of real property with a lease term in excess of 15 years, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, 2006, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(a3) Sunset for Certain Taxpayers Located in Development Zones. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that satisfies all of the conditions of this subsection, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(1) Before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce describing a proposed new or expanding project and specifying the amount to be invested in real property and machinery and equipment, the number of new jobs to be created, and a proposed timetable for making the investment and creating the jobs.

(2) Before January 1, 2006, the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase, lease, or construct and place in service in an eligible business at a location within a development zone within a three-year period at least ten million dollars ($10,000,000) of real property and machinery and equipment and that the taxpayer will create at least 300 new jobs at the location within a three-year period beginning when the property is first placed in service in an eligible business.

(3) Before January 1, 2006, the taxpayer places at least four million dollars ($4,000,000) of real property and machinery and equipment in service at the location and creates at least 20 new jobs at the location.

(a4) Sunset for Taxpayers That Sign a Letter of Commitment. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that signs a letter of commitment

with the Department of Commerce on or before December 31, 2006, stating the taxpayer's intent to create new jobs or make new investments with respect to machinery and equipment, central office or aircraft facility property, or substantial investments in other real property at a specific site in this State, this Article is repealed effective for business activities that occur on or after January 1, 2008. If a taxpayer elects to take any credit under the provisions of this subsection for activities occurring in the 2007 taxable year, the taxpayer may not take any credit under Article 3I of this Chapter with respect to the same establishment for activities occurring in the 2007 taxable year.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

(1) Study of the distribution of tax incentives across new and expanding industries.

(2) Examination of data on economic recruitment for the period from 1994 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by April 1, 2001."

SECTION 1.4. The Department of Commerce shall, in consultation with the North Carolina Rural Center, Inc. and lower-tiered counties, develop additional strategies to enhance economic growth and development in economically distressed areas. The Department shall report on the results of this study to the Joint Legislation Economic Development Oversight Committee by January 1, 2007. For the purposes of this section, "economically distressed areas" means enterprise tier one areas as defined in G.S. 105-129.3.

SECTION 1.5. Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. The remainder of this part is effective when it becomes law.

PART II. CONFORMING CHANGES

SECTION 2.1. G.S. 105-129.55(a) reads as rewritten:

"(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this subsection. Only one credit is allowed under this subsection with respect to the same expenses. If more than one subdivision of this subsection applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under subdivision (2) of this subsection and the remainder qualifies under subdivision (3) of this subsection, the applicable percentages apply separately to each part of the expenses.

(1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three percent (3%).

(2) Low-tier research. – For expenses with respect to research performed in ~~an enterprise tier one, two, or three~~a development tier one area, the applicable percentage is three percent (3%).

(3) Other research. – For expenses not covered under subdivision (1) or (2) of this subsection, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	$50 million	1%
$50 million	$200 million	2%
$200 million	–	3%"

SECTION 2.2. G.S. 105-164.14(h) reads as rewritten:

"(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or a development tier one area, as defined in G.S. 143B-437.08. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or if it is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area, as defined in G.S. 143B-437.08.

(3) Machinery and equipment. – For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. ~~105-129.4(a).~~105-129.4(a) or G.S. 105-129.83(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3;~~105-129.3, or a development tier one area, as defined in G.S. 143B-437.08, capitalizes them for tax purposes under the Code, and does not lease them to another party."

SECTION 2.3. G.S. 105-164.14(j)(2) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

...

(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in ~~an enterprise tier one, two, or three~~ a development tier one area as defined in ~~G.S. 105-129.3,~~G.S. 143B-437.08 the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term 'facility' has the same meaning as under G.S. 105-129.61."

SECTION 2.4. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local

government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars ($5,000) per new job created up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in ~~an enterprise tier one area as defined in G.S. 105-129.3.~~a county that has one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.

(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b).

(a1) Definitions. – The following definitions apply in this section:

(1) Air courier services. – ~~A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages, except by the United States Postal Service.~~Defined in G.S. 105-129.81.

~~(2) Central administrative office. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(2a) Company headquarters. – Defined in G.S. 105-129.81.

~~(3) Data processing. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(4) Economically distressed county. – A county that has one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.~~designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.~~

(5) Eligible industry. – A ~~central administrative office~~company headquarters or a person engaged in the business of air courier services, ~~data processing,~~information technology and services, manufacturing, or warehousing and wholesale trade.

(6) Information technology and services. – Defined in G.S. 105-129.81.

(7) Major economic dislocation. – The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. – Defined in ~~the North American Industry Classification System adopted by the United States Office of Budget and Management.~~G.S. 105-129.81.

(9) Reserved.

(10) ~~Warehousing and wholesale trade. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~Warehousing. – Defined in G.S. 105-129.81.

(11) Wholesale trade. – Defined in G.S. 105-129.81.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of ~~enterprise tier one, two, and three areas, as defined in G.S. 105-129.3,~~the counties that have one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial

Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. – The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

SECTION 2.5. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

(1) No local match is required for grants awarded for projects located in ~~enterprise tier one areas as defined in G.S. 105-129.3.~~counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(2) To the extent practicable, priority consideration for grants is given to projects located in ~~enterprise tier one areas as defined in G.S. 105-129.3~~counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied or in ~~development~~ urban progress zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated ~~a development~~an urban progress zone under G.S. ~~105-129.3A,~~143B-437.09, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish ~~a development~~an urban progress zone committee to oversee the

strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

SECTION 2.6. G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a) and reads as rewritten:

"(4a) ~~Enterprise~~ Development tier. – The classification assigned to an area pursuant to G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.7. G.S. 143B-437.53(a) reads as rewritten:

"(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one ~~enterprise~~ development tier area, the location with the highest ~~enterprise~~ development tier area designation determines the minimum number of eligible positions that must be created.

~~Enterprise~~ Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	~~10~~20
Tier Three	~~10~~20
~~Tier Four~~	~~20~~
~~Tier Five~~	~~20~~"

SECTION 2.8. G.S. 143B-437.55(c)(3) reads as rewritten:

"(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

...

(3) The number and ~~enterprise~~ development tier area of eligible positions created by projects with respect to which grants were awarded."

SECTION 2.9. G.S. 143B-437.56(d) reads as rewritten:

"(d) The percentage established in the agreement shall be reduced by ~~one-fourth~~fifteen percent (15%) for any eligible position that is located in a development tier two area and twenty-five percent (25%) for any eligible position that is located in ~~an enterprise~~ a development tier ~~four or five~~three area."

SECTION 2.10. G.S. 158-7.3(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will

occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in ~~an enterprise~~ a development tier one area, as defined in G.S. ~~105-129.3~~,143B-437.08 and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

(2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.

(3) Unit or unit of local government. – A county, city, town, or incorporated village."

SECTION 2.11. G.S. 19A-64(c) reads as rewritten:

"(c) Distribution. – The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within ~~enterprise tier one, two, and three~~development tier one areas as defined in G.S. ~~105-129.3.~~143B-437.08. The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in ~~enterprise tier four and five~~development tier two and three areas as defined in G.S. ~~105-129.3.~~143B-437.08.

(2) Among the eligible counties and cities in ~~enterprise tier one, two, and three~~development tier one areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier one, two, or three~~development tier one areas.

(3) Among the eligible counties and cities in ~~enterprise tier four and five~~development tier two and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the

preceding fiscal year by all of the eligible applicants in ~~enterprise tier four and five~~development tier two and three areas.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for ~~enterprise tier one, two, or three~~development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in ~~enterprise tier four and five~~development tier two and three areas."

SECTION 2.12. G.S. 106-744(c2) reads as rewritten:

"(c2) A county that is ~~an enterprise tier four county or an enterprise tier five~~a development tier two or three county, as these tiers are defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is ~~an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are~~a development tier one county, as defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds."

SECTION 2.13. G.S. 113A-252 reads as rewritten:

"**§ 113A-252. Definitions.**

The following definitions apply in this Article:

(1) Council. – The advisory council for the Clean Water Management Trust Fund.

(2) Economically distressed local government unit. – An economically distressed county, as defined in ~~G.S. 105-129.3,~~G.S. 143B-437.01, or a local government unit located in that county.

(3) Fund. – The Clean Water Management Trust Fund created pursuant to this Article.

(4) Land. – Real property and any interest in, easement in, or restriction on real property.

(4a) Local government unit. – Defined in G.S. 159G-20.

(4b) Stormwater quality project. – Defined in G.S. 159G-20.

(5) Trustees. – The trustees of the Clean Water Management Trust Fund.

(6) Wastewater collection system. – Defined in G.S. 159G-20.

(7) Wastewater treatment works. – Defined in G.S. 159G-20."

SECTION 2.14. G.S. 146-22.3(d) reads as rewritten:

"(d) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.15. G.S. 146-22.4(c) reads as rewritten:

"(c) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.16. G.S. 146-22.5(b) reads as rewritten:

"(b) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.17. G.S. 153A-15.1(e) reads as rewritten:

"(e) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.18. G.S. 160A-425.1(c) reads as rewritten:

"(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.19. G.S. 160A-426(c) reads as rewritten:

"(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.20. G.S. 105-129.51(a) reads as rewritten:

"(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~105-129.83(c), (d), (e), and (f) relating to wage standard, health insurance, environmental impact, and safety and health programs, respectively."

SECTION 2.21. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(24) To furnish the Department of Commerce and the Employment Security Commission a copy of the qualifying information required in G.S. ~~105-129.7(b).~~105-129.7(b) or G.S. 105-129.86(b).

...

(27) To publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-129.85, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.

...

(36) To furnish the Department of Commerce with the information needed to complete the studies required under G.S. 105-129.2A and G.S. 105-129.82."

SECTION 2.22. G.S. 105-129.70, as enacted by S.L. 2006-40, reads as rewritten:

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in section 47 of the Code.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(3a) Development tier area. – Defined in G.S. 143B-437.08.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed three million dollars ($3,000,000) for the site as a whole.

~~(6) Enterprise tier area. – Defined in G.S. 105-129.3.~~

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36."

SECTION 2.23. G.S. 105-129.171(a), as enacted by S.L. 2006-40, reads as rewritten:

"(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For an eligible site located in ~~an enterprise tier one, two, or three~~a development tier one or two area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For an eligible site located in ~~an enterprise tier four or five~~a development tier three area, determined as of the date of certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures."

SECTION 2.24. G.S. 105-129.72(a), as enacted by S.L. 2006-40, reads as rewritten:

"(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. For an eligible site located in ~~an enterprise tier one, two, or three~~a development tier one or two area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in ~~an enterprise tier four or five~~a development tier three area."

SECTION 2.25.(a) G.S. 105-164.3(8e), as enacted by S.L. 2006-66, reads as rewritten:

"(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in ~~Internet~~ "Internet service providers and

Web search ~~portals~~ portals" industry 51811, as defined by NAICS.

b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three or a development tier one or two area pursuant to ~~G.S. 105-129.3,~~G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility."

SECTION 2.25.(b) G.S. 105-164.13(55), as enacted by S.L. 2006-66, reads as rewritten:

"(55) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet data center, then the exemption provided for ~~the~~ such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an

eligible Internet data center, then the exemption provided for ~~the~~ such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.1(i). If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 2.25.(c) Section 24.17(c) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.17.(c)** ~~This~~ Subsection (b) of this section becomes effective October 1, 2006, and applies to sales made on or after that date. The remainder of this section is effective when it becomes law."

SECTION 2.26. G.S. 105-164.3(23a), as enacted by S.L. 2006-66, reads as rewritten:

"(23a) NAICS. – ~~The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.~~ Defined in G.S. 105-129.81."

SECTION 2.27. Section 2.25(c) of this part and the changes made to G.S. 105-164.3(8e)a. by Section 2.25(a) of this part are effective when they become law. Subsection 2.25(b) of this part becomes effective October 1, 2006. The remainder of this part becomes effective January 1, 2007.

PART III. EFFECTIVE DATES

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 2170: Bill Lee Changes

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 18, 2006
Introduced by:	Reps. Harrell, Daughtridge, Gibson, Owens	**Summary by:**	Canaan Huie Committee Counsel
Version:	PCS to Fourth Edition H2170-CSLY-115		

SUMMARY: ***This bill would create a new Article under Chapter 105 to provide tax credits to new and expanding businesses, effective for taxable years beginning on or after January 1, 2007; would sunset the Bill Lee Act for activities occurring on or after January 1, 2007, rather than January 1, 2008; and would make conforming changes to other statutes that refer to provisions of the Bill Lee Act.***

This PCS differs from the 4th Edition in the following ways:

- ***It would require the Department of Commerce to study additional ways to enhance economic development in lower-tiered areas and report on this study by January 1, 2007.***
- ***It would expand the types of industrial parks that would qualify for special treatment in determining tier status by allowing this treatment for a two-county industrial park when the counties either own the land (under the 4th Edition) or the land is under contractual control of agencies working for both counties or subject to a development agreement between the counties and third-party owners.***

BILL ANALYSIS:

Part I. Tax Credits for Growing Businesses.

The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, and for worker training. Counties are divided into five enterprise tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior or merely provided tax reductions to businesses that would have located or expanded in any case. In 2000, the General Assembly extended the sunset on the act until January 1, 2006. In 2005, the General Assembly approved a two-year extension of the Act, until January 1, 2008, in order to provide additional time to study alternatives to the Act.[1]

[1] There are several exceptions to the 2008 sunset date. Interstate air couriers are eligible to claim the credits for business activity that occurs on or before January 1, 2010, provided that the interstate air courier entered into a real estate lease on or before January 1, 2006 with an airport authority that provides for the lease of at least 100 acres of land for a term of at least

This bill would create a new package of State tax incentives to replace the Bill Lee Act for most taxpayers. These incentives would become effective January 1, 2007, and would expire January 1, 2011. Taxpayers that are eligible for the later repeal date of the Act would be able to choose to take credits under the current Act or under the bill. Many of the provisions of this proposed new Article are similar or identical to the provisions of the Bill Lee Act. There are some significant differences however.

General Administration.
Under this bill, by November 30 of each year, the Department of Commerce would be required to assign a tier designation to each of the 100 counties in the State. In order to make these assignments, the Department would rank all counties based on the following factors: unemployment, median household income, percentage population growth, and per capita adjusted assessed property value. Regardless of the development factor, any county with a population of less than 12,000 would automatically be included in the counties with the 40 highest rankings and any county with a population of less than 50,000 would automatically be included in the counties with the 80 highest rankings. Regardless of the development factor, a county first designated as a tier one area in one of the two previous years would be included in the counties with the 40 highest rankings. The 40 counties with the highest ranking would be designated as development tier one, the next 40 highest counties would be designated as development tier two, and the remaining counties would be designated as development tier three.

This differs in several keys ways from the Bill Lee Act. First, the Bill Lee Act tier designation is not required until December 31. Second, in order to make the Bill Lee tier designations, the Department of Commerce ranks all 100 counties based on the following three factors: unemployment, average per capita income, and percentage growth in population. The proposed legislation would substitute median household income for per capita income and add the new factor related to adjusted assessed property value per capita. Third, under the Bill Lee Act, counties are divided into five tiers rather than three. Fourth, under this proposal, the number of counties in a tier would be fixed. If one county received a lower tier designation because of the population or low-tier status exceptions, another county would be moved to a higher tier. Under the Bill Lee Act, the adjustments may move a county to a lower tier, but they do not result in any county being assigned to a higher tier.

The Bill Lee Act also contains exceptions to the tier designation structure for certain multi-jurisdictional industrial parks. Under those exceptions, taxpayers located in certain industrial parks that are owned by multiple jurisdictions are eligible for credits as if they were located in the lower-tiered jurisdiction. These exceptions are retained in this bill.

---

15 years. "Eligible major industries" that qualify as such before January 1, 2006, are also allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least $100 million in acquiring, constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing. In addition, projects that are located in development zones are eligible for credits for business activities occurring before January 1, 2010, if all of the following conditions are met: before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce; the Secretary of Commerce makes a written determination that the taxpayer will invest $10 million and create at least 300 new jobs at the facility within a three-year period; and the taxpayer invests at least $4 million and creates at least 20 new jobs at the facility before January 1, 2006.

Development zones are another key feature of the Bill Lee Act.[2] Development zones were intended to be areas of high poverty within cities. Over the years, it has become clear that the development zones often include areas that are neither high-poverty nor particularly urban. This bill would replace development zones with urban progress (UP) zones. UP zones are more narrowly focused than development zones. First, an UP zone must be entirely within the corporate limits of a municipality with a population of at least 10,000. Development zones are located at least partially in a municipality with a population of at least 5,000. Second, UP zones must meet more stringent guidelines with respect to poverty within the zone. Third, the total area of all UP zones in a municipality may comprise no more than 15% of the area of a municipality: there is no similar restriction on development zones.

This bill would also create a new type of zone in which the credits would be enhanced. This bill would authorize the creation of agrarian growth (AG) zones and would provide those areas with the same benefits provided to UP zones. An AG zone must satisfy the following conditions: it must be composed of contiguous census tracts or block groups located within a single county that does not have any municipality with a population in excess of 10,000; each census tracts or block groups in the zone must have more than 20% of its population below the poverty level; the area of the zone, less its smallest census tract, may not exceed 5% of the total area of the county. The Department of Commerce shall designate an area as an AG zone upon the request of a local government.

Under this bill, all of the credits would be allowed against the franchise tax levied in Article 3 of Chapter 105, the income taxes levied in Article 4 of Chapter 105, the gross premiums tax levied in Article 8B of Chapter 105, or a combination of these taxes. The credits allowed under the Bill Lee Act are also allowed against these taxes; however, unlike this bill, under the Bill Lee Act, a taxpayer may take a credit against only one of the three taxes.

Under this bill, the total amount of credits allowed could not exceed 50% of the cumulative amount of the taxpayer's tax liability for franchise, income, and gross premiums taxes. Under the Bill Lee Act, the credits are limited to 50% of the taxpayer's tax liability for the one tax against which the taxpayer chooses to apply it. As with the Bill Lee Act, this cap would apply to the cumulative amount of credits for the current year and carryforwards of credits from previous years. Under this bill, any unused portion of a credit with respect to the credit for creating jobs or investing in business property could be carried forward for the succeeding five years. This is also the standard carryforward period for the Bill Lee Act. Any unused portion of a credit with respect to the credit for investing in real property could be carried forward for the succeeding 15 years, as compared to the succeeding 20 years under the Bill Lee Act. Finally, as with the Bill Lee Act, credits with respect to a large investment (at least $150 million) could be carried forward for 20 years. This bill would shorten the carryforward period for some credits and eliminates some enhanced carryforward provisions altogether.

When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit, the taxpayer would be required to submit a fee of $500 for each type of credit the

---

[2] Under the Bill Lee Act, the Department of Commerce is also responsible for designating development zones. Development zones were intended to be areas of higher poverty within urban centers. In order to be designated as a development zone, the area must satisfy all of the following conditions: every census tract or block group in the zone is located in a city with a population of at least 5,000, the zone has a population of at least 1,000, more than 20% of the population of the zone is below the poverty level, every census track or block group in the zone has more than 10% of its population below the poverty level or is immediately adjacent to a census tract or block group that has more than 20% of its population below the poverty level, and no census tract or block group in the zone is located in another development zone. Designation as a development zone is effective for two years. Location in a development zone leads to more favorable treatment for the taxpayer with respect to the wage standard, the credit for creating new jobs, the credit for investing in machinery and equipment, and the credit for worker training.

taxpayer intended to claim with respect to an establishment. The Bill Lee Act contains a similar fee requirement. Under the Bill Lee Act, there is a maximum fee of $1,500 per taxable year: there would be no maximum fee under the proposed new Article.

As under the Bill Lee Act, each taxpayer claiming a credit under the proposed new Article would be required to provide any information required by the Secretary of Revenue to evaluate the eligibility of the taxpayer for the credit claimed.

As under the Bill Lee Act, the Department of Revenue and the Department of Commerce would be required to make several reports on the proposed new Article. By each May 1, the Department of Revenue would be required publish information itemized by credit and by taxpayer relating to the amount and tier designation of new jobs, new real property investment, and new business property. The Department of Commerce would be required to make biennial reports on tax equity and the impact of the proposed new Article.

As with the Bill Lee Act, credits under the proposed new Article could not be taken more than six months after the deadline for filing the tax return (including extensions) on which they were claimed. This is more restrictive than is generally the case under North Carolina law. In general, an overpayment may be refunded only if the discovery is made or the written request for a refund made within 3 years of the date set by statutes for filing the return or within 6 months of the date of the overpayment, whichever is later.

Basic Eligibility

Type of Business. Under this bill, in order to be eligible for a credit under the proposed new Article, a taxpayer would be required to meet eligibility requirements with respect to type of business. Under the proposed new Article, business type generally would be determined solely by reference to the primary activity of the particular establishment.[3] The following types of businesses would be eligible for credits under the proposed new Article:

- Aircraft maintenance and repair.
- Air courier services hub.
- Corporate headquarters, but only if additional eligibility requirements are satisfied.
- Customer service call centers.
- Electronic shopping and mail order houses.
- Information technology and services.
- Manufacturing.
- Motorsports facilities.
- Motorsports racing teams.
- Research and development.
- Warehousing.
- Wholesale trade.

Business-type eligibility under the proposed new Article would be substantially different than under the Bill Lee Act. Under the Bill Lee Act, business type eligibility depends on several factors including the

[3] The definition of "establishment" under the proposed new Article is different from the definition of "establishment" under the Bill Lee Act. Generally, under this bill, an establishment means a single physical location. Under the Bill Lee Act, an "establishment" is defined by NAICS (North American Industry Classification System) as the smallest operating entity for which records provide information on the cost of resources – materials, labor, and capital – employed to produce the units of output. Under NAICS, an establishment is generally a single physical location; although there are many exceptions to this generality.

primary business of the taxpayer as a whole, the primary activity of the particular establishment, the location of the establishment, and the number of new jobs created. The following types of business are eligible under the Bill Lee Act:

- Air courier services, if the primary business of the taxpayer is air courier services.
- Data processing, if the primary business of the taxpayer is data processing.
- Manufacturing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is manufacturing.
- Warehousing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is warehousing, or if the primary activity of an establishment is warehousing, the establishment is located in an enterprise tier 1-3 area, and the establishment serves 25 or more establishments of the taxpayer.
- Wholesale trade, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is wholesale trade.
- Computer services, if the primary activity of the establishment is computer services.
- Electronic mail order house, if the primary activity of the establishment is an electronic mail order house and the electronic mail order house is located in an enterprise tier 1-3 area and creates at least 250 new jobs.
- Customer service center, if the primary business of the taxpayer is financial services or telecommunications, the primary activity of the establishment is a customer service center, and the center is located in an enterprise tier 1-3 area.
- Central office or aircraft facility, if the primary activity of the establishment is a central administrative office or a training or maintenance center for an interstate air passenger carrier and the establishment creates at least 40 new jobs.

Under the proposed new Article, motorsports facilities and motorsports racing teams would be eligible for credits whereas they are not currently eligible under the Bill Lee Act. A larger group of manufacturers, warehousers, wholesale traders, electronic mail order houses, and customer service centers would be eligible for credits under the proposed new Article than under the Bill Lee Act. Under the proposed new Article, credits for central administrative office facilities would be restricted to those facilities that are corporate headquarters and credits for data processing and computer services would be replaced by credits for information technology and services.

In order for a corporate headquarters to qualify for credits under the proposed legislation, the establishment would be required to create at least 75 new jobs within a 24-month period. A taxpayer that satisfied this job creation requirement would be eligible for credits in the year in which the requirement was satisfied and the two succeeding years. A taxpayer that later created an additional 75 new jobs in a 24-month period could be eligible for an additional three-year period of eligibility, but only if the job creation occurred outside of any other period of eligibility.

Wage Standard. Under this bill, a taxpayer would be eligible for a credit under the proposed new Article only if the jobs provided by the taxpayer met a wage standard. As with the Bill Lee Act, no wage standard would apply in the lower-tiered areas.[4] For development tiers two and three, the jobs provided by the taxpayer would be required to pay at least the lower of 90% of the average county wage or 110% of the average State wage. This differs significantly from the manner in which the wage

[4] Legislation enacted in 2002 eliminated the wage standard in enterprise tiers one and two under the Bill Lee Act. Under the proposed new Article, no wage standard would apply in development tier one. Development tier one under the proposed new Article is roughly equivalent to enterprise tiers one and two under the Bill Lee Act.

standard is calculated under the Bill Lee Act. Under the Bill Lee Act, for enterprise tier areas three through five, the jobs provided by the taxpayer must pay at least 110% of the applicable average weekly wage. The applicable average weekly wage of the county is the lowest of the following: the average weekly wage for all insured private employers in the county, the average weekly wage for all insured private employers in the State, and the average weekly wage for all insured private employers in the county multiplied by the county income/wage adjustment factor.[5] Under the proposed legislation, for activities that occur in UP zones or AG zones, the wage standard is lower than for activities that occur in development tiers two and three outside of UP zones or AG zones. For UP zones or AG zones, the wage standard is 90% of the lesser of the average county wage and the average State wage. Under the Bill Lee Act, there is no wage standard for activities occurring in development zones.

Under the proposed new Article, the wage standard would be calculated in different ways for the credit for creating jobs and the credit for investing in business property. For the credit for creating jobs, the average weekly wage of the jobs for which the credit was claimed and the average weekly wage of all jobs at the establishment with respect to which the credit was claimed would be required to meet the relevant wage standard. For the credit for investing in business property, the average weekly wage of all jobs at the establishment with respect to which the credit was claimed must meet the relevant wage standard. This is equivalent to how the wage standard is applied under the Bill Lee Act for the credits for creating jobs and for investing in machinery and equipment. As with the Bill Lee Act, there would no wage standard for the credit for investing in real property under the proposed new Article because that credit would be available only in the lower-tiered counties where the wage standard requirement would not apply.

Under the Bill Lee Act, all jobs, including part-time jobs, must be included in the wage standard calculation. However, part-time jobs that also provide health insurance are considered to have an average weekly wage at least equal to the relevant wage standard. For the purpose of calculating the wage standard, the weekly wage of a part-time job is converted to a full-time equivalency. Under the proposed new Article, no part-time jobs would be included in the calculation of the wage standard. As under the Bill Lee Act, all jobs that were filled for at least 1600 hours during the year in which the taxpayer engaged in the activity for which a credit was claimed would be included in the wage standard calculation under the proposed new Article even if those jobs were not filled at the time the taxpayer claimed the credit.

Health insurance. As under the Bill Lee Act, a taxpayer would be required to provide health insurance for all full-time jobs at the establishment in order to be eligible for a credit under the proposed new Article. The taxpayer would be required to pay at least 50% of the premiums for health insurance that met at least the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee. Each year that a taxpayer claimed an installment or carryforward of a credit, the taxpayer would be required to provide certification that it continued to provide health insurance for all full-time employees. If the taxpayer ceased to provide health insurance, the credit would expire and the taxpayer would not be able to take any remaining installment or carryforward of the credit.

Environmental Impact. As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any pending administrative, civil, or criminal enforcement action based on alleged significant violation of any program implemented by an agency of the

[5] The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The income/wage ratio is determined by dividing the average per capita income in the relevant jurisdiction by the annualized average wage for all insured private employers in the jurisdiction.

Department of Environment and Natural Resources or if the taxpayer had had any final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources in the last five years. The Secretary of Environment and Natural Resources would be required to notify the Department of Revenue of all persons who currently had any of these pending actions or who had had any of these final determinations in the past five years.

Safety and Health Programs. As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any outstanding violations under the Occupational Safety and Health Act that had become a final order for "willful serious" or "failure to abate serious" violations within the past three years. The Department of Labor would be required to notify the Department of Revenue of all employers who had had these citations become final orders in the past three years.

Overdue Tax Debts. As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any overdue tax debts. An overdue tax debt is any part of a tax debt that remains unpaid 90 days or more after a notice of final assessment was mailed to the taxpayer. A tax debt is a final assessment after all possibilities for appeal have been exhausted.[6]

Expiration. Under the Bill Lee Act, credits may expire for several reasons. If the taxpayer is no longer engaged in an eligible type of business or if the number of jobs of an eligible business falls below the minimum number required, the credit expires. Generally, if a credit expires, the taxpayer may not continue to take installments of the credit, but may continue to take carryforwards of installments that accrued in previous years.[7] The credit for creating jobs and the credit for investing in machinery and equipment expire if the jobs are no longer filled or if the machinery and equipment are taken out of service used in an eligible business. The credit does not expire if the enterprise tier designation of an eligible taxpayer changes after the credit is first claimed. The credits under the proposed new Article retain these expiration provisions.

Forfeiture. Under the Bill Lee Act, a taxpayer forfeits a credit if the taxpayer was not eligible for the credit in the year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest. The past taxes and interest are due 30 days after the date the credit is forfeited. The credits under the proposed new Article would retain these forfeiture provisions.

Specific Credits.

Credit for creating jobs, G.S. 105-129.78. Under this bill, a taxpayer would be allowed a credit for creating new full-time jobs. In order to be eligible for this credit, the taxpayer would be required to meet a job creation threshold based on the development tier designation of the location where the jobs

---

[6] Under general existing law, if the Secretary of Revenue discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the assessment, the amount of tax to be assessed, and any interest and penalties due. If the taxpayer disagrees with the assessment, the taxpayer has 30 days to request a hearing before the Secretary. The Secretary must then schedule a hearing to occur within 90 days of the request. Within 90 days after the hearing, the Secretary must issue a decision on the hearing. If the taxpayer does not request a hearing within the 30 days allowed, or if the Secretary finds that the tax is due after the hearing, the proposed assessment becomes a final assessment. If a taxpayer disagrees with a final assessment, the taxpayer may appeal the decision to the Tax Review Board, and then on to superior court, the Court of Appeals, and the Supreme Court.

[7] Expiration of a credit because the taxpayer ceases to provide health insurance is an exception to this general rule. In that case, the taxpayer may not claim installments or carryforwards after the credit expires.

were created.[8] If the taxpayer created jobs in more than one county during a year, the threshold would apply separately to each county. If the taxpayer created jobs at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. In addition, the amount of the credit would vary depending on the development tier designation of the area in which the job was located. A job is located in an area if 50% or more of the employee's duties are performed in the area. The full amount of the credit could not be taken in the first year, but instead would be taken in four equal installments beginning with the taxable year following the year in which the employee was hired. Jobs transferred from one part of the State to another would not qualify for the credit. In addition, jobs transferred within the State from a related member of the taxpayer to the taxpayer would not qualify for the credit. The amount of the credit and the job creation threshold would be equal to the amounts in the following table based on the development tier area in which the job is located. In addition, a job created in an UP zone or an AG zone would be eligible for an additional credit of $1,000 and if that job were filled by a resident of the zone or a long-term unemployed worker[9] it would be further increased by an additional $2,000.

Area Development Tier	Amount of Credit	Threshold
Tier One	$12,500	5
Tier Two	5,000	10
Tier Three	750	15

Under the proposed new Article, if in one of the four years in which the installment of a credit accrues, the jobs with respect to which the credit was taken were unfilled, the credit related to those specific jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credit. If, in one of the four years in which the installment of a credit accrues, the total number of jobs fell below the sum of the applicable job creation threshold and the number of jobs existing in the year before the new jobs were created, the credits with respect to all the new jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credits. If, in one of the four years in which an installment of the credit accrued, a job that qualified for the credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the job had been initially located in the later area.

Under the proposed new Article, a taxpayer that planned to create new jobs in a specific area during the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designations for the purposes of this credit. If the taxpayer created the jobs within the next two years, the taxpayer would be allowed to compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the jobs were created. If the taxpayer did not create the jobs in the next two years, the taxpayer could still claim a credit under the existing tier designation if the jobs were later created.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same job. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are several significant differences between the proposed new credit for creating jobs and the credit that currently exists under the Bill Lee Act (G.S. 105-129.8). First, the Bill Lee Act credit does not require the taxpayer to meet a job creation threshold whereas the proposed new credit would. Second,

[8] For jobs created in an UP zone or an AG zone, the threshold applicable to development tier one would apply.
[9] A "long-term unemployed worker" is defined as an individual that has been totally unemployed for at least the preceding 26 consecutive weeks.

the amount of the credit per job is more generous for some taxpayers under this proposed credit than under the existing Bill Lee Act credit.

Credit for investing in machinery and equipment, G.S. 105-129.79. Under this bill, a taxpayer would be allowed a credit for the amount by which the cost of the eligible investment amount of business property placed into service during a taxable year exceeds a threshold. The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the net increase in eligible business property over the base year (the year of the preceding three years in which the taxpayer had the largest amount of business property in service in the State). In order to be eligible for the credit, the taxpayer would be required to place new business property into service in excess of a threshold based on the development tier designation. The credit would be taken in four equal installments, beginning the year after the equipment was placed in service. The amount of the credit would be equal to a percentage of the eligible investment amount of the business property. If the taxpayer placed eligible business property into service in more than one county during a year, the threshold would apply separately to each county. If the taxpayer placed eligible business property into service at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. The following table sets out the relevant percentage and threshold for each development tier area:

Area Development Tier	Threshold	Credit Percentage
Tier One[10]	$ -0-	7%
Tier Two	1,000,000	5%
Tier Three	2,000,000	3.5%

If in one of the four years in which the installment of a credit would accrue, the business property with respect to which the credit was taken was disposed of, moved out of State, or taken out of service, the credit would expire and the taxpayer could not take any remaining installments of the credit unless the cost of that business property was offset in the same taxable year by the taxpayer's new investment in business property. If eligible business property that qualified for a credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the business property had been initially located in the later area

A taxpayer that planned to place specific business property in service at a specific location within the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designation for the purposes of this credit. If the taxpayer placed the eligible business property in service within the next two years, the taxpayer could compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the business property was placed in service. If the taxpayer did not place the business property in service in the next two years, the taxpayer could still claim a credit under the existing tier designation if the business property was later placed in service.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same business property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are significant differences between the proposed new credit for investing in business property and the credit currently allowed under the Bill Lee Act for investing in machinery and equipment. First, the thresholds under the proposed credit differ from the thresholds under the existing credit. Second, the

[10] For the purposes of this credit, investment that occurs in an UP zone or an AG zone is subject to the threshold and percentage applicable to activity that occurs in a development tier one area.

definition of "business property" under the proposed new credit is broader than the definition of "machinery and equipment" under the existing credit. Third, the percentage that determines the amount of the credit under the proposed new credit differs from the percentage for the existing credit for some taxpayers.

Credit for substantial investment in other property, G.S. 105-129.79. Under this bill, a taxpayer that is located in a development tier one area would be eligible for a credit for investment in real property. In order for the taxpayer to claim this credit, the Secretary of Commerce would be required to make a written determination that the taxpayer was expected to invest at least $10 million in real property at a location within a three-year period and that the taxpayer would create at least 200 new jobs at the location within two years of the time that the property was first used in an eligible business. The taxpayer could begin to claim the credit once the property was first used in an eligible business. The amount of the credit would be equal to 30% of the eligible investment amount and could be taken in installments over a seven-year period. There would no ceiling on the amount of the credit. The credit for investment in real property would expire if the number of people employed at the location fell below 200.

A taxpayer could not claim both the proposed credit for investment in real property and either of the existing Bill Lee Act credits for investment in real property with respect to the same property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

The only significant difference between the proposed credit for investment in real property and the Bill Lee Act credit for substantial investment in other property is the carryforward period. Under the Bill Lee Act, unused portions of the credit can be carried forward for up to 20 years. Under the proposed legislation, unused portions of the credit could be carried forward for up to 15 years.

Expiring credits. The Bill Lee Act contains five credits that do not have a counterpart in this bill. Those credits are as follows:

- *G.S. 105-129.9A. Technology commercialization credit.* The technology commercialization credit is essentially an enhanced version of the credit for investing in machinery and equipment for taxpayers that are making significant investments in certain types of machinery and equipment. There is no similar enhancement in the proposed new Article; however, the technology commercialization credit was designed with a specific project in mind that never came to fruition and therefore the credit has never been claimed.
- *G.S. 105-129.10. Credit for research and development.* The Bill Lee Act contained a credit for research and development expenditures. In 2004, the General Assembly created a new, stand-alone credit for research and development (See Article 3G of Chapter 105 of the General Statutes). Therefore, no similar credit is included in the proposed new Article.
- *G.S. 105-129.11. Credit for worker training.* The Bill Lee Act contains a credit with which a taxpayer could offset certain worker training expenses. There is no similar credit in the proposed new Article.
- *G.S. 105-129.12. Credit for investing in central office or aircraft facility property.* The Bill Lee Act contains a credit for investing in central office or aircraft facility property. The credit was equal to 7% of the eligible investment amount and was capped at $500,000. There is no similar credit in the proposed new Article though a business that would have been eligible for this credit under the Bill Lee Act would be eligible for the proposed credit for investing in real property if the requirements of that proposed credit are satisfied.

- *G.S. 105-129.13. Credit for development zone projects.* This credit allowed a taxpayer to claim a credit equal to 25% of a donation to a development zone agency for an improvement project in a development zone. There is no similar credit in the proposed new Article.

Other Issues Related to Bill Lee Act

Extension of Bill Lee Act for taxpayers signing a letter of commitment. This bill would allow certain taxpayers to claim credits under the Bill Lee Act rather than the proposed legislation in certain circumstances. There are any number of companies that are currently considering expanding in or relocating to North Carolina. Many of the expansions or relocations have been considered assuming that the credits allowed under the Bill Lee Act would be available through at least its current repeal date, 2008. For some taxpayers, the Bill Lee Act would allow for more generous credits whereas for other taxpayers the credits under the proposed legislation would be generous. This bill would allow taxpayers that sign a letter of commitment with the Department of Commerce on or before December 31, 2006, that describes the specific project to claim credits under the Bill Lee Act for the 2007 taxable year rather than under the proposed legislation. The legislation clarifies that if a taxpayer elects to take any credit under the Bill Lee Act during the 2007 taxable year, the credit may not take any credit under the new Article with respect to the same establishment for that taxable year. This would prevent a taxpayer from picking and choosing which Article would be more beneficial for each particular credit.

Part II. Conforming Changes.

Part II of the bill would make a number of conforming changes to the statutes because of the changes that would be made under Part I of this bill. Since the creation of the Bill Lee Act in 1996, many other programs have adopted the enterprise tier designation as a proxy for the economic viability or the available resources of a county. Many of these programs deal with economic development; but the tier structure has also been adopted as a proxy in such areas as animal control and wetlands mitigation. In addition, other programs refer to other aspects of the Bill Lee Act such as development zones or the wage standard. Because the Bill Lee Act would largely be replaced by the new Article in this bill, the changes in Part II of this bill should help to lessen confusion that would be inherent in the use of two different tier systems. Because the tier structures are not equivalent, the changes in this Part will benefit some areas while reducing benefits to other areas. The changes are briefly summarized below.

- *Section 2.1.* This section would conform the credit for research and development expenses to the new tier structure. Under current law, the credit for research and development expenses is more generous if the research is conducted in an enterprise tier one, two, or three area. Under this bill, research conducted in a development tier one area would be eligible for the more generous credit. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being eligible for a smaller credit.

- *Section 2.2.* This section would conform the sales and use tax refund for low enterprise tier machinery and equipment to the new tier structure. Under current law, a taxpayer is eligible for a refund of sales and use tax paid at the general rate on machinery and equipment put into service in enterprise tier one and two areas. This section adds a reference to development tier one. Because development tier one is expected to be roughly equivalent to, though including more counties than, enterprise tiers one and two combined, this change should have limited effect.

- *Section 2.3.* This section would conform the sales and use tax refund on building materials for major eligible industrial facilities to the new tier structure. Under current law, a taxpayer

must invest at least $50 million in an eligible facility in an enterprise tier one, two, or three area or $100 million in an eligible facility in an enterprise tier four or five area to be eligible for the refund. This section changes the requirement so that the $50 million threshold applies to facilities in development tier one and the $100 million threshold applies to facilities in tiers two and three. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for a refund.

- *Section 2.4.* This section would make changes to the Industrial Development Fund to conform to the tier designation changes. Under the IDF, local government units in enterprise tiers one, two, and three are eligible for grants to help create jobs. The grant funds may be used in limited ways mostly related to the provision of infrastructure, equipment, or building repairs. Generally, a local match is required unless the local government unit is in an enterprise tier one area. This provision would make the counties that have the 65 highest rankings (development tier one and slightly more than half of development tier two) eligible for grants under the IDF. In addition, no local match could be required for the counties that have the 25 highest rankings (slightly more than half of development tier one). The intent was to maintain the status quo with respect to the IDF.

- *Section 2.5.* This section would conform the guidelines adopted by the Department of Commerce relating to community development block grant funds to the new tier structure. Under current law, those guidelines must ensure that grants award in enterprise tier one areas do not require a local match and that priority is given to projects in enterprise tier one areas and development zones. This section would change those references. The reference to enterprise tier one would be changed to the counties that have the 25 highest rankings (slightly more than half of development tier one) and the reference to development zones would be changed to UP zones. Because the counties that have the 25 highest rankings would be roughly equal to enterprise tier one, this change should maintain the status quo with respect to enterprise tier one areas. On the other hand, because UP zones are more restrictive than development zones, this change could have the effect of eliminating some projects from priority consideration.

- *Section 2.6.* This section changes a definitional reference under the JDIG statutes.

- *Section 2.7.* This section would conform the JDIG job creation requirements to the new tier structure. Under current law, a business must create at least 10 new jobs in an enterprise tier one, two, or three area or 20 new jobs in an enterprise tier four or five area to be eligible for consideration for JDIG. This section would change those requirements so that a business must create at least 10 new jobs in a development tier one area or 20 new jobs in a development tier two or three area to be eligible for consideration. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for consideration for JDIG. However, as a practical matter, all businesses that have received JDIG grants have created far more jobs than the minimum required and it is therefore unlikely that this change would have any practical effect.

- *Section 2.8.* This section would conform a reference to tiers under the JDIG reporting requirements.

- *Section 2.9.* This section would conform the JDIG grant reduction requirements to the new tier structure. Under current law, a business that is located in an enterprise tier four or five area when the grant is awarded would have the amount of a grant reduced by 25%, with that reduction flowing to the Utility Account of the Industrial Development Fund rather than to the business. This section would change that reference. Under this provision, for development tiers three, the amount of the reduction would remain 25% and for development tier two, the reduction would be equal to 15%. This section would roughly maintain the status quo in enterprise tier five, would provide a benefit to enterprise tier four, and would lessen the amount of the grant for enterprise tier three.

- *Section 2.10.* This section would conform a provision relating to tax increment financing to the new tier structure. This section would expand an exception created for financing districts related to tourism-related economic development projects. Under current law, this exception is allowed only in an enterprise tier one area. This section would allow that exception in a development tier one area. Because development tier one would contain more counties than enterprise tier one, this change would expand this exception.

- *Section 2.11.* This section would conform provisions dealing with the Spay/Neuter Account to the new tier structure. Under existing law, there is an account that helps offset the costs incurred by cities and counties for the spaying and neutering of animals. Fifty percent of the funds in the account are reserved for cities and counties in enterprise tiers one, two, and three. The remaining 50% is reserved for cities and counties in enterprise tiers four and five. If there are excess funds after all needs have been met in enterprise tier one, two and three areas, those funds are transferred and used in enterprise tier four and five areas. The funds designated for a group of tier areas are then allocated based on population. This section would change this breakdown so that the division would be between development tier one areas and development tier two and three areas. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some cities and counties getting more assistance and some cities and counties getting less assistance.

- *Section 2.12.* This section would conform a provision relating to agricultural easements and the Farmland Preservation Trust Fund to the new tier structure. Under current law, enterprise tier one, two, and three counties that have prepared countywide farmland protection plans are not required to match funds from the Farmland Preservation Trust Fund used to purchase agricultural easements. This section would change that reference to development tier one. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some counties being newly subject to the match requirement.

- *Section 2.13.* This section corrects a definition relating to the Clean Water Management Trust Fund. That statue referred to a "economically distressed county as defined by G.S. 105-129.3". Although G.S. 105-129.3 is the statute that specifies tier designation under the Bill Lee Act, there is no definition in that statute of an "economically distressed county." There is, however, a definition of an economically distressed county under this statute dealing with the Industrial Development Fund. This provision corrects that statutory reference. As discussed above, the definition under the Industrial Development Fund was changed in section 2.4 of this bill, but that change roughly maintained the status quo.

- *Section 2.14 through Section 2.17.* These sections would conform provisions dealing with wetlands mitigation to the new tier structure. Under current law, when the State purchases land for wetlands mitigation it is required to make a payment in lieu of taxes to the county in which the land is located if the county is an enterprise tier one or two area. These sections would change those references to development tier one area. Because development tier one would have slightly more counties than enterprise tiers one and two combined, this change would require the State to make these payments in more instances.
- *Section 2.18 and Section 2.19.* These sections would conform provisions dealing with condemnation of unsafe buildings to the new tier structure. Under current law, cities have more flexibility in condemning nonresidential buildings as unsafe if the building is located in a "community development target area". A community development target area is one that has characteristics of a development zone or similar characteristics. These sections would change the references from development zone to UP zone. Because of the amorphous nature of the definition of "community development target area", this change should not have any impact.
- *Section 2.20.* This section would conform eligibility requirements for the credit for research and development to the new Article. Under current law, in order to be eligible for that credit the taxpayer must satisfy the wage standard, health insurance, environmental impact and safety and health record requirements under the Bill Lee Act. This section would change the reference to those requirements under the new Article. This change could have the effect of making more taxpayers eligible for the credit because the wage standard requirement under the new Article is less strenuous than the requirement under the Bill Lee Act.
- *Section 2.21.* This section would amend the statutes relating to tax secrecy to ensure that the Department of Revenue could share information that is needed to administer the new Article with the Department of Commerce.
- *Sections 2.22 through 2.24.* These sections would amend the statutes relating to the mill rehabilitation tax credits passed earlier this year by the General Assembly. Under the law enacted earlier this year, the credit is larger if the eligible site is located in an enterprise tier one, two, or three area. These sections would change those references to development tiers one and two. Because development tiers one and two would have more counties that enterprise tiers one, two, and three, these sections would allow for more generous credits at more sites.
- *Section 2.25.* This section would conform the provisions of the sales and use tax exemption for eligible Internet data centers to the new tier structure. Senate Bill 1741, the 2006 Appropriations Act, would create a sales and use tax exemption for certain Internet data service centers. In order to be eligible for that exemption, the center would have to be located in an enterprise tier one, two, or three area. This section would change that reference to development tiers one and two, thereby enlarging the number of counties in which the center could be located and remain eligible for the exemption. In addition, this section makes technical changes requested by the industry for which the exemption was requested.
- *Section 2.26.* This section would cross reference the definition of NAICS for sales and use tax purposes to the definition used under the tax credit Article.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 2170 (Second Edition)

SHORT TITLE: Bill Lee Changes.

SPONSOR(S): Representatives Harrell, Daughtridge, Gibson, and Owens

FISCAL IMPACT ($ Million)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES: State General Fund	-0-	-$2.0	-$6.4	-$12.0	-$17.0
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: Included in "Bill Summary"

BACKGROUND INFORMATION: The Bill Lee Act was enacted in 1996 and has been modified on numerous occasions. The 1996 legislation included a January 1, 2002 sunset of the full Act. During the 2000 session the sunset was extended to January 1, 2006. Finally, the 2005 General Assembly moved the sunset to January 1, 2008 with the expectation that the 2006 session would overhaul the entire Act. The PCS for HB 2170 represents that re-write.

The current Bill Lee Act is a package of State tax incentives adopted during the 1996 session. The incentives are primarily in the form of state tax credits for investing in machinery and equipment, acquiring certain real property, creating jobs, establishing a central administrative office, and training workers. The original research and development credit has been re-codified elsewhere.

Under the Act counties are divided into five enterprise Tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the Tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

BILL SUMMARY: Replaces the existing Bill Lee Act with a new system of more narrowly focused job creation and investment tax credits. The new package generally becomes effective beginning with activity taking place on or after January 1, 2007 and sunsets January 1, 2011. The existing Bill Lee Act is eliminated on January 1, 2007 with one exception: companies currently considering expanding in or relocating to North Carolina would be allowed to claim Bill Lee Act credits for the 2007 tax year under the Act if the taxpayer signs a letter of commitment with the Department of Commerce by December 31, 2006. The letter would require that the specific project be described.

Beginning on the next page is a comparison of the major features of the current Bill Lee Act and the proposed system.

	Current Law	HB 2170
Tier Structure (Tier 1 includes most distressed counties)	5 enterprise Tiers: - 10 counties in Tier 1 - 15 counties in Tier 2 - 25 counties each in Tiers 3, 4, and 5 Exceptions may move some counties to more distressed tier level	3 development Tiers: - 40 counties in Tier 1 - 40 counties in Tier 2 - 20 counties in Tier 3 Exceptions may move some counties to a lower tier and some to a higher tier
Tier Rankings	- 3 factors determine initial ranking: unemployment, per capita income, population, growth - Adjustments based on Tier 1 or 2 status, population level, unemployment level, and multi-county parks - Population figures include prisoners	- 4 factors determine initial ranking: unemployment, median household income, population growth, and assessed property value per capita - Same adjustments as under Bill Lee Act except for high high unemployment - Population figures do not include prisoners
Distressed Zones Within a County (Enhanced Credits)	Development zones eligibility: - At least partly within a city of 5,000 or more - Zone population of at least 1,000 - 20% of zone population is below poverty level - Every census tract in zone meets certain poverty guidelines - Area may be in one zone	Urban progress zones eligibility: - Wholly with a city of 10,000 or more - Each track must meet poverty or industrial requirements - Non-residential tracks no more than 35% of zone - Zones no more than 15% of municipality
Taxes to Which Credits Apply	- Credit is taken against either income, franchise, or insurance premiums tax - Credit may not exceed 50% of liability of tax selected - Carryforward period ranges from 5 years to 20 years	- Credit is taken against income, franchise, or insurance premiums taxes or combination of these taxes - Credit may not exceed 50% of combined tax liability - Carryforward period ranges from 5 years to 20 years

	Current Law	HB 2170
Activity Eligibility Factors	Depends on a combination of factors including: - Primary activity of a taxpayer as a whole - Primary activity of the special establishment - Enterprise Tier designation of the establishment - Number of new jobs created	- Eligibility depends on the primary activity of the specific establishment - However, company headquarters must create 75 jobs over two years
Eligible Industries	- Air courier services - Central office or aircraft facility - Computer services - Customer service center - Data processing - Electronic mail order house - Manufacturing - Warehousing - Wholesale trade	Same as current law with following exceptions: - Aircraft maintenance and repair is established as a separate category - Central administrative office is changed to company headquarters - Data processing and computer services combined as information technology and services - Motorsports racing team and motorsports racing facilities added - Research and development added
Quality Jobs	- Provision of health insurance - OSHA record - Environmental record - No overdue tax debts	Same As Current Law
Wage Standard	- No wage standard in Tiers 1 and 2 and development zones - Wage standard equal to 110% of the lesser of: - County wage - State wage - County wage adjusted by the wage/income factor	- No wage standard in Tier 1 - Wage standard equal to the lesser of: - 110% of the State wage - 90% of the county wage - Wage standard in Urban Progress zone is 90% of the lower wage

	Current Law	HB 2170
Specific Credits	- Job creation - Investing in machinery & equipment - Technology commercialization - Worker training - Central office or aircraft facility property - Other real property - Development zone projects	- Job creation - Investing in business property - Investing in real property
Job Creation Credit	- Must have 5 full-time employees and create at least one new job - Credit amount varies depending on enterprise Tier and development zone: - $12,500 per job in Tier 1 - $4,000 per job in Tier 2 - $3,000 per job in Tier 3 - $1,000 per job in Tier 4 - $500 per job in Tier 5 - Additional $4,000 for development zone - Taken over 4 years	- Taxpayer must meet a job creation threshold before becoming eligible for the credit: - 5 new jobs in Tier 1 - 10 new jobs in Tier 2 - 15 new jobs in Tier 3 - Taken over 4 years - Jobs transferred from a related member not included - Credit varies depending on Tier and Urban Progress zone: - $12,500 per job in Tier 1 - $5,000 per job in Tier 2 - $750 per job in Tier 3 - Additional $1,000 for Urban Progress zone ($2,000 for hiring a zone resident or long-term unemployed worker in zone)
Machinery & Equipment Credit	- Credit taken in seven installments - Credit amount varies depending on enterprise Tier level: - 7% in Tiers 1 and 2 - 6% in Tier 3 - 5% in Tier 4 - 4% in Tier 5 - Machinery and equipment definition narrowly drawn	- Credit taken in four installments - Credit amount varies depending on development Tier level: - 7% in Tier 1 - 5% in Tier 2 - 3.5% in Tier 3 - Business property definition broadly drawn

	Current Law	HB 2170
	- Credit is based on the eligible investment amount above a threshold: - $0 in Tier 1 - $100,000 in Tier 2 - $200,000 in Tier 3 - $1,000,000 in Tier 4 - $2,000,000 in Tier 5	- Credit is based on the eligible investment amount above a threshold: - $0 in Tier 1 - $1,000,000 in Tier 2 - $2,000,000 in Tier 3
Real Property Credit	- Require activity in lower-tiered area - Require 200 new jobs and $10 million investment - Credit equal to 30% of eligible investment amount - Credit taken over 7 years - 20-year carryforward	Same as current law except for 15 year carryforward
Credit Application Fee	- $500 for each type of credit - $1,500 maximum fee per tax year - Proceeds retained as agency receipts - Positions funded by receipts	- $500 for each type of credit - No maximum fee - Proceeds go to General Fund - Positions approved during budget process

ASSUMPTIONS AND METHODOLOGY: 2006-07 Year. The new system is effective for activity taking place on or after January 1, 2007. In general the credits are taken in installments over a four-year period beginning in the tax year following the year of activity. This means that the first impact of the bill will be for 2008 tax year and there would be no effect on the 2006-07 fiscal year.

2007-08 and Later Years: General Impact Discussion. It may be helpful to start by looking at some of the ways that the re-write could affect the potential cost of incentives:

(1) The ability of certain taxpayers to choose whether to claim credits under the existing Lee Act or the new system for the 2007 tax year could lead to an increased cost to the extent that the affected taxpayers select the most lucrative option. However, this impact will be limited by the fact that the taxpayer must sign a letter of commitment by December 31, 2006 and must specify the details of the project.

(2) The elimination of the worker training tax credit and the credits for central administrative offices and aircraft facilities will lead to a revenue gain. A March 31, 2006 report of the Department of Revenue indicates that for tax returns processed during the 2005 calendar year,

there were $5.8 million of credits generated from the credits that will be eliminated under the bill and that $2.7 million of credits were actually claimed on tax returns.

(3) The impact of the new tier structure on the jobs and investment credits claimed by eligible taxpayers depends on the mix of activity in the new tiers compared to the prior designations. In general the costs of the investment tax credit will be reduced because current Tier 4 and Tier 5 companies will receive a 3.5% credit instead of 4% or 5% and some current Tier 3 companies will be eligible for a 5% credit instead of 6%. This change is important because the investment tax credit is by far the most expensive of the Lee Act credits ($119.9 million generated and $56.5 million claimed in 2005).

(4) The program savings from the investment tax credit tier changes will be partially offset by higher costs for the jobs credit. For reference purposes, the jobs credit amounts to 30-40% of the investment tax credit total for returns processed during the 2005 calendar year.

(5) The change in the investment tax credit thresholds means that some current Tier 4 taxpayers will have a $2 million threshold to reach instead of $1 million and that many current Tier 3 taxpayers will face a $1 million threshold hurdle of $200,000. This will be offset by the fact that some taxpayers currently located in Tier 2 and 3 counties will have their small thresholds replaced by no threshold.

(6) Under the current system there is no job creation threshold although a business must have 5 employees to be eligible for the credit for each new job created. The new system does not have a "current job level" threshold but does require a certain number of jobs to be created in order to gain eligibility for the credits. For example, a company located in a new Tier 3 county must create at least 15 jobs to be eligible. Under the existing act a credit could be received for just one new job if the employer already had 5 employees.

(7) The shift from a machinery and equipment investment credit to a general business property credit would in theory add to the cost due to the expanded eligibility (essentially any item that could be depreciated under the Internal Revenue Code). However, discussions with the Department of Revenue staff monitoring the Lee Act indicates this impact will be lessened by the fact that many taxpayers are already claiming the credit for the expanded items.

(8) The conversion of development zones to urban progress zones means that a smaller area will be covered and there will be a lower number of eligible zones. This change could lead to a significant amount of program savings in future years as employers are beginning to discover and take advantage of the enhanced credits.

(9) The ability of taxpayers to use the credit against the combined income, franchise, and insurance premiums tax liability (in lieu of selecting one credit) will add to the cost of the credits by an unknown amount. The impact is especially important in the near term (2008, 2009, etc.) due to the limitation of the credit to 50% of tax liability.

(10) The elimination of the development zone donation credit will have little impact due to its minimal usage.

(11) Under the bill the investment tax credit can be taken over four years instead of seven years. This change will add to the cost in the early years.

2008-09 and Later Years: Fiscal Simulation. The Department of Commerce simulated the impact of the major changes in the re-write using actual data collected over the last five years. This data covered the 1996-2002 experience under the Lee Act. Below are some of the highlights of the simulation:

(1) The analysis indicates that had the new system been in place during the 1996-2002 period, the higher investment threshold for the investment tax credit would have eliminated about 15% of the sites that received the credit and the total credits generated would have declined by 31%. This is important due to the sheer magnitude of the machinery and equipment under the Lee Act (2.5-3.0 times the magnitude of the jobs credit). In addition, these dollar savings were based on a 4% credit for the new Tier 3 counties, not the 3.5% credit in the current version of the bill. The savings at 3.5% would be even larger.

(2) The higher job creation threshold for eligibility of the jobs credit would have reduced the number of sites taking the credit substantially. However, the larger credit amounts would push up the total dollar cost of these credits by over 100%.

The second step of this analysis by Commerce was to perform a simulation using the most recent three tax years. After taking into account the elimination of the worker training tax credit and the central administrative office credit, the shift to the new system would lead to a slight revenue gain (under $1 million) in the first year in which the credits are actually taken, **when compared to the potential costs of the existing Bill Lee Act.** However, the Department admits that the analysis is not 100% complete. For example, it does not take into account the revisions to the data that will take place after the results of the extensive Department of Revenue audits are factored in. In addition the analysis does not consider the impact on the 2008 tax year of the provision allowing "letter of commitment" companies to choose between the existing Bill Lee Act and the new system for the 2007 tax years.

Discussions with the Department of Revenue indicate that their preliminary analysis shows that the new system could lead to additional credits generated of $12 million, **when compared to the potential costs of the existing Bill Lee Act.** However, as in the case of the Department of Commerce's simulation, the analysis does not consider all of the features of the new system. In addition the $12 million is calculated on a "claims generated" basis. This is important because the Department of Revenue has indicated that the limitation of the credits to 50% of tax liability means that only a handful of companies are able to use the full amount of the credit in the first couple of years. Thus, a substantial portion of the potential credits will be carried forward to future years. There is another issue to be considered when analyzing the fiscal impact of the overhaul. Up to this point our analysis has focused on how the costs of the new system compares to the existing Bill Lee Act. On this issue, we can say that the new system is approximately revenue neutral.

However, the primary focus of a fiscal estimate for state budget purposes is how the system envisioned under the bill compares to current law, which includes a January 1, 2008 sunset to the Bill Lee Act. This means that the meaningful comparison beginning with the 2008 calendar year is the absolute cost of the new system.

Based on the analysis of the Department of Revenue and Department of Commerce, we estimate that the incremental annual impact of shifting from the current Act to the new system at $1.2 million each year. This means that the second year impact is $2.4 million, the third year is $3.6 million, and so forth. These costs would continue to pyramid until the 2011 sunset.

Since the new system is effective beginning with 2007 tax year activity and taxpayers take the credit in the year following the activity year, the first effects would be felt in the 2008 tax year. We bumped up the potential 2008 tax year cost to $2.2 million due to the fact that certain taxpayers may be able to choose between the existing credits and the new system for the 2007 activity year.

After calculating the tax year impact, we adjusted the numbers to the state fiscal year by assuming that 55% of the relief is taken in the fiscal year ending in the tax year for which the credit is claimed and the remainder would be taken in the following fiscal year.

These costs apply to the difference between the new system and the current Lee Act. In addition, there is a baseline cost associated with removing the January 1, 2008 sunset of the incentives. Based on a review of the historical experience of the Bill Lee Act from 1996-2005 and discussions with the Department of Revenue (which has access to actual tax returns), we estimate the fiscal year cost for the combination of the jobs and investment credits at $2.3 million for 2008-09, $6.7 million for 2009-10, and $11.2 million for 2010-11. These costs would be added to the incremental costs under the new system, when compared to current Bill Lee Act.

Administrative Costs. The Department of Revenue is charged with reporting on the credits claimed and credit used under both the existing Bill Lee Act and the new system. The addition of the reporting requirements for the new system will mean that the Department will be faced with reviewing tax returns and tabulating credit usage for both the old system and the new. This will lead to additional personnel requirements and other costs. Preliminary data formatting work will begin during the 2006-07 fiscal year.

SOURCES OF DATA: Numerous discussions with the research staff of Department of Revenue and Department of Commerce and tax impact simulations run by the staff.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 27, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

House Bill 2170 PCS — **Bill Lee Act Changes**

Recommended by House Select Committee on Economic Development

Supported by: *N.C. Department of Commerce*
N.C. Economic Developers Association
North Carolina Citizens for Business & Industry
North Carolina Metropolitan Coalition

Main Features

- Extends sunset of Bill Lee Act tax credits through Jan. 1, 2011.
  - *Credits currently expire Dec. 31, 2007.*
- Simplifies eligibility process and make more businesses eligible.
- Makes wage test fairer.
- Simplifies and stabilize tier system.
- Emphasizes and encourages job creation.

What does House Bill 2170 do?

- Establishes three basic tax credits.
  - *Credit for Creating New Jobs*
  - *Credit for Investing in Business Property*
  - *Credit for Investing in Real Property in Disadvantaged Rural Counties*

- Offers enhanced credits in disadvantaged and rural counties. Maintains credits for recruiting business in urban counties.

Job Creation Tax Credit		
Tier Level	**Minimum Jobs**	**Credit per Job**
Tier 1	5	$12,500
Tier 2	10	$5,000
Tier 3	15	$750

Business Property Investment Tax Credit		
Tier Level	**Minimum Investment Threshold**	**Amount of Credit as % of M&E**
Tier 1	$0	7%
Tier 2	$1,000,000	5%
Tier 3	$2,000,000	3.5%

Real Property Investment Tax Credit			
Tier Level	**Minimum Investment Threshold**	**New Jobs**	**Amount of Credit as % of Investment**
Tier 1	$10 million	200	30%

- Makes credits available to more businesses in all tiers.

Manufacturing ♦ Warehousing & Distribution ♦ Wholesale Trade ♦ Corporate Headquarters ♦ Research Facilities ♦ Aircraft Maintenance & Air Courier Services ♦ Computer Technology & Information Processing ♦ Call Centers & Mail Houses ♦ Motorsports Teams & Tracks

- Modifies the wage test to make it fairer.
  - Wage test would be 90% of county average or 110% of state average (whichever is lower) for Tiers 2 & 3.
  - Tier 1 counties do not have to meet wage test.
  - Wage test in development zones ("UP Zones") is 90% of the county average or the state average, whichever is lower.

- Makes credits simpler for businesses to qualify for.
  - Credits would be available based on primary business at each establishment. Primary business of the taxpayer would no longer be an issue.
    - *E.g.*, All manufacturing facilities would be eligible – not just manufacturing facilities owned by taxpayers whose primary business happens to be eligible for credits.
  - A better system for economic developers and simpler and fairer to businesses.

- Changes tier structure from five tiers to three.
  - Makes tiers more stable and counties less subject to arbitrary annual shifts.

Tier 1	Bottom 40 counties	Most Distressed
Tier 2	Middle 40 counties	Moderately Distressed
Tier 3	Top 20 counties	Least Distressed

  - New formula produces better measure of distress.
  - More counties qualify as distressed.

- Redesigns Development Zones to create Urban Progress ("UP") Zones.
  - These changes address concerns that the current zones do not target urban poverty areas.
  - Zones would be smaller and more focused.
  - Businesses in UP Zones get additional $1,000 job credit plus an additional $2000 for hiring an UP Zone resident or long-term unemployed worker. Job threshold is same as Tier 1.
  - Business property credit has same threshold and percentage as Tier 1.

- Maintains traditional Lee Act safeguards.
  - Limits credits to 50% of tax liability.
  - Requires wage test & health insurance.
  - Continues DENR, OSHA & DOR tax debt tests.
  - Credit installments expire if jobs or investment not sustained.
  - Forfeited credits may be clawed back.
  - Six months statute of limitations for late filing of credits.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2170

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H2170-ALY-143 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
PCS to Fourth Edition

Senator Hoyle

moves to amend the bill on page 15, lines 40-44 by rewriting those lines to read:

"(e) Adjustment for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties, and any county that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census shall automatically be ranked one of the 40 highest counties."

and on page 19, lines 9-10, by adding the following between those lines:

"**SECTION 1.2A.** Notwithstanding the provisions of G.S. 143B-437.08, as enacted by Section 1.2 of this act, for the 2007 taxable year, a development tier one area is a county whose annual ranking is one of the 41 highest in the State.";

and on page 7, line 34, by replacing the word "either" with the word "any";

and on page 15, lines 34-35, by rewriting those lines to read:
"generally recognized as having expertise concerning the data. In".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2170

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H2170-ALY-143 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2006 Tier Under New Tax Credit Proposal

Tier 1

County	2006 Tier	2006 New Tier
ALLEGHANY	1	1
ANSON	3	1
BERTIE	1	1
BLADEN	1	1
BURKE	3	1
CALDWELL	1	1
CAMDEN	1	1
CASWELL	1	1
CLAY	1	1
CLEVELAND	2	1
COLUMBUS	2	1
DUPLIN	3	1
EDGECOMBE	1	1
GATES	1	1
GRAHAM	1	1
GRANVILLE	3	1
GREENE	2	1
HALIFAX	1	1
HERTFORD	1	1
HOKE	3	1
HYDE	1	1
JONES	1	1
LENOIR	3	1
MARTIN	1	1
MCDOWELL	2	1
MITCHELL	1	1
MONTGOMERY	2	1
NORTHAMPTON	1	1
PERQUIMANS	1	1
RICHMOND	1	1
ROBESON	2	1
ROCKINGHAM	2	1
RUTHERFORD	1	1
SAMPSON	3	1
SCOTLAND	1	1
SWAIN	1	1
TYRRELL	1	1
VANCE	1	1
WARREN	1	1
WASHINGTON	1	1

Tier 2

County	2006 Tier	2006 New Tier
ALAMANCE	4	2
ALEXANDER	4	2
ASHE	3	2
AVERY	3	2
BEAUFORT	1	2
CATAWBA	4	2
CHEROKEE	3	2
CHOWAN	3	2
CRAVEN	4	2
CUMBERLAND	4	2
CURRITUCK	3	2
DARE	3	2
DAVIDSON	4	2
DAVIE	5	2
GASTON	3	2
HARNETT	4	2
JACKSON	4	2
LINCOLN	4	2
MACON	3	2
MADISON	3	2
NASH	4	2
ONSLOW	5	2
PAMLICO	3	2
PASQUOTANK	3	2
PENDER	4	2
PERSON	3	2
PITT	4	2
POLK	3	2
RANDOLPH	4	2
ROWAN	3	2
STANLY	3	2
STOKES	3	2
SURRY	3	2
TRANSYLVANIA	3	2
WATAUGA	4	2
WAYNE	4	2
WILKES	3	2
WILSON	1	2
YADKIN	4	2
YANCEY	2	2

Tier 3

County	2006 Tier	2006 New Tier
BRUNSWICK	5	3
BUNCOMBE	5	3
CABARRUS	5	3
CARTERET	5	3
CHATHAM	5	3
DURHAM	5	3
FORSYTH	5	3
FRANKLIN	5	3
GUILFORD	4	3
HAYWOOD	5	3
HENDERSON	5	3
IREDELL	5	3
JOHNSTON	5	3
LEE	4	3
MECKLENBURG	5	3
MOORE	5	3
NEW HANOVER	5	3
ORANGE	5	3
UNION	5	3
WAKE	5	3

Note: The list above reflects each county's tier if the proposed new tax credit, HB 1270, had been in place for 2006

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1843

Committee Substitute Favorable 5/16/06
Third Edition Engrossed 5/18/06
Senate Judiciary I Committee Substitute Adopted 7/18/06
PROPOSED SENATE COMMITTEE SUBSTITUTE H1843-CSST-127 [v.2]

7/18/2006 10:05:04 PM

Short Title: State Government Ethics Act - 1. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES, TO AMEND THE LOBBYING LAWS, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. ENACT THE STATE GOVERNMENT ETHICS ACT.

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 138A.**

"**State Government Ethics Act.**

"Article 1.

"General Provisions.

"**§ 138A-1. Title.**

This Chapter shall be known and may be cited as the 'State Government Ethics Act'.

"**§ 138A-2. Purpose.**

The people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest. To maintain the public trust, it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence. Elected and appointed

officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions. Acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted shall not be used to advance narrow interests for oneself or others. Self-interest, partiality, and prejudice have no place in decision making for the public good. Public officials must exercise their duties responsibly with skillful judgment and energetic dedication. Public officials must exercise discretion with sensitive information pertaining to public and private persons and activities. To maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect. Because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists. The State is committed to the responsible exercise of authority by persons of honor and goodwill in government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

"**§ 138A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, except for those public bodies that have only advisory authority, as determined and designated by the Commission.

(2) Business. – Any of the following for profit:

a. Association.
b. Corporation.
c. Enterprise.
d. Joint venture.
e. Organization.
f. Partnership.
g. Proprietorship.
h. Vested trust.
i. Every other business interest, including ownership or use of land for income.

(3) Business associate. – A partner, or member or manager of a limited liability company.

(4) Business with which associated. – A business in which the person or any member of the person's immediate family does any of the following:

a. Is an employee.

b. Holds a position as an associate, director, officer, business associate, or proprietor, irrespective of the amount of compensation received or the amount of the interest owned.

c. Owns a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more or five percent (5%), whichever is less, in the business.

For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Commission. – The State Ethics Commission.

(6) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(7) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, if applicable, reported as required by Article 22A of Chapter 163 of the General Statutes.

(8) Confidential information. – Information defined as confidential by the General Statutes.

(9) Constitutional officers of the State. – Officers whose offices are established by Article III of the North Carolina Constitution.

(10) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(11) Covered person. – A legislator, public servant, or judicial officer, as identified by the Commission under G.S. 138A-11.

(12) Economic interest. – Matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(13) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For judicial employees, it is the Chief Justice.

(14) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal ascendant, spouse's lineal descendant, spouse's sibling, and the spouse of any of these persons.

(15) Filing person. – A person required to file a statement of economic interest under G. S. 138A-22.

(16) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Anything of value given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and not made for the purpose of lobbying.

(17) Honorarium. – Payment for services for which fees are not legally or traditionally required.

(18) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.

(19) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(20) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court; or any person elected or appointed to any of these positions prior to taking office.

(21) Legislative action. – As the term is defined in G.S. 120C-100.

(22) Legislative employee. – As the term is defined in G.S. 120C-100.

(23) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(24) Lobbying. – As the term is defined in G.S. 120C-100.

(25) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.

(26) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(27) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(28) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.

(29) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.

(30) Public event. – Any of the following:

a. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which all legislators or legislative employees are invited to attend.

b. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which a legislator or legislative employee is invited to attend along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, or a legislative caucus.

c. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, or a legislative caucus and to which at least 10 individuals, other than the legislator or legislative employee, or the spouse of the legislator or legislative employee, actually attend, or to which all shareholders, employees, board

members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend.

d. An organized gathering of individuals open to the general public to which tickets may or may not be issued or sold and to which at least 10 public servants are invited to attend.

e. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which at least 10 public servants are invited to attend.

f. An organized gathering of a person to which at least 10 public servants are invited to attend and to which at least 10 individuals, other than the public servant, or the public servant's spouse, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend.

(31) Public servants. – All of the following:

a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.

c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.

d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.

e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.

f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.

g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. Judicial employees.

i. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.

j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the

vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

l. Members of the Commission.

m. Persons under contract with the State working in or against a position included under this subdivision.

(32) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:

a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and

b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§§ 138A-4 and 138A-5: [Reserved]**

"Article 2.

"State Ethics Commission.

"**§ 138A-6. State Ethics Commission established.**

There is established the State Ethics Commission.

"**§ 138A-7. Membership.**

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom may be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom may be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) Two members appointed by the Governor shall serve an initial term of one year.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.

(3) Two members appointed by the Governor shall serve initial terms of three years.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance as determined by the Governor.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.

(2) Hold office in any political party above the precinct level.

(3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.

(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or 138-7, as applicable.

"**§ 138A-8. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair; in the case of a vacancy in the chair, by the vice-chair; or by four of its members. Five members of the Commission constitute a quorum.

"**§ 138A-9. Staff and offices.**

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 138A-10. Powers and duties.**

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to covered persons in complying with this Chapter.

(2) Develop readily understandable forms, policies, and procedures to accomplish the purposes of the Chapter.

(3) Identify and publish the names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.

(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.

(5) Investigate alleged violations against judicial officers and legislators in accordance with G.S. 138A-12.

(6) Investigate alleged violations against public servants in accordance with G.S. 138A-12.

(7) Render advisory opinions in accordance with G.S. 138A-13.

(8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 138A-14.

(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(10) Adopt rules to implement this Chapter, including those establishing ethical standards and guidelines to be employed and adhered to by public servants and legislative employees in attending to and performing their duties.

(11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(g), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(i), the number of complaints referred for appropriate action under G.S. 138A-12(i) or G.S. 138A-12(l)(3), and the number of complaints pending action by the Commission.

(13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption of rules, the Committee shall:

(1) Publish the proposed rules in the North Carolina Register at least 30 days prior to the adoption of the rule.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

(3) Notify persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.

(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this section becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code.

"**§ 138A-11. Identify and publish names of covered persons and legislative employees.**

The Commission shall identify and publish at least quarterly a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. This listing may be published electronically on a public Internet Web site maintained by the Commission.

"**§ 138A-12. Investigations by the Commission.**

(a) Jurisdiction. – The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall investigate complaints alleging unethical conduct by covered persons and legislative employees as set forth in this section.

(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an investigation into any of the following:

(1) The application or alleged violation of this Chapter.

(2) The application or alleged violation of rules adopted in accordance with G.S. 138A-10.

(3) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.

(4) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.

(5) An alleged violation of G.S. 126-14.

Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(c) Complaint. –

(1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (d) of this section, a complaint filed under this Chapter must be filed within one year of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept, refer, or investigate any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer, or investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint investigation pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the covered person who is the subject of the complaint within 30 days of the filing.

(d) Investigation of Complaints by the Commission. – The Commission shall investigate all complaints properly before the Commission in a timely manner. The

Commission shall initiate an investigation of a complaint within 60 days of the filing of the complaint. The Commission is authorized to initiate investigations upon request of any member of the Commission if there is reason to believe that a covered person or legislative employee has or may have violated this Chapter. There is no time limit on Commission-initiated complaint investigations under this section. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Commission may take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting investigations.

(e) Investigation by the Commission of Matters Other Than Complaints. – The Commission may investigate matters concerning covered persons or legislative employees other than complaints properly before the Commission under subsection (b) of this section. For any investigation initiated under this subsection, the Commission may take any action it deems necessary or appropriate to further compliance with this Chapter, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 138A-13, or referral to appropriate law enforcement or other authorities pursuant to subdivision (l)(1) of this section.

(f) Covered Person and Legislative Employees Cooperation With Investigation. – Covered persons and legislative employees shall promptly and fully cooperate with the Commission in any Commission-related investigation. Failure to cooperate fully with the Commission in any investigation shall be grounds for sanctions as set forth in G.S. 138A-45.

(g) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a covered person or legislative employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint.

(h) Commission Investigations. – If at the end of its preliminary inquiry, the Commission determines to proceed with further investigation into the conduct of a covered person or legislative employee, the Commission shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the investigation and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the Commission.

(i) Action on Investigations. – The Commission shall investigate complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:

(1) For public servants and legislative employees, decide to proceed with a hearing under subsection (j) of this section.

(2) For legislators, refer the complaint to the Committee.

(3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, or to the senior resident superior court judge of the district or county for

complaints against district attorneys, or to the chief district court judge for the district or county for complaints against clerks of court.

(j) Hearing. –

(1) The Commission shall give full and fair consideration to all complaints received against a public servant or legislative employee. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant or legislative employee requests a hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, and the public servant or legislative employee. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) The Commission shall make available to the public servant or legislative employee prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.

(4) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the public servant or legislative employee requests that the hearing be held in open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.

c. The public servant or legislative employee being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(k) Settlement of Investigations. – The public servant or legislative employee who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the investigation or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the investigation is subject to the approval of the Commission.

(l) Disposition of Investigations. – Except as permitted under subsections (g) and (i) of this section, after hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a private admonishment to the public servant or legislative employee and notify the employing entity, if applicable.
b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.
c. Refer the matter for appropriate action to the Chief Justice for judicial employees.
d. Refer the matter to the Principal Clerks of the House of Representatives and Senate of the General Assembly for constitutional officers of the State.
e. Refer the matter to the Legislative Services Commission for legislative employees.

(m) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court.

(n) Findings and Record. – The Commission shall render a written report of a violation of this Chapter made pursuant to complaints or the Commission's investigation. When a matter is referred under subsection (i) or (l) of this section, the Commission's report shall include detailed results of its investigation in support of the Commission's finding of a violation of this Chapter.

(o) Confidentiality. – Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an investigation under this section shall be confidential and not matters of public record, except when the covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes sanctions. At such time as public sanctions are imposed on a covered person, the complaint, response, and Commission's report to the employing entity shall be made public.

(p) Recommendations of Sanctions. – After referring a matter under subsection (l) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's or legislative employee's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for public servant or legislative employee as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.

(2) The number of ethics violations.
(3) The severity of the ethics violations.
(4) Whether the ethics violations involve the public servant's or legislative employee's financial interests or arise from an appearance of conflict of interest.
(5) Whether the ethics violations were inadvertent or intentional.
(6) Whether the public servant or legislative employee knew or should have known that the improper conduct was a violation of this Chapter.
(7) Whether the public servant or legislative employee has previously been advised or warned by the Commission.
(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(c).
(9) The public servant's or legislative employee's motivation or reason for the improper conduct or actions, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant or legislative employee, including removal of the public servant or legislative employee from the public servant's or legislative employee's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(q) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entity to discipline the covered person or legislative employee.

(r) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to continue to investigate possible criminal violations of this Chapter for a period of one year following the date a person who was formerly a public servant or legislative employee ceases to be a public servant or legislative employee for any investigation that commenced prior to the date the public servant or legislative employee ceases to be a public servant or legislative employee.

(s) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(t) Reports. – The number of complaints referred under this section shall be reported under G.S. 138A-10(a)(11).

(u) Concurrent Jurisdiction. – Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission.

"**§ 138A-13. Advisory opinions.**

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Except as provided in this subsection, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

(1) Investigation by the Committee.

(2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. The immunity granted under this subsection shall not apply after the time the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under rules adopted by the Commission.

(d) The Commission shall interpret this Chapter by rules, and these interpretations are binding on all covered persons and legislative employees upon publication.

(e) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(f) Except as provided under subsection (e) of this section, requests for advisory opinions, and advisory opinions issued under this section, are confidential and not public records.

(g) This section shall not apply to judicial officers.

"**§ 138A-14. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons, except judicial officers, and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or hiring, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant, shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or hiring, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission deems appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission within three months of the person's election, reelection, appointment, or employment in a manner as the Commission deems appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

(i) This section shall not apply to judicial officers.

"§ 138A-15. Duties of heads of State agencies.

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(c) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any official meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and

implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment, or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"**§§ 138A-16 through 20: [Reserved]**

"Article 3.

"Public Disclosure of Economic Interests.

"**§ 138A-21. Purpose.**

The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests. Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"**§ 138A-22. Statement of economic interest; filing required.**

(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(31)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), shall file a statement of

economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (c) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Notwithstanding subsection (a) of this section, public servants, under G.S. 138A-3(31)j. and k., who have submitted a statement of economic interest under subsection (a) of this section, may be hired, appointed, or elected provisionally prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article, subject to dismissal or removal based on the Commission's evaluation.

(d) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(e) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(f) Within 10 days of the filing deadline for office of a covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of all candidates who have filed as candidates for offices as a covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Elections under this section.

(g) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other covered persons the appropriate forms needed to comply with this Article.

"**§ 138A-23. Statements of economic interest as public records.**

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

"**§ 138A-24. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

(1) The name, home address, occupation, employer, and business of the person.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person, and the filing person's immediate family. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's spouse, including descriptions adequate to determine the location by city and county of each parcel.

b. Real estate that is currently leased or rented to or from the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to or from the State.

e. The name of each publicly owned company.

f. The name of each nonpublicly owned company or business entity, including interests in partnerships, limited partnerships,

joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

h. For any company or business entity listed under sub-subdivisions f. and g. of this subdivision, list any company or business entity that has any material business dealings, contracts, or other involvement with the State, including a brief description of the business activity.

i. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

j. A list of all liabilities, excluding indebtedness on the filing person's personal residence, by type of creditor and debtor.

k. A list of each source (not specific amounts) of income received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains, and business income.

l. A list of all nonpublicly owned businesses of which the person is an officer, employee, director, business associate, or owner. The list also shall indicate whether each nonpublicly owned business does business with or is regulated by the State, and the nature of the business done with the State.

m. A list of any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do business with the State or receive State funds, and a brief description of the nature of the business, if known, or which with due diligence could reasonably be known.

n. An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be

associated. This sub-subdivision does not apply to a legislator or a judicial officer.

o. A list of all gifts, and the sources of the gifts, of a value of more than two hundred dollars ($200.00) received during the 12 months preceding the reporting period under subsection (d) of this section from sources other than the person's extended family. The list required by this sub-subdivision shall not apply to gifts received by the filing person prior to the time the person filed as a candidate for office, as defined in G.S. 138A-22, or was appointed or employed as a covered person.

(3) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty.
c. Corporate law.
d. Criminal law.
e. Decedents' estates.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation.
k. Real property law.
l. Securities law.
m. Taxation.
n. Utilities regulation.

(4) Except for a filing person in compliance under subdivision (3) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

(5) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction. This subdivision does not apply to a legislator, a judicial officer, or that person's immediate family.

(6) A list of any felony convictions of the filing person.

(7) Any other information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential

conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(b) The Supreme Court, Legislative Ethics Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall be subject to the provisions of G.S. 138A-25.

(c) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(e) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The filing person who submitted the statement.

(2) The head of the agency in which the filing person serves.

(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.

(4) The Chief Justice for judicial officers and judicial employees.

(5) The appointing or hiring authority for those public servants not under the Governor's authority.

(6) The State Board of Elections for those filing persons who are elected.

"**§ 138A-25. Failure to file.**

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"**§ 138A-26. Concealing or failing to disclose material information.**

A filing person who knowingly conceals or fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"**§ 138A-27. Penalty for false or misleading information.**

A filing person who provides false or misleading information on a statement of economic interest as required under this Article knowing that the information is false or misleading is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45.

"**§§ 138A-28 through 30: [Reserved]**

"Article 4.

"Ethical Standards for Covered Persons.

"**§ 138A-31. Use of public position for private gain.**

(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit, direct or indirect, to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of public position for financial benefit. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a directory or biographical listing, or the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3). Disclosure of a

covered person's position to an existing or prospective customer, supplier, or client is not considered advertising for purposes of this subsection when the disclosure could reasonably be considered material by the customer, supplier, or client.

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, or the Internet, that contains that covered person's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fund-raising on behalf of and aired on public radio or public television.

"**§ 138A-32. Gifts.**

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal as defined in G.S. 120C-100.

(d) No public servant shall knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

(1) Food and beverages for immediate consumption in connection with public events where the food and beverages are generally provided to other attendees.

(2) Lodging, transportation, entertainment and recreation provided in connection with a public event by a chamber of commerce qualifying under 26 U.S.C. § 501(c)(6) to which all legislators are invited when all the things of monetary value are provided within the geographic area represented by the chamber of commerce.

(3) Informational materials relevant to the duties of the covered person or legislative employee.

(4) Reasonable actual expenses for food, registration, travel, and lodging of the covered person or legislative employee for a meeting at which the covered person or legislative employee participates in a panel or speaking engagement at the meeting related to the covered person's or legislative employee's duties and when expenses are incurred on the actual day of participation in the engagement or incurred within a 24-hour time period before or after the engagement. Reasonable travel expenses necessary to attend the meeting and payments for registration and lodging for the 24-hour time periods may be paid in advance. Nothing in this subdivision shall prevent a covered person or legislative employee from arriving before or staying beyond the 24-hour time period at his or her own expense.

(5) Entertainment or recreation provided in connection with a public event sponsored by a charitable organization as defined under G.S. 1-539.11.

(6) Food, beverages, other items, and entertainment received by a public servant in connection with a state, national, or regional organization in which the person's agency is a member or the public servant is a member or participant by virtue of the person's public position, provided the food, beverages, other items, or entertainment are made available to other attendees and the entertainment is of an incidental character.

(7) Food, beverages, other items, and entertainment received by a legislator or legislative employee in connection with a state, regional, or national legislative organization of which the General Assembly is a member or the legislator or legislative employee is a member or participant by virtue of the person's legislative position, provided the food, beverages, other items, or entertainment are made available to other attendees and the entertainment is of an incidental character.

(8) Food, beverages, other items, and entertainment received in connection with an educational conference or meeting, provided the food, beverages, other items, or entertainment are made available to other attendees and the entertainment is incidental to the principal agenda of the conference or meeting.

(9) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(10) Gifts accepted on behalf of the State for the benefit of the State.

(11) Anything generally made available or distributed to the general public or all other State employees, by lobbyists or lobbyist's principals.

(12) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.

(13) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is food and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible gift, other than food or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.

(14) Gifts of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(f) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g) A prohibited gift shall be declined, returned, paid for at fair market value, or accepted and donated immediately to the State. Perishable food items of reasonable costs, received as gifts, shall be donated to charity, destroyed, or provided for consumption among the members and staff of the employing entity or the public.

(h) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.
(2) The employing entity's work time or resources are used.
(3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a gift for purposes of subsection (c) of this section.

(i) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, 14-218, or 120-86.

"**§ 138A-33. Other compensation.**

A public servant or legislative employee shall not solicit or receive personal financial gain, other than that received by the public servant or legislative employee from the State, or with the approval of the employing entity, for acting in the public servant's or legislative employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or legislative employee's duties.

"**§ 138A-34. Use of information for private gain.**

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employees' extended family, or a person with whom or business with which the public servant or legislative employee is associated. A public servant or legislative employee shall not improperly use or disclose any confidential information not a public record.

"**§ 138A-35. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.

"**§ 138A-36. Public servant participation in official actions.**

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, business associate, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

"**§ 138A-37. Legislator participation in official actions.**

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has an economic interest in, or may reasonably and foreseeably benefit from the action, if

after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104.

"**§ 138A-38. Permitted participation exception.**

Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

(1) The only interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with which the covered person is associated as a member of a profession, occupation, or general class, is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) Where an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

(3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subsection, the Commission shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under this

section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies, in writing, the Commission that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

"**§ 138A-39. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) A decision under this section shall be considered a final decision for contested case purposes under Article 3 of Chapter 150B of the General Statutes.

(d) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"**§ 138A-40. Employment and supervision of members of covered person's extended family.**

A covered person or legislative employee shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or legislative employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public servant's extended family, except as specifically authorized by the public servant's employing entity.

"**§ 138A-41. Other ethics standards.**

Nothing in this Chapter shall prevent the Supreme Court, the Legislative Ethics Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

"**§§ 138A-42 through 44: [Reserved]**

"Article 5.

"Violation Consequences.

"**§ 138A-45. Violation consequences.**

(a) Violation of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in Article 3 of this Chapter and for perjury under G.S. 138A-12 and G.S. 138A-24, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the Speaker of the House of Representatives or of the General Assembly made by the House of Representatives upon the recommendation of the Speaker of the House of Representatives, the Speaker of the House of Representatives may remove the offending public servant. For appointees of the President Pro Tempore of the Senate or of the General Assembly made by the Senate upon the recommendation of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For public servants elected to a board by either the Senate or House of Representatives, the electing house of the General Assembly shall exercise the discretion of whether to remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services Commission shall make or refer to the hiring authority all final decisions on the matter in which the offending legislative employee shall be disciplined. For public servants appointed or elected for The University of North Carolina or the Community Colleges System, the appointing or electing authority shall make all final decisions on the matter in which the offending public servant shall be disciplined. For all other public servants serving as a State employee, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) The willful failure of a legislator to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(g) The State Ethics Commission may seek to enjoin violations of G.S. 138A-34."

SECTION 2.(a) G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(14) The State Ethics Commission."

PART II. AMEND LEGISLATIVE ETHICS ACT.

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding the following new section to read:

"**§ 120-32.6. Certain employment authority.**

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. G.S. 120-85, 120-87(b), 120-88, and Part II of Article 14 of Chapter 120 of the General Statutes are repealed.

SECTION 5. Part 1 of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-85.1. Definitions.**

As used in this Article, the following terms mean:

(1) Business with which associated. – As defined in G.S. 138A-3.

(2) Confidential information. – As defined in G.S. 138A-3.

(3) Economic interest. – As defined in G.S. 138A-3.

(4) Immediate family. – As defined in G.S. 138A-3.

(5) Legislator. – A member or presiding officer of the General Assembly.

(6) Nonprofit corporation or organization with which associated. – As defined in G.S. 138A-3.

(7) Vested trust. – As defined in G.S. 138A-3."

SECTION 6. G.S. 120-86 reads as rewritten:

"**§ 120-86. Bribery, etc.**

(a) No person shall offer or give to a legislator or a member of a legislator's immediate ~~household,~~family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

~~(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.~~

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under ~~G.S. 120-103.~~G.S. 120-103.1."

SECTION 7. G.S. 120-99(a) reads as rewritten:

"(a) The Legislative Ethics Committee is created ~~to~~ and shall consist of ~~ten~~ twelve members, ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader, and ~~five~~ six members of the House of Representatives appointed by the Speaker of the House, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader."

SECTION 8. G.S. 120-99(c) is repealed.

SECTION 9. G.S. 120-101 reads as rewritten:

"**§ 120-101. Quorum; expenses of members.**

(a) ~~Six~~ Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

SECTION 10. G.S. 120-102 reads as rewritten:

"**§ 120-102. Powers and duties of Committee.**

(a) In addition to the other powers and duties specified in this Article, the Committee ~~has the following powers and duties~~may:

~~(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.~~

~~(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.~~

~~(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.~~

~~(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10 year period, these documents shall be destroyed.~~

(5) ~~To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.~~Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, and to

suggest rules of conduct that shall be adhered to by legislators and legislative employees.

(5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) ~~To advise~~Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(6a) Review, modify or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.

(7) ~~To propose~~Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, ~~to~~ investigate and dispose of the matter according to the terms of this Article.

(9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(10) Adopt rules to implement this Article.

(11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties."

SECTION 11. G.S. 120-103 is repealed.

SECTION 12. Part III of Article 14 of Chapter 120 is amended by adding a new section to read:

"**§ 120-103.1. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. –

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(3) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.

(c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section, initiate an investigation of a complaint or dismiss the complaint, or the complaint shall then become a public record. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee may:

(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.

(2) Conduct further investigations and hearings under this section.

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subsection (j)(2) of this section.

(f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint after Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. –

(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.

(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) At any hearing held by the Committee:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.

c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsection (g) of this section, after the hearing the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – Except as provided under subsection (c) of this section, the complaint, response, records and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members."

SECTION 13. G.S 120-104 reads as rewritten:

"§ 120-104. Advisory opinions.

(a) At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. ~~These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee.~~

(b) The Committee shall accept and review advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13. The Committee may modify or overrule the advisory opinions issued to legislators by the State Ethics Commission and the opinion of the Committee shall control. The Committee shall provide the Commission with the advisory opinion modified or overruled by the Committee, and the Commission shall publish the Committee's opinion under G.S. 138A-13(e). The failure of the Committee to modify or overrule an advisory opinion issued to a legislator by the State Ethics Commission shall constitute ratification

of the State Ethics Commission's advisory opinion for purposes of the immunity granted under G.S. 138A-13(a).

(c) Staff to the Committee may issue informal, nonbinding advisory opinions under rules adopted by the Committee.

(d) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators by rules, and these interpretations are binding on all legislators upon publication.

(e) The Committee shall publish its advisory opinions issued separately from the State Ethics Commission at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(f) Except as provided under subsection (e) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission, are confidential and not matters of public record."

SECTION 14. G.S. 120-105 reads as rewritten:

"**§ 120-105. Continuing study of ethical questions.**

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as ~~sections to cover the administrative branch of government and~~ Chapter 138A of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government."

SECTION 15. G.S. 143B-350 reads as rewritten:

"**§ 143B-350. Board of Transportation – organization; powers and duties, etc.**

...

(i) Disclosure of Contributions. – Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of

Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to ~~any other code of ethics that may be applicable to members of the Board or to the Secretary.~~the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection ~~shall:~~shall include

~~(1)~~ ~~Include~~ a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

~~(2)~~ ~~Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest~~

~~shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~(3) Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.~~

(l) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in ~~nature~~ nature, conducted in conjunction with the State Ethics Commission, and shall include input from the Institute of Government, ~~the North Carolina Board of Ethics,~~ the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

...."

PART III. AMEND LOBBYING LAWS.

SECTION 16.(a) G.S. 120-47.7B as enacted by S.L. 2005-456 is effective when this act becomes law.

SECTION 16.(b) G.S. 120-47.7B is repealed effective January 1, 2007.

SECTION 17. Article 9A of Chapter 120 of the General Statutes is repealed.

SECTION 18. The General Statutes are amended by adding a new Chapter to read:

"Chapter 120C.

"Lobbying.

"Article 1.

"General Provisions.

"§ 120C-100. Definitions.

(a) As used in this Article, the following terms mean:

(1) Designated individual. – A legislator, legislative employee, or public servant.

(2) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.

b. A public servant's communication with a person or another person on that person's behalf with respect to any of the following:

1. Applying for a permit, license, determination of eligibility, or certification.

2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.

3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.

c. Internal administrative functions, including those functions exempted from the definition of 'rule' in G.S. 150B-2(8a).

d. Ministerial functions.

e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting or submitted as written comment, on a proposed executive action in response to a request for public comment, provided identity of the person on whose behalf the comments are made is disclosed as part of the public participation and no reportable expenditure is made.

(3) In session. – One of the following:

a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:

1. Adjourns sine die.

2. Recesses or adjourns for more than 10 days.

b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:

1. Adjourns sine die.

2. Recesses or adjourns for more than 10 days.

(4) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill,

resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(5) Legislative employee. – Employees and officers of the General Assembly.

(6) Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals.

(7) Legislator. – As defined in G.S. 138A-3.

(8) Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications, activities, or monies spent as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(9) Lobbyist. – An individual who engages in lobbying and meets any of the following criteria:

a. Is employed by a person for the intended purpose of lobbying.

b. Is employed by a person and a significant part of that individual's duties include lobbying. For purposes of this sub-subdivision, a significant part of an individual's duties is deemed to be any portion of more than five calendar days in a calendar year.

c. Represents another person, but is not directly employed by that person, and receives compensation for the purpose of lobbying. For the purposes of this sub-subdivision, the term compensation shall not include reimbursement of actual travel and subsistence.

d. Contracts for economic consideration for the purpose of lobbying.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

(10) Lobbyist principal and principal. – The person on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the individual members of the association or other organization.

(11) News medium. – Media providers whose sole purpose is to report events and that does not involve research or advocacy.

(12) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.

b. A contract, agreement, promise or other obligation whether or not legally enforceable.

(13) Solicitation of others. – The petition or request of the general public to influence legislative or executive action, or both by a lobbyist, lobbyists' principal or other person, except communication between the lobbyist, lobbyist's principal or other person and the lobbyist's principal's or other person's stockholders, employees, board members, officers, members, subscribers, or other persons who have affirmatively assented to receive the lobbyist's principal's or other person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter.

"**§ 120C-101. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated

that commitment or decision to the State or local government agency involved with the project.

"**§ 120C-102. Advisory opinions.**

(a) At the request of any person affected by this Chapter, the Secretary of State shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Secretary of State shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion, from both of the following:

(1) Investigation by the Secretary of State.

(2) Any adverse action by the employing entity.

(b) Staff to the Secretary of State may issue advisory opinions under rules adopted by the Secretary of State.

(c) The Secretary of State shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"**§ 120C-103. Lobbying education program.**

(a) The Secretary of State shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Secretary of State shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Secretary of State deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the Secretary of State within six months of the person's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Secretary of State deems appropriate. Upon request, the Secretary of State shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Secretary of State shall publish a newsletter containing summaries of the Secretary's opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Secretary of State shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made

available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals upon request.

"**§ 120C-103. Chapter applies to candidates for certain offices.**

For purposes of this Chapter, the term 'legislator' as defined in G.S. 120C-100(7) and the term 'public servant' as defined in G.S. 138A-3(31)a. shall include a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes.

"Article 2.

"Registration.

"**§ 120C-200. Lobbyist registration procedure.**

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for a person to lobby without registering within one business day of engaging in any lobbying as defined in G.S. 120C-100(8) unless exempted by this Chapter.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address and telephone number; the registrant's place of business; the full name, complete address and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

(e) Each lobbyist shall identify himself or herself as a lobbyist prior to engaging in lobbying communications or activities with a designated individual. The lobbyist shall also disclose the identity of the lobbyist's principal connected to that lobbying communication or activity.

"**§ 120C-201. Lobbyist's registration fee.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyists registering to represent persons who have been granted nonprofit status under 26 U.S.C. 501(c)(3).

"**§ 120C-202-205: Reserved for future codification.**

"**§ 120C-206. Lobbyist's principal's authorization.**

(a) A written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent that principal.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

"**§ 120C-207. Lobbyist's principal's fees.**

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist's principals that have been granted nonprofit status under 26 U.S.C. 501(c)(3).

"**§ 120C-208-210: Reserved for future codification.**

"**§ 120C-215. Other persons required to register.**

(a) A person incurring an expense for solicitation of others as defined in G.S. 120C-100(13) shall register and report under this Chapter when the expense is one of the following:

(1) Media costs exceeding a total of one thousand dollars ($1000) during any 90-day period.

(2) Mailing costs exceeding a total of five hundred dollars ($500.00) during any 90-day period.

(3) Conferences, meetings, or other similar events exceeding a total of five hundred dollars ($500.00) during any 90-day period.

(b) A person required to register and report under this section shall be referred to as a 'solicitor' for purposes of this Chapter.

"**§ 120C-216-219: Reserved for future codification.**

"**§ 120C-220. Publication and availability of registrations.**

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically.

"Article 3.

"Prohibitions and Restrictions.

"§ 120C-300. Contingency fees prohibited.

(a) No person shall act as a lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to a person doing business with the State who is engaged in sales with respect to that business with the State whose regular compensation agreement includes commissions based on those sales.

(c) Any compensation paid to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

"§ 120C-301. Election influence prohibited.

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist's principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

"§ 120C-302. Campaign contributions prohibition.

No lobbyist or lobbyist's principal may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(31)a.

"§ 120C-303. Gifts by lobbyists and lobbyist's principals prohibited.

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may directly or indirectly give a gift to a designated individual.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery or solicitation of bribery under G.S. 14-217, 14-218, or 120-86, but shall be subject to civil fines under G.S. 120C-601(b).

"§ 120C-304. Restrictions.

(a) No legislator or former legislator and no public servant or former public servant as defined in G.S. 138A-3(31)a. may register as a lobbyist under this Chapter within six months after the end of the term to which the member was elected or appointed.

(b) No person serving as a public servant as defined in G.S. 138A-3(31)c. may register as a lobbyist under this Chapter within one year after separation from employment or leaving office.

(c) No individual registered as a lobbyist under this Chapter shall serve as a campaign treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(d) A lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State within 60 days after the expiration of the lobbyist's registration. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) Any appointment or registration made in violation of this section shall be void.

"**§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.**

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure.

"Article 4.

"Reporting.

"**§ 120C-400. Reporting of reportable expenditures.**

For purposes of this Chapter, all reportable expenditures, as defined in G.S. 120C-100(12), made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual, or those persons' immediate family members, in the regular course of that individual's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a designated individual, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

(4) Reportable expenditures for gifts exempted by Article 3 of this Chapter.

"**§ 120C-401. Reporting generally.**

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 10 business days after the end of the reporting period.

(b) Each report shall set forth the fair market value or face value if shown, date, a description of the reportable expenditure, name and address of the payee, or beneficiary,

and name of any designated individual, or that person's immediate family member connected with the reportable expenditure. When more than 15 designated individuals benefit from a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(c) Reportable expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment.

(3) Food and beverages.

(4) Meetings and events.

(5) Gifts.

(6) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist's principal, or other person required to report of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist's principal, or solicitor. No lobbyist, lobbyist's principal, or solicitor may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist's principal, or solicitor for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section.

"**§ 120C-402. Lobbyist's reports.**

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall include all of the following:

(1) All reportable expenditures made for the purpose of lobbying during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.

c. Conferences, meetings, or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

(3) Reportable expenditures reimbursed by the lobbyist's principal, or another person on the lobbyist's principal's behalf.

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly reportable expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-403. Lobbyist's principal's reports.**

(a) Each lobbyist's principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following:

(1) All reportable expenditures made for the purpose of lobbying during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.

c. Conferences or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

(3) Compensation paid to all lobbyists during the quarter. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(4) Reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

"**§ 120C-404. Solicitor's reports.**

(a) Each solicitor shall file quarterly reports under oath with the Secretary of State.

(b) The report shall include all of the following:

(1) All reportable expenditures made for the purpose of lobbying during the reporting period.

(2) Solicitation of others when such solicitation involves:

a. Media costs which exceed a cost of one thousand dollars ($1000) during the reporting period.

b. Mailing costs which exceed a cost of five hundred dollars ($500.00) during the reporting period.

c. Conferences, meetings, or other similar events, which exceed a cost of five hundred dollars ($500.00) during the reporting period.

"**§ 120C-405. Report availability.**

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes.

"Article 5.

"Liaison Personnel.

"**§ 120C-500. Liaison personnel.**

(a) All agencies and constitutional officers of the State, including all boards, commissions, departments, divisions, councils, constituent institutions of The University of North Carolina and other units of government in the executive branch, except local units of government, shall designate liaison personnel to lobby legislators and legislative employees.

(b) No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees.

(c) No more than two persons may be designated as liaison personnel for each agency and constitutional officers of the State, including all boards, commissions, departments, divisions, councils, constituent institutions of The University of North Carolina, and other units of government in the executive branch.

"**§ 120C-501. Applicability of chapter on liaison personnel.**

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) The registration under G.S. 120C-200 shall apply to liaison personnel.

(c) The reports required by G.S. 120C-402 shall be completed and filed as required by that section.

"Article 6.

"Violations and Enforcement.

"§ 120C-600. Powers and duties of the Secretary of State.

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"§ 120C-601. Punishment for violation.

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of this Chapter up to five thousand dollars ($5,000) per violation.

"§ 120C-602. Enforcement by Attorney General.

(a) The Secretary of State may investigate complaints of violations of this Chapter and shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Secretary of State or any member of the Department of the Secretary of State shall be referred to the Attorney General for investigation. Any portion of the complaint not involving alleged violations of this Chapter by the Secretary of State or any member of the Department of the Secretary of State shall remain with the Secretary of State for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district

attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(c) Complaints of violations of this Chapter involving the Attorney General or any member of the Department of Justice shall be investigated by the Secretary of State and any apparent violations reported to the district attorney of that prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part. The district attorney of that prosecutorial district shall, upon receipt of the Secretary of State's report, prosecute any person who violates any provisions of this Chapter.

"Article 7.

"Exemptions.

"§ 120C-700. Persons exempted from this Chapter.

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following lobbying activities:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties.

(4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes, or is an employee of any news medium while engaged in the acquisition or dissemination of news on behalf of that news medium.

(6) Designated individuals while acting in their official capacity.

(7) A person responding to inquiries from a designated individual and who engages in no further activities as a lobbyist in connection with that inquiry.

(8) A person who is a political committee as defined in G.S. 163-278.6(14)a. or b., that person's employee, or that person's contracted service provider.

"Article 8.

"Miscellaneous.

"§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(c) If a designated individual accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from an extended family member to a designated individual.

(3) Gifts associated primarily with the designated individual's or that person's immediate family member's employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the reportable expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest

under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest.

(g) For purposes of this section, the term 'scholarship' shall mean a grant-in-aid to attend a conference, meeting or other similar event."

SECTION 19. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 20. G.S. 120-86.1 reads as rewritten:

"**§ 120-86.1. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in ~~G.S. 120-47.1(4).~~ G.S. 120C-100(4), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes."

SECTION 21. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~ under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in ~~G.S. 120-47.1(7),~~ G.S. 120C-100(10) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered ~~pursuant to Article 9A of Chapter 120~~under Chapter 120C of the General Statutes."

SECTION 22. Effective September 1, 2008, The Revisor of Statutes shall change the term "Secretary of State" to "State Ethics Commission" wherever it appears in Chapter 120C of the General Statutes. Effective September 1, 2008, all personnel and associated funding of those personnel employed with the Secretary of State with respect to Chapter 120C of the General Statutes shall be transferred to the State Ethics Commission.

SECTION 23. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 24.(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

SECTION 24.(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008.

SECTION 25. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid. If G.S. 120C-302 as enacted by Section 18 of this act is declared unconstitutional or invalid by the courts, it shall be repealed.

SECTION 26. Sections 4 through 15 and Sections 17 through 22 of this act become effective January 1, 2007, and G.S. 120C-304 as enacted by Section 18 of this

act applies to appointments made on or after that date. Sections 16, 25, and 26 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 1843:
State Government Ethics Act.

BILL ANALYSIS

Committee:	Senate Floor	**Date:**	July 18, 2006
Introduced by:	Reps. Hackney, Howard, Brubaker, Luebke	**Summary by:**	O. Walker Reagan Committee Co-Counsel
Version:	PCS to Third Edition H1843-PCS80685-RU-104		

SUMMARY: ***The Senate Committee Substitute for House Bill 1843 creates an independent ethics commission to oversee the administration of certain ethics laws that apply to the executive branch, the legislative branch, and the judicial branch. The bill codifies Executive Order No. One, modifies the existing Legislative Ethics Act, substantially conforms ethics laws applying to legislators to those applicable to the executive branch, and requires judicial officials to file statements of economic interest with the independent commission and be subject to investigations for ethics violations. Part III of the bill amends the lobbying laws as follows:***

1. ***Bans certain gifts by lobbyists and lobbyists' principals to covered persons (legislators, legislative employees, and executive branch officers).***
2. ***Expands coverage of the lobbying laws to additional executive branch officers and employees, with a combined single registration, fee, regulation, and reporting periods for both legislative and executive branch lobbying.***
3. ***Prohibits campaign contributions by registered lobbyists and lobbyist's principals.***
4. ***Permits the issuance of advisory opinions and requires lobbying education programs.***

CURRENT LAW:

Executive Branch. - Ethics in the executive branch is primarily regulated by Executive Order No. One (Order) issued by the Governor. Under the Governor's limited authority, the Governor has made the order applicable to appointees of the Governor, and offered the services of the State Ethics Board (created by the Order) to members of the Council of State, the Speaker and President Pro Tempore for their appointees to boards and commissions, and to the UNC Board of Governors. The Order requires covered officials to file statements of economic interests (SEI) annually, establishes rules of conduct for covered officials, authorizes the Board to issue advisory ethics opinions, investigate ethics complaints, and conduct ethics education programs. Enforcement of the Board's recommendations is left to the discretion of the appointing or hiring authority. Records of the Board are public, including SEI filed by perspective appointees prior to their appointment. False statements made on SEI are not subject to the penalty of perjury. The Governor has no authority to require other constitutional officers of the State to participate under the Order or make the order applicable to appointees of boards and commissions made by persons other than the Governor, including the General Assembly.

Legislative Branch. - The current Legislative Ethics Act, enacted in 1975, consists of three Parts. Part 1 is the Code of Legislative Ethics that defines certain conduct involving legislators that would be either criminal or unethical conduct and conflicts of interest for legislators. Part 2 governs legislator's SEI Part 3 establishes the Legislative Ethics Committee and defines the powers and authority of the Committee for overseeing the SEI process, issuing ethics advisory opinions, and conducting investigations of alleged unethical conduct.

Judicial Branch. - Article IV of the Constitution establishes the Judicial Branch to include all justices and judges of the General Court of Justice, magistrates, clerks of court, district attorneys and the Administrative Office of the Courts. The responsibility for ethics in the judicial branch is given to the NC Supreme Court which has authority to prescribe standards of judicial conduct in the Code of Judicial Conduct. The Judicial Standards Commission, made up of judges, private attorneys, and non-lawyer private citizens, is established to receive and investigate complaints of judicial misconduct, and report to the Supreme Court for disciplinary action, including censure or remove a judge for certain judicial misconduct.

Lobbying Law - A person paid to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, any expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that a lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures that the principal made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

BILL ANALYSIS: The Senate Committee Substitute for House Bill 1843 does the following:

ARTICLE 1 sets out the purpose of the Act and the applicable definitions.

G.S. 138A-3 sets out the following definitions used in the Chapter:

Board - Any non-advisory State branch board, commission, council, committee, task force, authority, or similar body created by statute or executive order.

Covered Person – Legislator, public servant (defined below), justices, judges, district attorneys, and clerks of court,

Extended Family – Spouse, lineal descendants and ascendants, sibling, and spouse of the covered person, and lineal descendants and ascendants, and sibling of the spouse of the covered person, and the spouse of these persons.

Gift – Anything of monetary value given or received without valuable considerations by or from a lobbyist or lobbyist principal, or other defined person doing business with a specific State agency. Excluded from the definition of a gift are things for which fair market value or face value is paid, normal commercial loans and business relationships, not for the purpose of lobbying, normal academic and athletic scholarships, lawful campaign contributions, and things given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to public service and not for the purpose of lobbying.

Judicial employees – The director and assistant director of the Administrative Office of the Courts and any other person designated by the Chief Justice earning more than $60,000 per year from the State.

Public event – An organized gathering of individuals open to the general public or to which at least 10 other persons, not the covered public official, or all persons associated with the sponsor in a specific office or county, are invited to attend, and to which at least ten public servants or a recognized group of legislators are invited to attend.

Public servants – All Council of State members, heads of all principal State departments, chief deputies and administrative assistants, confidential assistants and secretaries, employees of the Office of the Governor, persons designated as exempt from the State Personnel Act by the Governor, Council of State or department heads, judicial employees, voting members of all boards (defined) whether appointed by the executive, legislative, or judicial branch, the UNC Board of Governors, the UNC president and vice-presidents, chancellors, vice-chancellors, members of UNC boards of trustees, members of the State Board of Community Colleges, President and chief financial officer of the Community College System, presidents, chief financial officers and trustees of local community colleges, and contract employees filling any of these positions.

BILL SUMMARY:

House Bill 1843 retains most the provisions of the existing Legislative Ethics Act and supplements these provisions with more definitions of conflicts of interest, establishes a limit on gifts received by legislators from lobbyists and lobbyist principals, and provides for a more detailed and frequent statement of economic interest. The bill also enacts two new criminal penalties which are the subject of this incarceration note.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

The proposed GS 120-286 would establish new definitions for bribery of a legislative official. Violations of this section would be punishable as a Class F felony. It is not known how many additional bribery convictions may occur as a result of this proposed bill. If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Proposed GS 120-319 sets out penalties for failure to file required reports or knowingly providing false information on these reports of economic interest. Knowingly concealing or failing to disclose required information would be punishable as a Class 1 misdemeanant, and knowingly providing false information is a Class H felony.

There is no historical data by which to estimate the impact of this proposal, since it is a new offense. In 2004-05, 35% of Class H felonies resulted in active sentences, with an estimated time served of ten months. Thus, to need one additional prison bed in the first year, there would need to be three convictions during the year. The misdemeanor penalty section would not be expected to have any impact on the State's prison system, since sentences less than 90 days are served in local jails.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense. The Administrative Office of the Courts has no data with which to analyze this bill, but suspects there would be few cases filed, although these cases might be considered high-profile and time-consuming.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Douglas Holbrook

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 18, 2006



Signed Copy Located in the NCGA Principal Clerk's Offices

ARTICLE 2 establishes the State Ethics Commission as an independent, bipartisan commission of eight members, 4 appointed by the Governor, of which no more than 2 may be of the same political party, 4 appointed by the General Assembly, 2 each on the recommendation of the President Pro Tempore and the Speaker, of which no more than 1 each may be of the same political party. While serving on the Commission, no member may hold or be a candidate for public office, hold office in a political party, participate in or contribute to a political campaign for a public servant the Commission oversees, or otherwise be an employee of the State, a community college or local public school system, or a member of any other State board.

The Commission would have the power to employ staff, review statements of economic interest, render advisory opinions, investigate ethics complaints, oversee ethics education programs, and advise the General Assembly on ethics matters.

G.S. 138A-12 sets out the authority of the Commission to conduct ethics investigations of alleged violations of the ethics laws, rules, or the criminal law in the performance of official duties committed by covered persons and legislative employees. After investigation and before hearing, complaints received against legislators and judicial officers are referred to the Legislative Ethics Committee, the Judicial Standards Commission, or the senior resident superior court judge in the county or district for district attorneys and to the chief district court judge of the county or district for clerks of court. As to complaints against public servants and legislative employees, after a hearing, the Commission can dismiss the complaint, refer criminal matters to the Attorney General and the district attorney, issue a private admonishment, or refer the matter to the employing entity for possible sanctions. Complaints, responses and the Commission's reports of its investigation are not public records until the employing authority imposes public sanctions. Hearings are generally held in closed session. The Commission has subpoena authority when authorized by the court.

G.S. 138A-13 grants the Commission authority to issue advisory opinions to legislators, public servants and legislative employees. A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. Requests for advisory opinions and advisory opinions are confidential and not public records, but annual summaries of advisory opinions are to be published and made available to the public. Opinions given to legislators are sent to the Legislative Ethics Committee to be modified or overturned.

G.S. 138A-14 sets out the requirement for the Commission to provide for mandatory ethics education programs for all public servants and judicial employees and their immediate staffs (individuals who report directly to the public servant), and legislators and legislative staff.

G.S. 138A-15 sets out the ethics duties of heads of State agencies. Agency heads, including board chairs, are required to take an active role in promoting ethics in their areas of responsibility. They are expected to remain knowledgeable of ethics laws, remind public servants of their ethical obligations, remind their fellow public servants about conflicts of interests and appearances of conflicts of interests, and arrange and promote in-house ethics education programs.

ARTICLE 3 sets out the requirements for filing statements of economic interests.

G.S. 138A-22 requires all judicial officials (justices, judges, district attorneys, clerks of court), public servants, except employees earning $60,000 or less, and legislators to file statements of economic interest (SEI) prior to their initial appointment, election, or employment and no later than March 15th of every year thereafter. An exception is made for appointees of newly elected constitutional officers, who have 30 days from the date of appointment or employment to file, when the appointment or employment is done within the first 60 days of the initial term in office. This section sets forth the requirement and procedure for candidates for judgeships and the Council of State to follow for filing their SEI, in the same manner as is required for candidates for the General Assembly.

G.S. 138A-23 makes statements of economic interest public records when filed, except SEI's of perspective appointees or employees do not become public until the person is appointed or employed.

G.S. 138A-24 sets out the contents of the Statement of Economic Interest (SEI). Included in the information to be reported are assets in excess of $10,000 in real estate holdings, personal property leased, sold or bought to or from the State, publicly owned companies, non-publicly owned companies, vested trusts, indebtedness by type of lender, sources of income, businesses in which the filing person is an officer, employee, director, business associate, or owner; gifts from lobbyists or lobbyist's principals in excess of $200 during the preceding 12 months other than from extended family members. The statement also requires lists of memberships and associations in organizations over which the public servant's agency or board has jurisdiction, and felony convictions. Statements of economic interest must be sworn, and false statements would be subject to penalty of perjury. The Commission is to evaluate each statement and issue an opinion on the existence or lack of conflicts of interests and potential conflicts of interests.

G.S. 138A-25 requires the Commission to notify every filing person who fails to file or complete his or her required SEI within 30 days of the due date. Any filing person currently in office who fails to file or complete the SEI within 30 days of the receipt of the late notice is subject to a $250 fine. Any filing person currently in office who fails to file or complete the SEI within 60 days of receipt of the late notice shall be subject to disciplinary action under Article 5.

G.S. 138A-26 makes it a Class 1 misdemeanor for a filing person to knowingly conceal or fail to disclose required information on a SEI.

G.S. 138A-27 makes it a Class H felony for a filing person to provide false or misleading information on a SEI knowing the information to be false or misleading.

ARTICLE 4 establishes ethical standards for covered persons.

G.S. 138A-31 prohibits covered persons from using their public position for personal financial gain for themselves, their extended families, or a business with which they are associated, or from using their governmental title for non-governmental advertising that advances the private interest of the public servant or others. Use of the public servant's title is permitted for political advertising, charitable solicitations and other limited purposes. A covered person is prohibited from using State funds for advertising or public service announcements that contains the covered person's name, picture or voice except in the case of national emergencies.

G.S. 138A-32 restricts gifts that public servant, legislator or legislative employee can accept. It prohibits accepting gifts in return for being influenced in their official duties. It prohibits soliciting charitable gifts from subordinate State employees. It prohibits covered persons from accepting gifts from lobbyists, lobbyist principals, or other people doing business with the public servant's agency. Excepted from the gift restrictions are meals and beverages for immediate consumption in connection with public events, lodging, transportation, entertainment and recreation provided to all legislator in connection with a public event by a chamber of commerce, informational materials related to the covered person's duties, expenses associated with a speech or panel related to the covered person's public duties, items or services related to an organization to which the public servant or the public servant's agency belongs, items or services received at an educational conference or meeting, a plaque or nonmonetary recognition memento, gifts accepted on behalf of the State, anything available to the general public or all State employees, things of monetary value associated with travel and tourism and industry recruitment under certain conditions, gifts of less than $100 received in a foreign country as part of a trade mission, and gifts from extended family members.

This section also specifies that a gift accepted or solicited in compliance with this section without corrupt intent shall not constitute bribery.

G.S. 138A-33 prohibits public servants and legislative employees from receiving additional compensation, other than salary, for carrying out their duties.

G.S. 138A-34 prohibits public servants and legislative employees from using information gained in their official positions for personal financial gain.

G.S. 138A-35 requires public servants to use due diligence to determine if they have a conflict of interest and to continually monitor their situation to assure the avoidance of conflicts.

G.S. 138A-36 defines conflicts of interest for public servants. A conflict of interest occurs when the person, his or her extended family, or a business with which he or she is associated, has an economic interest in, or would benefit from, the matter under consideration, and the public servant's independence of judgment would be influenced by the interest. When a conflict exists, the public servant must abstain from participation. If the public servant is unclear if a conflict exists, the public official is required to seek guidance.

G.S. 138A-37 defines conflicts of interest for legislators. A legislator should not act on a legislative matter if the legislator has an economic interest in the matter being considered that would be substantially influence the legislator's independence of judgment on the matter.

G.S. 138A-38 sets out numerous exceptions to the restrictions in G.S. 138A-36 and 37, primarily involving situations where the benefit is no greater to the covered person than to the public in general, or when the covered person has received an ethics opinion that no conflict exists.

G.S. 138A-39 establishes a process where a public servant can be forced to remove a disqualifying conflict of interest or be required to resign. A disqualifying conflict of interest occurs when a conflict of interest is found to prevent the public servant from fulfilling a substantial function or portion of his or her public duties.

G.S. 138A-40 prohibits a covered person or legislative employee from hiring or supervising a member of his or her extended family, except for legislators as permitted by the Legislative Services Commission, or specifically authorized by the public servant's employing entity.

G.S. 138A-41 permits individual State agencies to adopt more stringent ethical standards in addition to the provisions of this Act.

ARTICLE 5 sets out the sanctions for violation of the Act. Willful violations by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order which could lead to being fired. Willful violations by members of the Council of State constitute grounds for impeachment. Willful violations by legislators subject them to sanctions by the house of which they are a member.

SECTION 2 exempts the Commission from the rulemaking provisions of Chapter 150B, The Administrative Procedure Act, but G.S. 138A-10(c) sets up a rulemaking process for the Commission.

SECTION 3 through 14 make conforming changes to the Legislative Ethics Act to reflect duties given to the State Ethics Commission with regards to legislative ethics including he filing of statements of economic interests, ethics education, advisory opinions and receipt of ethics complaints. **Section 7** expands the Legislative Ethics Committee from 10 to 12 members and requires equal partisan representation in each house on the Committee. **Section 12** recodifies the law authorizing the Committee to conduct ethics investigations consistent with the authority given to the State Ethics Commission to investigate complaints against public servants and judicial employees. **Section 13** amends the authority

of the Committee with regards to advisory opinions by giving the Committee authority to modify or override advisory opinions give to legislators by the State Ethics Commission.

SECTION 15 modifies the Department of Transportation ethics laws to conform to the changes made in Section 1 of the bill for other executive branch public officials.

SECTION 18 does the following:

- Prohibits lobbyist from giving gifts to legislators, legislative employees and public servants except as permitted under G.S. 138A-32 (summarized above).
- Makes developing goodwill part of the definition of lobbying.
- Defines "reportable expenditure" for reporting purposes to include anything of value over $10.
- The lobbying laws are applied to certain persons in the Executive branch.
- Legislative staff is included under lobbying regulations.
- Prohibits a legislator or former legislator or member, or former member, of the Council of State from being employed as a lobbyist within 6 months after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the head of a cabinet department from being employed as a lobbyist within one year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign treasurer for a legislative or Council of State campaign.
- Prohibits a lobbyist from being appointed to any board, authority, commission, etc. that regulates the activities of a business, organization, person or agency that the lobbyist represented within 60 days of that representation.
- Prohibits a lobbyist from allowing a covered person (legislator or executive branch officer), legislative employee, or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Allows the Secretary of State's office to treat investigations of lobbying violations as criminal investigations, meaning the investigation information may not be released as a public record.
- Combines legislative and executive lobbying registrations and regulations into one and places them in a separate chapter.
- Definition of covered person for lobbying purposes is the same as under the State Government Ethics Act, Chapter 138A.
- Treats solicitation of others to lobby as a separate item from direct and indirect lobbying, including for registration and reporting purposes.
- Lobbying expenditures by liaison personnel have to be reported the same as lobbying expenditures by lobbyists.
- The registration period for a lobbyist and lobbyist's principal is one year.
- Clarifies that the lobbyist must file a separate registration for each principal the lobbyist represents, and that a fee of $100 is paid for each registration.
- Quarterly reporting of lobbying expenditures is required, with increased reporting to monthly of legislative lobbying while the General Assembly is in session if there is a lobbing expenditure made during that month.
- Increases the details of lobbying expenditure reports to include the fair market value or face value if shown, date, a description of the lobbying expenditure, name and address of the payee or beneficiary, name of any covered person benefiting from the lobbying expenditure (or legislative employee or those person's immediate family members)
- The Secretary of State is granted rulemaking authority to facilitate disclosure of lobbying expenditures, including the format of the report and additional categories.
- Bans all campaign contributions to General Assembly and Council of State races by lobbyists and lobbyist's principals.

- Requires registration by persons incurring expenses for solicitation of others in the following amounts:
  - Over $1,000 for media costs in a calendar quarter.
  - Over $1,000 for mailing costs in a calendar quarter.
  - Over $500 for conference or similar events in a calendar quarter.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply, and persons filing a statement of economic interest may fulfill reporting requirements on the statement of economic interest.
- Authorizes the Secretary of State to issue advisory opinions on issues arising under the lobbying law.
- Requires continuing lobbying education programs for legislators, legislative employees, executive branch officers, lobbyists and lobbyists' principals.
-

SECTION 22 transfers the lobbying regulation from the Secretary of State to the State Ethics Commission effective September 1, 2008.

SECTION 23 transfers the assets and personnel of the State Ethics Board to the State Ethics Commission effective October 1, 2006.

EFFECTIVE DATE: Most of the lobbying portions of the bill become effective January 1, 2007. Most of the remainder of the bill becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, and to acts and conflicts of interest that arise on or after January 1, 2007. The conforming changes become effective January 1, 2007.

Erika Churchill, counsel to the House Judiciary I Committee, substantially contributed to this summary.

H1843e3-SMRU-PCS80685-RU-1004

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1843 (Third Edition)

SHORT TITLE: Revise Legislative Ethics Act - 1.

SPONSOR(S): Representatives Hackney, Howard, Brubaker, and Luebke

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
GENERAL FUND					
Correction					
Recurring					
Nonrecurring					
Judicial					
Recurring					
Nonrecurring					
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS*					
POSITIONS: (cumulative)					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE: January 1, 2007

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1413*

Committee Substitute Favorable 8/11/05

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/15/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H1413-CSRBf-82 [v.6]

7/19/2006 10:03:42 AM

Short Title: Enhance Local Govt. Adm. of Env. Prgms. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS; TO THE CONTROL OF STREET AND DRIVEWAY CONNECTIONS IN THE EXTRATERRITORIAL PLANNING JURISDICTION OF CITIES IN CERTAIN COUNTIES; AND TO ALLOW LOCAL GOVERNMENT EMPLOYEES TO STAND IN, ON, OR NEAR A PUBLIC STREET OR HIGHWAY OWNED, LEASED, OR CONTROLLED BY THE STATE TO SOLICIT CHARITABLE CONTRIBUTIONS SO LONG AS THE PERSON SOLICITING IS AN EMPLOYEE OR AGENT OF THE LOCAL GOVERNMENT AND MEETS CERTAIN RESTRICTIONS AND GUIDELINES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding a new subsection to read:

"(e) The landowner, the financially responsible party, or their agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been

established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1."

SECTION 2. G.S. 113A-56 reads as rewritten:

"§ 113A-56. Jurisdiction of the Commission.

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

(1) Conducted by the ~~State:~~State.

(2) Conducted by the United ~~States:~~States.

(3) Conducted by persons having the power of eminent ~~domain:~~domain other than a local government.

(4) Conducted by ~~local governments; or~~a local government.

(5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to a delegated erosion and sedimentation control program:

(1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the Commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.

(2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action."

SECTION 3. G.S. 113A-60 reads as rewritten:

"§ 113A-60. Local erosion and sedimentation control programs.

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper

administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars ($100.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or

subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs.

(e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1."

SECTION 4. G.S. 143-215.3D is amended by adding a new subsection to read:

"(f) Local Government Fee Authority Not Impaired. – This section shall not be construed to limit any authority that a unit of local government may have pursuant to any other provision of law to assess or collect a fee for the review of an application for a permit, the review of a mitigation plan, or the inspection of a site or a facility under any local program that is approved by the Commission under this Article."

SECTION 5. G.S. 143-215.1(f) reads as rewritten:

"(f) Local Permit Programs for Sewer ~~Extension.~~ Extension and Reclaimed Water Utilization. – Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Commission. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where sewer service or a reclaimed water utilization system is already being provided by the municipality to the permit applicant or connection to the municipal sewer system or a reclaimed water utilization system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service or a reclaimed water utilization system is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of a program and

statement submitted by any local government, commission, authority, or board the Commission shall certify any local program ~~that:~~does all of the following:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Part and the rules implementing this ~~Part;~~Part.

(2) Provides that the Department receives notice and a copy of each application for a permit and that it receives copies of approved permits and plans upon request by the ~~Commission;~~Commission.

(3) Provides that plans and specifications for all construction, extensions, alterations, and changes be prepared by or under the direct supervision of an engineer licensed to practice in this ~~State;~~State.

(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial ~~process;~~process.

(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review ~~program;~~program.

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system;~~system.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer ~~system; and~~system or a reclaimed water utilization system.

(8) Is approved by the Commission as adequate to meet the requirements of this Part and the rules implementing this Part.

(f1) The Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A denial, suspension, or revocation of a certification of a local program shall be made only after notice and a public hearing. If the failure of a local program to carry out this subsection creates an imminent hazard, the Commission may summarily revoke the certification of the local program. Chapter 150B of the General Statutes does not apply to proceedings under this subsection.

(f2) Notwithstanding any other provision of ~~this subsection,~~ subsections (f) and (f1) of this section, if the Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article."

SECTION 6. G.S. 143-215.6A(j) reads as rewritten:

"(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs ~~by the Commission~~ pursuant to ~~G.S. 143-215.3(a)(14)~~ G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a

local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section."

SECTION 7.(a) Notwithstanding any other provision of law, if a municipality, as part of the approval of any zoning request, subdivision application, site plan review, or permit issuance within its extraterritorial planning and zoning jurisdiction, imposes any requirement or condition relating to the location, design, or construction of a subdivision street or a driveway connection to a subdivision street which would cause the affected street to be ineligible for acceptance as part of the State system, (considering the then-current North Carolina Department of Transportation standards for the streets or driveways), then the municipality shall accept for municipal maintenance the affected street when offered for dedication by the developer or owner if the area of the extraterritorial jurisdiction where the street is located is not annexed within two years of the date of construction of the street or the driveway connection to the street and if the street meets the city's street maintenance standards. The city may inspect a subdivision street to determine whether the street meets the city's street maintenance standards.

SECTION 7.(b) Notwithstanding any other provision of law, the acceptance of streets in the extraterritorial planning jurisdiction for municipal maintenance pursuant to subsection (a) of this section shall not affect distributions under G.S. 136-41.1 (Powell Bill).

SECTION 7.(c) Words and phrases used in this section have the same meaning as in Chapter 136 of the General Statutes and in Article 19 of Chapter 160A of the General Statutes, as appropriate.

SECTION 7.(d) This section applies only to municipalities having a population of 600,000 or more according to the most recent federal decennial census.

SECTION 8.(a) G.S. 20-175(d) reads as rewritten:

"(d) Local governments may enact ordinances restricting or prohibiting a person from standing on any street, highway, or right-of-way excluding sidewalks while soliciting, or attempting to solicit, any employment, business, or contributions from the driver or occupants of any vehicle. This subsection does not permit additional restrictions or prohibitions on the activities of licensees, employees, or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering ~~surveys.~~surveys except as provided in subsection (e) of this section."

SECTION 8.(b) G.S. 20-175 is amended by adding a new subsection to read:

"(e) A local government shall have the authority to grant authorization for an employee or agent of the local government to stand in, on, or near a street or State roadway, within the local government's municipal corporate limits, to solicit a charitable contribution if the requirements of this subsection are met.

An employee or agent seeking authorization under this subsection to solicit charitable contributions shall file a written application with the local government. This application shall be filed not later than seven days before the date the solicitation event is to occur. If there are multiple events or one event occurring on more than one day,

each event shall be subject to the application and permit requirements of this subsection for each day the event is to be held. to include the application fee.

The application must include:

(1) The date and time when the solicitation is to occur;

(2) Each location at which the solicitation is to occur; and

(3) The number of solicitors to be involved in the solicitation at each location.

This subsection does not prohibit a local government from charging a fee for a permit, but in no case shall the fee be greater than twenty-five dollars ($25.00) per day per event.

The applicant shall also furnish to the local government advance proof of liability insurance in the amount of at least two million dollars ($2,000,000) to cover damages that may arise from the solicitation. The insurance coverage must provide coverage for claims against any solicitor and agree to hold the local government harmless.

A local government, by acting under this section, does not waive, or limit, any immunity or create any new liability for the local government. The issuance of an authorization under this section and the conducting of the solicitation authorized are not considered governmental functions of the local government.

In the event the solicitation event, the solicitors, or any employee or agent of the local government shall create a nuisance, delay traffic, create threatening or hostile situations, any law enforcement officer with proper jurisdiction may order the solicitations to cease. Any individual failing to follow a law enforcement officer's lawful order to cease solicitation shall be guilty of a Class 2 misdemeanor. This subsection shall not limit a local government's authority to discipline or take other lawful action against an employee or an agent who fails to comply with the provisions of this subsection."

SECTION 9. Sections 1 through 6 of this act becomes effective 1 September 2006. Section 8 of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date. This remainder of this act is effective when it becomes law.

HOUSE BILL 1413:
Enhance Local Govt. Adm. of Env. Prgms

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 19, 2006
Introduced by:	Reps. L. Allen, Hackney, Justice, Weiss	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to Third Edition H1413-CSRBf-82		

SUMMARY: ***House Bill 1413 would: require the self-inspection of an area covered by an approved erosion and sedimentation control plan; clarify the jurisdiction of the North Carolina Sedimentation Control Commission over local erosion and sedimentation control programs; authorize a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing activities within the jurisdiction; authorize a local government to establish a fee not to exceed $100.00 for the review of a plan and related compliance activities; clarify that the statute which provides the fee structure for water quality permits should not be construed to limit local government fee authority for certain activities; authorize local permit programs for reclaimed water utilization systems; and provide that local governments certified and approved by the Environmental Management Commission (EMC) to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs.***

The proposed Senate Finance committee substitute does the following:

- ***It amends Section 1 of the bill to remove the requirement that the approved erosion and sedimentation control plan include a schedule for the inspection of the property covered by the plan and to remove the requirement that the records of the inspection indicate whether the erosion control measures required by the plan have been installed in the correct sequence and whether the measures are being maintained in substantial accordance with the plan.***
- ***It adds Section 7 to the bill. Section 7 would require a municipality to provide maintenance to a street within its extraterritorial jurisdiction if the municipality imposed a requirement related to the location, design, or construction of the street or any driveway connection to it that would cause the affected street to be ineligible for acceptance as part of the State highway system. This section applies only to municipalities with a population of 600,000 or more. Charlotte is the only municipality that meets this description. This section becomes effective when it becomes law.***
- ***It adds Section 8 to the bill. Section 8 would allow a local government to grant authority to an employee or agent of the local government to solicit charitable contributions by standing near streets within the municipal corporate limits. This section becomes effective December 1, 2006.***

CURRENT LAW: The General Assembly enacted the Sedimentation Pollution Control Act of 1973 (Act) to establish a program to allow development while minimizing the detrimental effects from pollution by sedimentation. The Act provides that certain land-disturbing activity is subject to mandatory requirements and the Act is enforceable by means of civil penalties, criminal penalties, stop-work orders, injunctive relief, and civil relief. The Act requires a person conducting a land-disturbing activity involving the uncovering of more than one acre to have an erosion and sedimentation control plan (plan) approved by the North Carolina Sedimentation Control Commission (Commission), which has delegated this authority to the Division of Land Resources in the Department of Environment and Natural Resources, prior to initiating the activity. In addition, the Act requires the utilization of sedimentation and erosion control devices and practices that are sufficient to retain the sediment

generated by the construction within the boundaries of the tract during construction and provides for permanent ground cover after completion of construction. A local government may establish its own erosion and sedimentation control program (program) to approve plans and enforce the Act upon a determination by the Commission that the local program has standards that equal or exceed those of the Act. A local government that establishes its own program may also set its own fees.

BILL ANALYSIS: Self-Inspection: The bill would require the landowner, financially responsible party, or their agent to perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary groundcover. The person performing the inspection would have to maintain and make available a record of the inspection. The report must also indicate if there was any deviation from the approved plan, measures required to correct the deviation, and document the completion of those measures.

Jurisdiction of Commission: The bill would clarify that the Commission has concurrent jurisdiction with local governments that administer a delegated program. In addition, the Commission would be given the authority to: (i) review plan approvals made by a delegated program and to require a revised plan if the Commission determines that the plan does not comply with the Act and the associated rules; and (ii) review the compliance activities of a delegated program and take appropriate action upon determination that the delegated program has failed to take appropriate compliance action.

Authorization of Limited Local Programs: The bill would authorize a local government to request that the Commission approve and delegate a limited program that allows the local government to only inspect land-disturbing activities, and assess and collect appropriate fees. Local governments would be authorized to adopt ordinances and regulations necessary to establish a limited program, which shall at least meet and may exceed the minimum requirements regarding the inspection of land-disturbing activities under the Act and the associated rules. If the Commission approves a limited local program, the Commission would retain responsibility for administering all components of the program, other than the inspection of land-disturbing activities. *The local government would be required to establish a fee for the review of a plan and related compliance activities, not to exceed $100.00, and submit a portion of the fee to the Commission to compensate the Commission for the costs associated with the administration and enforcement of other parts of the program.*

Local Government Fee Authority Not Impaired: The bill would clarify that G.S. 143-215.3D, which provides the fee schedule for water quality permits, would not be construed to limit the authority of a local government to collect a fee for the review of a permit application or mitigation plan, or inspection of a site.

Local Permit Programs for Reclaimed Water Utilization Systems: The bill would authorize local governments to establish and administer their own permit program, in lieu of required State permits, for construction, operation, alteration extension, or change of a reclaimed water utilization system. The statute already authorizes local government permit programs for these activities with regard to sewer systems.

Civil Penalties for Violations: The bill would provide that local governments certified and approved by the EMC to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs.

EFFECTIVE DATE: The bill would become effective September 1, 2006.

Jennifer McGinnis and Tim Dodge, counsel to the House Committee on Environment and Natural Resources, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 18, 2006

TO:

FROM: Kristin Walker
Fiscal Research Division

RE: House Bill 1413 (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Sedimentation Account	No estimate available. See Assumptions and Methodology				
Local Governments	No estimate available. See Assumptions and Methodology				
EXPENDITURES:					
Sedimentation Account	No estimate available. See Assumptions and Methodology				
Local Governments	No estimate available. See Assumptions and Methodology				
Correction	Exact amount cannot be determined				
Judicial Branch	Exact amount cannot be determined				
ADDITIONAL PRISON BEDS*	No impact anticipated				

POSITIONS: (cumulative)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local governments, Department of Environment and Natural Resources, Sedimentation Control Commission, Department of Correction, Judicial Branch.

EFFECTIVE DATE: September 1, 2006

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:
This PCS of House Bill 1413 would: require the self-inspection of an area covered by an approved erosion and sedimentation control plan; clarify the jurisdiction of the North Carolina Sedimentation Control Commission ("the Commission") over local erosion and sedimentation control programs; authorize a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing activities within the jurisdiction; clarify that the statute which provides the fee structure for water quality permits should not be construed to limit local government fee authority for certain activities; authorize local permit programs for reclaimed water utilization systems; and provide that local governments certified and approved by the Environmental Management Commission (EMC) to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs. The penalties in this case are paid to the local government. As such, it has no impact on state revenues.

ASSUMPTIONS AND METHODOLOGY:
Revenues: This bill allows a local government to submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission would still be responsible for the administration and enforcement of all other components of the program, including review and approval of the plans. Local governments operating a limited local program shall charge a fee made up of two components: 1) an amount equal to 80% of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus 2) any amount that the local government requires to cover the cost of inspection and administration activities by the local government. The total fee shall not exceed $100/acre.

The bill directs the local government operating a limited local program to pay the first component of the fee to the Commission for the administration and enforcement of other components of the program. These payments shall be deposited into the Sedimentation Account established by G.S. 113A-54.2(b). ***Under this bill, the Sedimentation Account will receive 20% less in fee revenue for each sedimentation and erosion control plan submitted under a limited local program.*** Currently, the sedimentation fee is set at $50/acre; therefore under a limited local program, the Sedimentation Account would receive only 80% of that or $40/acre. Currently, there is no estimate of how many plans would be submitted under a limited local program. Consequently, no estimate is available regarding the exact impact on the Sedimentation Account.

The second component of the fee will result in a revenue gain by local governments operating limited local programs. At this time, there is no estimate available regarding the number of local governments that would choose this option. Also the amount of this component of the fee will likely vary by local government. For these reasons, a specific estimate of the impact on local government revenues is not available.

Expenditures: Under a limited local program, inspection of land-disturbing activities is delegated to the participating local government. ***Consequently, the expenditures related to these inspections will be shifted from the Department of Environment and Natural Resources (DENR) to the participating local government.*** Because the extent to which local governments will choose the

limited local program option is unknown, no estimate is available regarding the resources saved by DENR and expended by the local governments. Note that inspections conducted by local rather than state inspectors, especially in rural areas, will likely require less in travel expenditures.

Criminal Penalties: General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitate effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

The proposed committee substitute makes various changes to Article 4 (Sedimentation Pollution Control Act of 1973), Chapter 113A of the General Statutes, including self-inspections by landowners and authorization for local governments to establish and administer their own permit program. Current G.S. 113A-64(b) states that any person who knowingly or willfully violates any provision of Article 4 or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000). Because this second edition would expand an existing offense, the number of charges and convictions cannot be projected.

Department of Correction & County Jails

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

- In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences and the average active sentence length was 23 days. Offenders with active sentences of less than thirty days are housed in county jails at county expense.
- The remaining 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Correction (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because Class 2 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation would not impact prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor is $2,314 per trial and $271 per guilty plea. The trial cost includes an estimated $1,365 in jury fees, costs of time in court, and attorney costs and an additional $949 in indigent defense. Based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by plea.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission, Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1413-CSRBF-82 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Clodfelter
Sen.)

moves to amend the bill on page 6, lines 37-38

~~( ) WHICH CHANGES THE TITLE~~

by rewriting the lines to read:

"(e) A local government shall have the authority to grant authorization for a person to stand in, on, or near a street or State"

p. 6, l 41, by deleting "An employee or agent" and substituting "A person"

p. 7, lins 19-20, by rewriting the lines to read:

"In the event the solicitation event or the solicitors shall create a nuisance, delay traffic, create threatening or hostile"

p. 7, l 23-26, by deleting the sentence that begins on lin 23.

and make a technical change to the title.

SIGNED Daniel G. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1436
PROPOSED COMMITTEE SUBSTITUTE S1436-CSLYx-117 [v.1]

7/19/2006 10:11:09 AM

Short Title: Local Government Debt Revisions. (Public)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW REGIONAL COUNCILS OF GOVERNMENT TO FINANCE REAL PROPERTY ACQUISITIONS AND IMPROVEMENTS AND TO MAKE REVISIONS RELATED TO TAX INCREMENT FINANCING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-475(7a) reads as rewritten:

"**§ 160A-475. Specific powers of council.**

The charter may confer on the regional council any of the following powers:

...

"(7a) For the purpose of meeting the regional council's office space and program needs, to acquire real property by purchase, gift, or otherwise, and to improve that property. The regional council may pledge real property as security for indebtedness used to finance acquisition of that property or for improvements to that real property. A regional council may not exercise the power of eminent domain."

SECTION 2. G.S. 153A-395 is amended by adding a new subdivision to read:

"**§ 153A-395. Powers and duties.**

A regional planning commission may:

...

(9a) For the purpose of meeting its office space and program needs, acquire real property by purchase, gift, or otherwise, and improve that property. It may pledge real property as security for an indebtedness used to finance acquisition of that property or for improvements to that property. It may not exercise the power of eminent domain in exercising the powers granted by this subdivision."

SECTION 3. G.S. 158-7.3(j) reads as rewritten:

"(j) Plan Implementation. – In implementing a development financing plan, a unit may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof. A private agency that enters into a contract with a unit for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract."

SECTION 4. G.S. 160A-515.1(i) reads as rewritten:

"(i) Plan Implementation. – In implementing a development financing plan, a city may act directly, through a redevelopment commission, through one or more contracts with private agencies, or by any combination of these. A private agency that enters into a contract with a city for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract."

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1211

Judiciary I Committee Substitute Adopted 7/7/06

PROPOSED COMMITTEE SUBSTITUTE S1211-PCS85488-RK-68

Short Title: Blaire Thompson Drug Dealer Liability Act. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO TAX THE UNLAWFUL DISTRIBUTION OF CONTROLLED SUBSTANCES AND TO CREATE THE BLAIRE THOMPSON FUND.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Blaire Thompson Act."

SECTION 2. G.S. 15B-2 reads as rewritten:

"...

(4a) "Controlled substance" has the same definition as set forth in G.S. 90-87.

...

(5) "Criminally injurious conduct" is defined as:

a. ~~means conduct~~ Conduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State. ~~Criminally injurious conduct includes conduct~~

b. Conduct that amounts to an offense involving impaired driving as defined in G.S. 20-4.01(24a), and conduct that amounts to a violation of G.S. 20-166 if the victim was a pedestrian or was operating a vehicle moved solely by human power or a mobility impairment device. For purposes of this Article, a mobility impairment device is a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12

miles per hour when the device is being operated by a person with a mobility impairment. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle when the conduct is punishable only as a violation of other provisions of Chapter 20 of the General Statutes.

c. The illegal distribution or transfer of controlled substances.

d. Conduct that constitutes ~~Criminally injurious conduct shall also include~~ an act of terrorism, as defined in 18 U.S.C. § 2331, that is committed outside of the United States against a citizen of this State.

...

(12b) "Transfer" has the same definition as set forth in G.S. 105-113.106.

..."

SECTION 3. G.S. 15B-6(a) reads as rewritten:

"**§ 15B-6. Powers of the Commission and Director.**

(a) In addition to powers authorized by this Article and Chapter 150B, the Commission may:

(1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and Article 2A of Chapter 150B of the General Statutes necessary to carry out the purposes of this Article;

(2) Establish general policies and guidelines for awarding compensation and provide guidance to the staff assigned by the Secretary of the Department of Crime Control and Public Safety to administer the program;

(3) Accept for any lawful purpose and functions under this Article any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm, or corporation, and may deposit the same to the Crime Victims Compensation ~~Fund.~~Fund or the Blaire Thompson Fund."

SECTION 4. G.S. 15B-7(a) reads as rewritten:

"**§ 15B-7. Filing of application for compensation award; contents.**

(a) A claim for an award of compensation from the Crime Victims Compensation Fund or the Blaire Thompson Fund is commenced by filing an application for an award with the Director. The application shall be in a form prescribed by the Commission and shall contain the following information:

...."

SECTION 5. G.S. 15B-8 is amended by adding a new subsection to read:

"**§ 15B-8. Procedure for filing application.**

(a) The Director shall establish procedures for screening, filing, recording, investigating, and processing applications for an award of compensation. The Director shall also establish the procedures and methods for processing follow-up claims for compensation. The procedures and methods established by the Director under this subsection shall conform to any rules adopted by the Commission.

(b) Repealed by Session Laws 1987, c. 819, s. 14.

(c) The Director shall establish the procedures described in subsection (a) of this section for applications for compensation from the Blaire Thompson Fund.

(1) Only persons who have suffered damages proximately caused by the illegal use of a controlled substance are qualified as claimants who are eligible to apply for, and to receive, an award of compensation from the Blaire Thompson Fund.

(2) Notwithstanding any other provision of this Article, claimants applying for compensation from the Blaire Thompson Fund shall not have an award withheld or reduced based upon either the criminal misconduct or contributory negligence of the claimant or the victim of the criminally injurious conduct."

SECTION 6. G.S. 15B-18 reads as rewritten:

"**§ 15B-18. Subrogation by State.**

(a) If compensation is awarded, the Crime Victims Compensation Fund or the Blaire Thompson Fund is subrogated to all the claimant's rights to receive or recover benefits or advantages for economic loss from a source that is, or if readily available to the victim or claimant would be, a collateral source, to the extent of the compensation awarded.

(b) The Crime Victims Compensation Fund and the Blaire Thompson Fund are~~is an eligible recipient~~ eligible recipients for restitution under G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

(c) As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant shall give the Commission prior written notice of the proposed action. After receiving the notice the Commission shall immediately notify the Attorney General who shall promptly:

(1) Join in the action as a party plaintiff to recover compensation awarded;

(2) Require that the claimant bring the action in his individual name as a trustee in behalf of the State to recover compensation awarded; or

(3) Reserve its rights and do neither in the proposed action. If, as requested by the Attorney General, the claimant brings the action as trustee and recovers compensation awarded from the Crime Victims Compensation Fund, he may deduct from the compensation recovered in behalf of the State the reasonable expenses, including attorney fees, allocable by the court for that recovery.

(d) If a judgment or verdict separately indicates economic loss and noneconomic detriment, payments on the judgment shall be allocated between them in proportion to the amounts indicated. In an action in a court of this State arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

(e) Any funds recovered by the Crime Victims Compensation Fund or the Blaire Thompson Fund pursuant to this section shall be paid to the general fund.

(f) The Director may pursue any claim of the Crime Victim's Compensation ~~Fund~~ Fund, the Blaire Thompson Fund, or the Commission set forth in this Article. At the request of the Director, or otherwise, the Attorney General is authorized to assert the rights of the Crime Victim's Compensation ~~Fund~~ Fund, the Blaire Thompson Fund, or Commission before any administrative or judicial tribunal for purposes of enforcing a claim or right set forth in this Article."

SECTION 7. G.S. 15B-21 reads as rewritten:

"**§ 15B-21. Annual report.**

The Commission shall, by March 15 each year, prepare and transmit to the Governor and the General Assembly a report of its activities in the prior fiscal year and the current fiscal year to date. The report shall include:

(1) The number of claims filed;
(2) The number of awards made;
(2a) The number of pending cases by year received;
(3) The amount of each award;
(4) A statistical summary of claims denied and awards made;
(5) The administrative costs of the Commission, including the compensation of commissioners;
(6) The current unencumbered balance of the North Carolina Crime Victims Compensation Fund;
(6a) The current unencumbered balance of the Blaire Thompson Fund;
(7) The amount of funds carried over from the prior fiscal year;
(8) The amount of funds received in the prior fiscal year from the Department of Correction and from the compensation fund established pursuant to the Victims Crime Act of 1984, 42 U.S.C. § 10601, et seq.; and
(9) The amount of funds expected to be received in the current fiscal year, as well as the amount actually received in the current fiscal year on the date of the report, from the Department of Correction and from the compensation fund established pursuant to the Victims Crime Act of 1984, 42 U.S.C. § 10601, et seq.

The Attorney General and State Auditor shall assist the Commission in the preparation of the report required by this section."

SECTION 8. Chapter 15B of the General Statutes is amended by adding a new section to read:

"**§ 15B-23.1. The Blaire Thompson Fund.**

There is established the Blaire Thompson Fund. Revenue in the Blair Thompson Fund includes amounts credited to the Fund under G.S. 105-113.113 and other funds. Any surplus in the Blaire Thompson Fund shall not revert. The Blaire Thompson Fund shall be kept on deposit with the State Treasurer, as in the case of other State funds, and may be invested by the State Treasurer in any lawful security for the investment of State money. The Blaire Thompson Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes."

SECTION 9. G.S. 105-113.105 reads as rewritten:

"The purpose of this Article is to levy an excise tax to generate revenue for State and local law enforcement ~~agencies~~ agencies, crime victims, and for the General Fund. Nothing in this Article may in any manner provide immunity from criminal prosecution for a person who possesses or distributes an illegal substance."

SECTION 10. G.S. 105-113.106 reads as rewritten:

"**§ 105-113.106. Definitions.**

The following definitions apply in this Article:

...

(8b) Transfer. – The actual or constructive change of possession from one person to another of a substance regulated by this Chapter.

...."

SECTION 11. G.S. 105-113.107A reads as rewritten:

"**§ 105-113.107A. Exemptions.**

(a) Authorized Possession. – The tax levied in this Article does not apply to a substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the substance is authorized by law.

(a1) Authorized Transfer. – The tax levied in this Article does not apply to a transfer of a substance by a dealer who is legally authorized to transfer the substance. This exemption applies only during the time the dealer's transfer of the substance is authorized by law.

(b) Certain Marijuana Parts. – The tax levied in this Article does not apply to the following marijuana:

(1) Harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant.

(2) Fiber or any other product of marijuana stalks described in subdivision (1) of this subsection, except resin extracted from the stalks.

(3) Marijuana seeds that have been sterilized and are incapable of germination.

(4) Roots of the marijuana plant."

SECTION 12. Article 2D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-113.107B. Transfer tax on unauthorized substances.**

A tax is levied on the actual or constructive transfer of controlled substances by dealers at the same rates set forth in G.S. 105-113.107, Excise tax on unauthorized substances. The provisions on weight set forth in G.S. 105-113.107(a1) are applicable to controlled substances subject to the transfer tax under this section."

SECTION 13. G.S. 105-113.108 reads as rewritten:

"**§ 105-113.108. Reports; revenue stamps.**

(a) Revenue Stamps. – The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the ~~tax~~ taxes required by this Article. Dealers shall report the taxes payable under this Article at the time and on the return prescribed by the Secretary. Notwithstanding any other provision of law, dealers are not required to give their name, address, social security number, or other identifying information on the

return, and the return is not required to be verified by oath or affirmation. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Reports. – Every local law enforcement agency and every State law enforcement agency must report to the Department within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the form prescribed by the Secretary and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's social security number, and any other information prescribed by the Secretary. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which ~~a~~an excise or transfer stamp has not been affixed as required by this Article:

(1) More than 42.5 grams of marijuana.
(2) Seven or more grams of any other controlled substance that is sold by weight.
(3) Ten or more dosage units of any other controlled substance that is not sold by weight.
(4) Any illicit mixed beverage.
(5) Any illicit spirituous liquor.
(6) Mash."

SECTION 14. G.S. 105-113.109 reads as rewritten:

"**§ 105-113.109. When tax payable.**

(a) The excise tax imposed by this Article is payable by any dealer who actually or constructively possesses an unauthorized substance in this State upon which the tax has not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the dealer acquires actual or constructive possession of a non-tax-paid unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the unauthorized substance. Once the excise tax due on an unauthorized substance has been paid, no additional excise tax is due under this Article even though the unauthorized substance may be handled by other dealers.

(b) The transfer tax imposed by this Article is payable by any dealer who actually or constructively transfers an unauthorized substance in this State upon which the transfer tax has not been paid, as evidenced by an unexpired transfer stamp. The tax is payable prior to any transfer, and stamps issued upon payment of the tax shall expire five days from the date of the issuance. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the unauthorized substance to be transferred. All transfers of unauthorized substances, including unauthorized substances which have been previously transferred with appropriate stamps, must have a valid and unexpired transfer stamp affixed."

SECTION 15. G.S. 105-113.111 reads as rewritten:

"**§ 105-113.111. Assessments.**

Notwithstanding any other provision of law, an assessment against a dealer who ~~possesses~~ possesses, or who has transferred, an unauthorized substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the excise or transfer tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set forth in G.S. 105-242, including causing execution to be issued immediately against the personal property of the dealer, unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter."

SECTION 16. G.S. 105-113.113 reads as rewritten:

"**§ 105-113.113. Use of tax proceeds.**

(a) Special ~~Account.~~ Accounts. – The Secretary shall credit the proceeds of the ~~tax~~ taxes levied by this Article to two ~~a~~ special nonreverting ~~account,~~ accounts, to be called the State Unauthorized Substances Tax Account for Excise Taxes, and the State Unauthorized Substances Tax Account for Transfer Taxes, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:

(1) The tax has been fully paid and the taxpayer has no current right under G.S. 105-267 to seek a refund.

(2) The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely contested the tax under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

(b) Excise Tax Distribution. – The Secretary shall remit from the State Unauthorized Substances Tax Account for Excise Taxes seventy-five percent (75%) of the part of the unencumbered tax proceeds that was collected by assessment to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

(b1) Transfer Tax Distribution. – The Secretary shall remit the unencumbered tax proceeds in the State Unauthorized Substances Tax Account for Transfer Taxes to the Blaire Thompson Fund, as established by G.S. 15B-23.1.

(b2) If the Secretary has made notification under this Chapter that a person owes taxes, penalties, and interest for both the excise and transfer tax, any monies collected shall be credited towards the State Unauthorized Substances Tax Account for Excise Taxes until the amount due based on failure to pay the excise tax is satisfied.

(c) Refunds. – The refund of a tax that has already been distributed shall be drawn initially from the State Unauthorized Substances Tax ~~Account.~~ Account for Excise Taxes or Transfer Taxes, depending upon which account had been the source of the distribution. The amount of refunded taxes that had been distributed to a law enforcement agency under this section and any interest shall be subtracted from succeeding distributions from the Account to that law enforcement agency. The amount of refunded taxes that had been credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account."

SECTION 17. Sections 1 through 16 are effective January 1, 2007, and apply to transfers of illegal controlled substances on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 1211 PCS:
Blaire Thompson Drug Dealer Liability Act

BILL ANALYSIS

Committee:	Senate Finance Committee	**Date:**	July 18, 2006
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell Staff Attorney
Version:	PCS to Second Edition S1211-CSRK-68		

SUMMARY: ***This act would create a tax on the distribution of controlled substances. Monies collected from the tax would be remitted by the Department of Revenue to the Blaire Thompson Fund. The fund would be available for claims for compensation due to damages from controlled substances. The act is effective on January 1, 2007, and applies to transfers on or after that date.***

BACKGROUND:

North Carolina has an excise tax on the possession of illegal controlled substances—the North Carolina Controlled Substances Act. State law requires a person in possession of controlled substances to purchase tax stamps to affix to the illegal substance. Persons who are caught with illegal substances without the proper stamps are liable to the Department of Revenue for the taxes, penalties, and interest. A total of approximately $78 million dollars was collected by the Department of Revenue between the years 1990 and 2004.

BILL ANALYSIS:

Section 1: The name of the act is the Blaire Thompson Act.

Section 2: The Crime Victims Compensation Act is amended to provide definitions of terms applicable to claims for compensation.

Section 3: Amends the powers of the Director, and the Crime Victims Compensation Commission ("Commission"), to accept grants of money to the Blaire Thompson Fund ("Fund").

Section 4: Amends the statute providing for applications to the Commission to include the Fund.

Section 5: Requires the Director to provide procedures for applications for compensation from the Fund. Contributory negligence or misconduct is not a bar to recovery.

Section 6: Amends Compensation Fund statutes to include the Blaire Thompson Fund. Upon an award, the Fund is subrogated to claimant's rights to recover from other sources, and is eligible to receive restitution as authorized by law.

Section 7: Requires the Commission to submit an annual report to the Governor and the General Assembly with the unencumbered balance in the Fund.

Section 8: Establishes the Blaire Thompson Fund, and provides for crediting from the Department of Revenue's collection of illegal substance transfer taxes. The Fund is subject to oversight by the State Auditor.

Section 9: Makes a technical, conforming change.

Section 10: Defines "transfer" as used in the illegal substance tax laws.

Section 11: Exempts lawful transfers of controlled substances; exemption applies only during the time the transfer is authorized by law.

Section 12: Amends the tax laws to create a transfer tax on controlled substances. Adopts the current tax schedule for the excise tax.

Section 13: Amends the statute providing for revenue stamps to reflect the additional transfer tax. Law enforcement agencies, upon seizure of the statutorily defined minimum amount of controlled substances, must report the absence of the proper stamps to the Department.

Section 14: Provides the guidelines for when the transfer tax is payable. The tax must be paid, and the stamps affixed, within 5 days of the transfer. The stamps expire after 5 days, and subsequent transfers must have valid stamps affixed.

Section 15: Adds the transfer tax to the penalty provisions for failure to pay the unauthorized substances tax. The section provides that notice must be given to the dealer, and also provides the procedure for collection of taxes, penalties, and interest.

Section 16: Establishes a State Unauthorized Substances Tax Account for Transfer Taxes as a non-reverting account. The section provides that the Secretary of the Department of Revenue shall credit the account with proceeds of the taxes levied under the transfer tax provisions. Upon the taxes becoming unencumbered, the proceeds in the Account must be remitted to the Blaire Thompson Fund. Taxes due to the Excise Fund have priority over the Transfer Fund.

Section 17: Provides the effective dates.

CURRENT LAW

In *State v. Ballenger*, the North Carolina Court of Appeals upheld the North Carolina Controlled Substances Act. The court held that the tax was not a criminal penalty, and reversed the trial court's order that had dismissed charges against the defendant based upon the Double Jeopardy Clause of the Constitution. The court noted that the law contained none of the "unusual features" of the Montana drug tax law that had been overturned by the U. S. Supreme Court in *Montana Dept. of Revenue v. Kurth Ranch.* The tax (1) was not predicated on whether the person had been arrested for a crime, i.e., it was based upon an event other than imposed "post-arrest", and (2) the property tax was not assessed or imposed on property that may have already been destroyed. The court specifically mentioned that a "high rate of tax" and a deterrent effect do not necessarily render a tax punitive. The decision by the NC Court of Appeals was affirmed by the North Carolina Supreme Court.

The United States Supreme Court, in *Hudson v. United States*, held that there are several factors to be considered in determining whether a civil penalty is, in actuality, a criminal penalty and would bar a subsequent prosecution based upon double jeopardy principles. The fact that a penalty may appear disproportionate was deemed not to be determinative in deciding whether a civil remedy was a criminal penalty. The factors must be considered in relation to the statute on its face, and only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.

The Proposed Committee Substitute parallels the current tax, and retains the same features that were upheld in the *Ballenger* case. The tax is based upon an event, and is paid prior to the transfer. Payment is not contingent upon arrest. The tax rate is identical to the tax for possession. Consequently, based upon the analysis provided in *Hudson and Ballenger*, it is doubtful that the tax would be considered a criminal penalty, and thereby implicate the Double Jeopardy Clause.

SENATE FINANCE COMMITTEE
Wednesday, July 19, 2006 at 2:40 PM
Senate Chamber, Legislative Building

MINUTES

The Senate Finance Committee met at 2:40 PM, July 19, 2006, in the Senate Chamber. Twenty-five members of the committee were present. Senator David Hoyle presided.

HB 749 – Agreement for Transportation Improvements –AB.

Senator Jenkins and Senator Kerr were recognized to explain the bill. Senator Atwater made a motion to adopt the proposed committee substitute for discussion. The motion carried. Senator Weinstein made a motion for a favorable report. The motion carried. A copy of the PCS and the summary are attached.

The meeting adjourned at 2:45 PM.

Senator David W. Hoyle, Presiding

Senator John H. Kerr, III, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John H. Kerr III, Co-Chair

Wednesday, July 19, 2006

Senator HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **749** Agreement for Transportation Improvements.-AB

Draft Number:	30633
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Report III

HOUSE BILL 749:
Agreement for Transportation Improvements.-AB

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 19, 2006
Introduced by:	Reps. Cole, Coates	**Summary by:**	Trina Griffin
Version:	PCS to Third Edition H749-CSSVf-102		Committee Counsel

SUMMARY: The Proposed Committee Substitute for HB 749 does three things:

- ***It authorizes the Department of Transportation to enter into certain highway financing agreements and to require agreements involving Department funds to be approved by the Board of Transportation.***
- ***It adds the contents of SB 185, which passed the Senate last year and provides that businesses that replace windshields may obtain replacement inspection stickers without paying the sticker fees.***
- ***It adds the contents of SB 1087, which passed the Senate last year but has been modified by the House. This provision would allow a person whose drivers license has been permanently revoked for two years to obtain a limited driving privilege. There would be $100 filing fee to file a motion for a limited driving privilege under this provision.***

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 749 has three components as follows:

Agreement for Transportation Improvements (Section 1)

BILL ANALYSIS: Section 1 of the PCS authorizes the Department of Transportation to enter into and requires the Board of Transportation to approve any agreement with a public or private entity in which the entity provides financing for the cost of acquiring, constructing, equipping, operating, or maintaining a highway project. This provision would also give DOT the needed authority to enter into an agreement with the North Carolina Turnpike Authority in order for the DOT to participate in the cost of construction of a turnpike project using federal funds.

EFFECTIVE DATE: Section 1 of the PCS would become effective August 1, 2006.

Windshield Replacers/Stickers Without Fee (Section 2)

CURRENT LAW: Businesses that replace windshields on vehicles may register with the Division of Motor Vehicles to obtain replacement inspection stickers for use on replaced windshields. The replacement inspection sticker must contain the same information and expire at the same time as the inspection sticker it replaces. The business must keep the removed inspection sticker, along with a copy of the statement given to the vehicle owner, for 18 months. The DMV may suspend or revoke the registration of a person who fails to keep the required records or is unable to account for the inspection stickers.

There are two types of inspection stickers placed on vehicles. A safety-only inspection sticker costs $.85 and an emissions and safety inspection sticker costs $6.50. Fees collected for inspection stickers are divided among the following accounts: the Highway Fund, the Emissions Program Account, the Telecommunications Account, the Highway Trust Fund Repayment Fee, the Volunteer Rescue/EMS Fund, the Rescue Squad Workers' Relief Fund, and the Division of Air Quality of the Department of Environment and Natural Resources.

BILL ANALYSIS: Section 2 of the Proposed Committee Substitute would allow a business that replaces windshields on vehicles to obtain replacement inspection stickers from the Department of Motor Vehicles without paying the sticker fees upon presenting a copy of the statement prepared for the vehicle owner along with the removed inspection sticker.

EFFECTIVE DATE: Section 2 of the PCS would become effective July 1, 2007.

Limited Driving Privilege –DWLR

CURRENT LAW: G.S. 20-16 lists a number of offenses for which the Division of Motor Vehicles (DMV) may revoke a person's driver's license. These include the accumulation of 12 or more drivers license points in a three year period, fraudulent use of a license, any offense committed in another state that if committed in this State would be grounds for suspension or revocation, and certain speeding violations[1]. G.S. 20-17 lists a number of offenses for which the DMV is required to revoke a person's driver's license. These include manslaughter resulting from the operation of a motor vehicle, impaired driving under G.S. 20-138.1 or 138.2[2], failure to stop and render aid, two convictions of reckless driving is a 12 month period, and conviction of assault with a motor vehicle. G.S. 50-13.12 and G.S. 110-142.2 both authorize a court to revoke a driver's license of a person who is delinquent with their child support payments. By far the most license revocations[3] occur under G.S. 20-24.2(a)(1) as a result of a failure to appear for a trial or hearing on a traffic offense. The next most common reason for revocation is the offense of driving while license revoked under G.S. 20-28.[4] (See below for additional grounds for revocations.)

The amount of time a license is revoked depends upon the specific grounds for the revocation. The revocation periods may be as little as 30 days, or last indefinitely if the person fails to resolve the underlying matter that led to the specific revocation. If no specific revocation period is provided, the period of revocation is one year[5]. The license is revoked for 2 years upon a second offense, and permanently revoked upon conviction of a third offense.[6] A person who is convicted of driving while license revoked (G.S. 20-28(a)) is guilty of a Class 1 misdemeanor and the license is revoked for an additional year. A person who is convicted of a moving offense while license revoked (G.S. 20-28.1) will also have the license revoked for an additional year. Subsequent violations of either statute result in additional revocations of two years and permanent revocation. A person whose license is revoked for one year under either G.S. 20-28(a) or G.S. 20-28.1 may apply to have the license reinstated after 90 days. A person whose license is revoked for two years under either statute may apply to have the license reinstated after one year. A person whose license is revoked permanently under either statute may apply to have the license reinstated after three years. DMV may reinstate the license if the person has not been convicted during the period of the revocation of: a moving violation under Chapter 20 or the laws of any other state, any provision of the alcoholic beverage laws of this or any other state, or any provisions of the drug laws of this or any other state. DMV may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. If the revocation is permanent, the conditions and restrictions imposed by the Division may not exceed three years.

---

[1] See also G.S. 20-16.1.
[2] G.S. 20-16.2 requires the revocation of a license for refusing to take a breath test.
[3] DMV reports 324,662 revocations in 2004, 306,226 revocations in 2003, and 304,064 revocations in 2002.
[4] DMV reports 68,361 revocations in 2004, 62,355 revocations in 2003, and 63,355 revocations in 2002.
[5] G.S. 20-19(f).
[6] G.S. 20-28(a).

There are a number of provisions under current law under which a court may grant a limited driving privilege during the term of a revocation. (See below) These include certain limited DWI offenses, certain speeding offenses, and revocations related to failure to pay child support.

BILL ANALYSIS:

Section 3(a) creates a new statute G.S. 20-20.1. It would allow a person whose drivers license has been permanently revoked under G.S. 20-28(a) (driving while license revoked) or G.S. 20-28.1 (moving offense while license revoked) to obtain a limited driving privilege if all of the following apply:

- The person has no other current drivers license revocations other than the revocation under G.S. 20-28(a) or 20-28.1.
- The person has no unresolved or outstanding motor vehicle offenses or motor vehicle charges or unpaid motor vehicle fines or penalties in this or any other state.
- The person has complied with the permanent revocation for at least 2 years immediately preceding the motion for a limited privilege.
- The person has not received a limited driving privilege under this section within the last 3 years.

A person would not be eligible for the privilege if any of the following apply:

- The person is eligible for a limited driving privilege under another provision of the law.
- The person's license was revoked for an impaired driving offense at the time the person was charged under G.S. 20-28(a) or 20-28.1.
- The person's license is revoked due to mental incompetence or drug or alcohol addiction.
- The person's license has been revoked in another state.
- A person who DMV has refused to issue a license due to physical or mental disease that prevents the person from exercising ordinary care in the operation of a vehicle.

A person seeking a limited driving privilege under this section would file a motion in the district court of the county where the person resides according to DMV records. The privilege would be limited to essential driving for employment, maintenance of the household and emergency medial care. The specifics of the privilege and other conditions are contained in subsections (g) - (k) of the bill, and are patterned after existing law regarding limited driving privileges for DWI offenses in G.S. 14-179.3. They include a requirement that the person applying for the privilege had adequate liability and property damage coverage.

If granted, the privilege would last for one year. Upon expiration of the term of the privilege or after three years from the date of permanent revocation, the person may apply to the Division for a license.

Section 3(b) amends G.S. 7A-305 by adding a new subsection. The provision assesses a court cost of $100 for persons filing for a limited driving privilege under G.S. 20-20.1. The costs are remitted to the State Treasurer. One half of the amount will be credited to the Highway Fund and the remaining one half will be remitted to the Court Information Technology Fund. These costs are in addition to any filing fee or other court costs assessed under G.S. 7A-305.

EFFECTIVE DATE: This section would become effective December 1, 2006.

Suspension statutes that require the loss of driving privilege.

Description Statute	Suspension Statute	Violation Description
20-179.4	20-179.4	Failure to Complete Community Service
20-16.5	20-16.5	Civil Revocation
20-17.8(f)	20-17.8(f)	Violation of Ignition Interlock
50-13.12	50-13.12	Fail to Pay Child Support
15A-1331A	15A-1331A	Forfeiture of License Privileges
20-141(j2)	20-17(2)(10)	Speeding in a Work Zone
20-138.7	20-17(12),19(g1)	Open Container After Consuming
14-72(a)	20-17(a)), 19(f)	Larceny of Motor Fuel
20-30(2)	20-16(a)(6).19-(c)	Allow Use of License or Permit
* 20-141.3(b)	20-141.3(e)	Willful Racing or Speed Competition
* 18B-406	20-16(a)(8),19-(a)	Transporting Intoxicants
20-28(a)	20-28	Driving While License Revoked
20-166(a)	20-17(a)(4), 19(f), 166(e)	Felony Hit and Run PI
14-18	20-17(a)(I), 19(f)	Involuntary Manslaughter
20-1669(b), 14-15	20-17(a)(4), 19(f)	Leaving Scene of Accident PI
14-18	20-17(a)(1), 19(f)	Manslaughter
20-141.3(a)	20-141.3(d)	Prearranged Speed Competition
* 20-30(I)	20-16(a)(6), 19(c)	Improper Use of License/Fictitious License
20-30(3)	20-16(a)(6), 19(c)	Unlawful Use of License
20-30(5)	20-17(a)(8)	Fraudulent License Permit
20-30(5)	20-17(a)(8)	Obtain Driver's License By Fraud
20-30(5)	20-17(a)(8)	Allowing False Application
20-4.20	20-4.20	Failure to Comply with Out of State Citation
* 20-16(a)(7)	20-17,20-26	Out of Sate Conviction
20-141.4(a2)	20-17(a)(9), 19(f)	Misdemeanor Death by Vehicle
20-141(j)	20-17(a)(10), 19(f)	Speeding to Elude (Prior to 12-1-1997
20-17(11)	20-19(c)	Assault With Motor Vehicle
20-138.1	20-19(e)	Driving While Impaired 3rd Offense
20-138.1	20-17(a)(2), 19(c1)	Driving While Impaired 1st Offense
20-138.1	20-19(d)	Driving While Impaired 2nd Offense
20-138.1	20-17(a)(2), 19(c1)	Aiding & Abetting Impaired Driving
* 20-12.1	20-16(8a), 19(f)	Instructing While Under the Influence
20-141.4(A1)	20-17(a)(9), 19(I)	Death by Vehicle Involving DWI
20-138.3	20-13.2	Driving After Consuming <21
18B-302	20-17.3	Violation of ABC Laws
20-28(a)	20-28	Driving While License Revoked
20-24.1	20-24.1	Failure to Appear
20-24.1	20-24.1	Failure to Pay
20-17(a)(3)	20-19(f)	Felony Using a Motor Vehicle
14-17	20-19(I)	2nd Degree Murder – DWI
20-138.5	20-138.5(d)	Habitual Impaired Driving
20-141.5	20-141.5(d)	Misdemeanor Eluding Arrest
20-141.5	20-141.5(d)	Felony Eluding Arrest (2 Aggravating Factors)
20-141.5(b)	20-141.5(d)	Felony Eluding Arrest (3 Aggravating Factors)
20-138.2A	20-17(a)(13)	Driving CMV After Consuming
138.2B	20-17(a)(14)	Driving School Bus/Activity Bus/Childcare Vehicle
20-166(e)	20-166	Hit and Run – Fail to Stop PI (2 yr. Revocation)

20-17(a)(15)	20-13.2(c2)(d), 19(f)	Property Damage by Explosive
14-69.2(c)	20-13.2(c2)(d),17(a)(15)	False Bomb Report
14-69.2(c)	20-13.2(c2), 17(a)(15)	Hoax False Bomb-Public Bldgs.
14-268.9(b1)	20-13.2(c2)(d),17(a)(15)	Possession of Explosives On Education Property
14-69.2(c1), 269.2(c1)	20-13.2(c2)(d),17(a)(15)	Aid Minor Possess Explo.Educ.Prop.
18B-302(c)	20-17.3	Aid Underage Purchase Liquor
18-302(b)	20-17.3	Purchase MTBV – by and not 19/20
20-160.1(a)	20-160.1(a)	Fail to Yield – Serious Injury
* 20-16.2	20-16.2	Refuse Chemical Test
* 20-19(c3)	20-19(c3)	Violation of Alcohol Concentration Restriction
* 20-17.8(g)	20-17.8(g)	Violation of Ignition Interlock Restriction
* 20-16	20-16	Point Accumulation
* 20-16	20-19	Speeding
20-16.1	20-16.1	Speeding
* 20-13	20-16(a)(7)	Provisional Licensee Moving W/N 12 mos.
20-16(c)		Violation Of Probation
* 20-16(a)(8b)	20-19(c)	Driving While Impaired – Military Court
* 20-16(a)(7)	20-19(c)	Driving While Impaired – Out of State – 1st Offense

(Notations indicated by asterisk represent discretionary suspensions.)

Current Limited Privilege Criteria

20-16(e1)	Speeding
20-16.1(b)	Excess speed
20-16.2(e1)	Refusal
20-16.5	Civil Revocation
20-138.3	Consuming alcohol less than 21 years of age
20-138.7	Transporting open container of alcohol
20-141.5	Felony elude
20-179.3	Impaired Driving
110-142.2 or 50-13.12	Child Support
20-166	Hit and Run PI

Kory Goldsmith, counsel to Senate Judiciary II, substantially contributed to this summary.

H0749e3-SMSV-CSSVf-102

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 749*

Committee Substitute Favorable 6/1/05

Committee Substitute #2 Favorable 7/6/06

PROPOSED SENATE COMMITTEE SUBSTITUTE H749-CSSVf-102 [v.5]

7/19/2006 11:04:56 AM

Short Title: DOT Agreemnts/No Sticker Fee/Ltd. Driv. Priv. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO CERTAIN HIGHWAY FINANCING AGREEMENTS, TO REQUIRE AGREEMENTS INVOLVING DEPARTMENT FUNDS TO BE APPROVED BY THE BOARD OF TRANSPORTATION, TO PROVIDE THAT REPLACEMENT INSPECTION STICKERS FOR USE ON A REPLACED WINDSHIELD ARE NOT SUBJECT TO THE INSPECTION STICKER FEE, AND TO ALLOW PERSONS WHO ARE CONVICTED OF CERTAIN DRIVING WHILE LICENSE REVOKED OFFENSES TO OBTAIN A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation ~~shall be~~ is vested with the following powers:

. . .

(39) To enter into partnership agreements with the North Carolina Turnpike Authority, private entities and authorized political subdivisions to finance, by tolls and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation."

SECTION 1.(b) G.S. 136-89.183(a)(17) reads as rewritten:

"(17) To enter into partnership ~~agreements,~~ agreements with the Department of Transportation, agreements with political subdivisions of the State, and agreements with private entities, and to expend such funds as it

deems necessary, pursuant to such agreements, for the purpose of financing the cost of acquiring, constructing, equipping, operating, or maintaining any Turnpike Project. An agreement entered under this subdivision requires the concurrence of the Board of Transportation if the Department of Transportation is a party to the agreement."

SECTION 1.(c) G.S. 143B-350(f) reads as rewritten:

(f) Duties of the Board. – The Board of Transportation ~~shall have~~ has the following duties and powers:

(1) To formulate policies and priorities for all modes of transportation under the Department of ~~Transportation;~~Transportation.

(2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the ~~Department;~~Department.

(3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various ~~alternatives;~~alternatives.

(4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects included in the Program, a list of any changes made from the previous year's Program, and the reasons for the ~~changes;~~changes.

(5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to ~~it;~~it.

(6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the ~~Department;~~Department.

(7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be ~~available;~~available.

(8) To approve all highway construction ~~programs;~~programs.

(9) To approve all highway construction projects and construction plans for the construction of ~~projects;~~projects.

(10) To review all statewide maintenance ~~functions;~~functions.

(11) To award all highway construction ~~contracts;~~contracts.

(12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent ~~domain;~~domain.

(12a) To approve partnership agreements with the North Carolina Turnpike Authority, private entities and authorized political subdivisions to finance, by tolls and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in this State.

(13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department."

SECTION 2. G.S. 20-183.7(a) reads as rewritten:

"(a) Fee Amount. – When a fee applies to an inspection of a vehicle or the issuance of an inspection sticker, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
Safety Only	$ 8.25	$0.85
Emissions and Safety	23.50	6.50.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for an inspection sticker does not apply to a replacement inspection sticker for use on a windshield replaced by a business registered with the Division pursuant to G.S. 20-183.6. The fee for inspecting after-factory tinted windows shall be ten dollars ($10.00), and the fee applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint. A safety inspection mechanic shall not inspect an after-factory tinted window of a vehicle for which the Division has issued a medical exception permit pursuant to G.S. 20-127(f).

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee.

The inspection fee for an emissions and safety inspection set out in this subsection is the maximum amount that an inspection station or an inspection mechanic may charge for an emissions and safety inspection of a vehicle. An inspection station or an inspection mechanic may charge the maximum amount or any lesser amount for an emissions and safety inspection of a vehicle. The inspection fee for a safety only inspection set out in this subsection may not be increased or decreased. The sticker fees set out in this subsection may not be increased or decreased."

SECTION 3.(a) Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-20.1. Limited driving privilege for certain revocations.**

(a) Definitions. – As used in this section, the following definitions apply:

(1) Limited driving privilege. – A judgment issued by a court authorizing a person with a revoked drivers license to drive under the terms and conditions authorized under this section.

(2) Nonfleet private passenger motor vehicle. – As defined in Article 40 of Chapter 58 of the General Statutes.

(3) Nonstandard working hours. – Any time other than 6 A.M. until 8 P.M. on Monday through Friday.

(4) Offense involving impaired driving. – As defined in G.S. 20-4.01(24a).

(5) Standard working hours. – Any time from 6 A.M. until 8 P.M. on Monday through Friday.

(b) Eligibility. – The court, for good cause shown, may issue a limited driving privilege to a person whose North Carolina drivers license is permanently revoked under G.S. 20-28(a) or G.S. 20-28.1 if all of the following conditions apply:

(1) The person has no other current drivers license revocations other than the revocation under G.S. 20-28(a) or G.S. 20-28.1.

(2) The person has complied with the permanent revocation for at least two years immediately preceding the motion for a limited driving privilege.

(3) The person has no unresolved or outstanding motor vehicle offenses or motor vehicle charges or unpaid motor vehicle fines or penalties in this or any other state.

(4) The person has not held a limited driving privilege issued under this section at any time during the three years prior to the filing of the current action.

(c) Ineligibility. – A person is not eligible to receive a limited driving privilege under this section if any of the following conditions apply:

(1) The person is eligible to receive a limited driving privilege under any other provision of law.

(2) The person's drivers license was revoked for an offense involving impaired driving at the time the person was charged under G.S. 20-28(a) or G.S. 20-28.1.

(3) The person's drivers license is revoked under G.S. 20-17.1.

(4) The person is not eligible to receive a North Carolina drivers license under G.S. 20-9(f).

(5) The Division has refused to issue a drivers license to the person under G.S. 20-9(e).

(6) The person's drivers license issued by another state has been revoked by that state for any reason or the person's North Carolina drivers license has been revoked under any interstate compact or agreement.

(d) Scope of Privilege. – A limited driving privilege must restrict the holder to essential driving related to one or more of the purposes listed in this subsection. Any driving that is not related to the purposes authorized in this subsection is unlawful even though done at times and upon routes that may be authorized by the privilege. Except as otherwise provided, all driving must be for a purpose and done within the restrictions specified in the privilege.

The permissible purposes for a limited driving privilege are: (i) travel to and from the person's employment; and in the course of employment; (ii) necessary maintenance of the person's household; and (iii) emergency medical care for the person or for an immediate family member of the person who resides in the same household with the person. Driving related to emergency medical care is authorized at any time and without restriction as to routes.

(e) Jurisdiction. – A motion for a limited driving privilege under this section is separate from any action that resulted in the initial revocation and is a civil action filed in district court in the county of the person's residence as reflected by the Division's records. The costs required under G.S. 7A-305(a3) apply to this action.

(f) Motion. – A motion for a limited driving privilege requested under this section must include a copy of the person's driving history. The motion must also include a sworn statement that there are no outstanding or unresolved charges, no unpaid fines, and no violations in this or any other state that could result in the revocation of the person's drivers license, and that the person has complied with the current revocation for the time period required under subdivision (b)(2) of this section immediately preceding the person's motion for a limited driving privilege under this section.

(g) Employment Driving in Standard Working Hours. – The court may authorize driving for employment-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the person is not required to drive for essential employment-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (i) of this section. The limited driving privilege must state the name and address of the applicant's place of work or employer and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(h) Employment Driving in Nonstandard Working Hours. – If a person is required to drive during nonstandard working hours for an essential employment-related purpose and the person provides to the court documentation of that fact, the court may authorize the person to drive for that purpose during those hours. If the person is self-employed, the documentation must be attached to or made a part of the limited driving privilege. The limited driving privilege must state the name and address of the person's place of employment or employer and may include other information and restrictions applicable to work-related driving, in the discretion of the court. If the court determines that it is necessary for the person to drive during nonstandard working hours for an employment-related purpose, the court may authorize the person to drive subject to these limitations:

(1) If the person is required to drive to and from a specific place of employment at regular times, the limited driving privilege must specify the general times and routes in which the person will be driving to and from work and restrict driving to those times and routes.

(2) If the person is required to drive to and from work at a specific place but is unable to specify the times during which the driving will occur,

the limited driving privilege must specify the general routes which the person will be driving to and from work and restrict the driving to those general routes.

(3) If the person is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the person will be driving and restrict driving to those times and within those boundaries.

(4) If the person can specify neither the times nor places in which the person will be driving to and from work, or if the person is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which the person will drive and restrict driving to within those boundaries.

(i) Household Maintenance. – A limited driving privilege may not allow driving for maintenance of the household except during standard working hours. The limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court.

(j) Proof of Financial Responsibility. – A person applying for a limited driving privilege under this section must provide to the court proof of financial responsibility, and a limited driving privilege must be conditioned upon the maintenance of financial responsibility during the period of the limited driving privilege. The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. This subsection does not apply to a person who does not own a currently registered motor vehicle and who does not operate a nonfleet private passenger motor vehicle that is owned by another person and that is not insured under a commercial motor vehicle liability insurance policy. If this subsection applies, the person must sign a written certificate to that effect. The Division shall furnish the certificate. Any material misrepresentation made by the person on the certificate shall be grounds for the court to revoke the limited driving privilege granted under this section.

Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically transmitted facsimile of the certificate issued by an insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and must state the date that the certificate or facsimile is issued. The certificate or facsimile must remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or

facsimile is issued but must not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

(k) Other Restrictions. – The court must include in all limited driving privileges a restriction that the holder of the privilege not consume alcohol while driving or drive at any time while the holder has remaining in the holder's body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The court may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(l) Term. – The term of a limited driving privilege issued under this section shall be one year. Upon the expiration of the term of the limited driving privilege or after three years from the date of the permanent revocation, the person may apply to the Division for a license under G.S. 20-28(c) or G.S. 20-28.1(c).

(m) Notification. – The clerk of court must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section or that does not contain the limitations required by law is invalid.

(n) Modification. – A court may modify or revoke a person's limited driving privilege issued under this section upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege. The judge must indicate in the order of modification or revocation the reasons for the order, or the judge must make specific findings indicating the reason for the order, and those findings must be entered in the record of the case. When a court issues an order of modification or revocation, the clerk must send a copy of the order to the Division.

(o) Effect of Violation. – A violation of a limited driving privilege issued under this section constitutes the offense of driving while license revoked under G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege must be suspended pending the final disposition of the charge."

SECTION 3.(b) G.S. 7A-305 is amended by adding a new subsection to read:

"(a3) In every motion to obtain a limited driving privilege filed under G.S. 20-20.1, a cost of one hundred dollars ($100.00) shall be assessed against the person filing the motion. Costs collected by the clerk under this subsection shall be remitted to the State Treasurer. The State Treasurer must credit one-half of the assessed cost to the Highway Fund and the remaining one-half of the assessed cost to the Court Information Technology Fund established under G.S. 7A-343.2. Costs assessed under this subsection are in addition to any other costs assessed under this section."

SECTION 4. Section 1 of this act becomes effective August 1, 2006. Section 2 of this act becomes effective July 1, 2007. Section 3 of this act becomes effective December 1, 2006, and applies to permanent revocations that occurred before, on, or after that date. The remainder of this act is effective when it becomes law.